

DATED

2020

**SUSTAINABLE LAND PRODUCTS
LIMITED**

AND

BARGATE HOMES LIMITED

TO

FAREHAM BOROUGH COUNCIL

AND

HAMPSHIRE COUNTY COUNCIL

**PLANNING OBLIGATION UNDER SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO LAND ADJOINING NEWGATE LANE,
FAREHAM**

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THIS DEED is made on

2020

BY

- (1) **SUSTAINABLE LAND PRODUCTS LIMITED** (company registered number 07945383) whose registered office is at Endeavour House, Viking Way, Swansea, Wales SA1 7DA (the **Owner**) and
- (2) **BARGATE HOMES LIMITED** (company registered number 05626135) whose registered office is situated at Peninsular House, Wharf Road, Portsmouth PO2 8HB (the **Developer**)

TO

- (3) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire PO16 7AZ (the **Borough Council**); and
- (4) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8ZB (the **County Council**)

BACKGROUND

- 0.1 The Borough Council and the County Council are the local planning authorities for the purposes of the TCPA 1990 for the area in which the Property is situated.
- 0.2 The County Council is the local highway authority (save in respect of trunk roads and special roads) and local education authority for the area in which the Property is situated.
- 0.3 The Owner is the freehold owner of the Property registered with Title Number HP731073 subject to the entries as set out in the Charges Register of Title Number HP731073 and a conditional contract for purchase dated 18 January 2021 in favour of the Developer but otherwise free from encumbrances that would prevent the carrying out of the Development.
- 0.5 Fareham Land LP submitted the Planning Application in respect of the Property and has submitted the Appeal.

0.6 The parties enter into this deed to secure the performance of planning obligations pursuant to the Appeal.

AGREED TERMS

1. INTERPRETATION

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

1.1. Definitions:

Appeal: the appeal against the non-determination of the Planning Application pursuant to section 78(2) TCPA 1990 submitted to the Secretary of State and allocated reference number APP/A1720/W/20/3252180.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:
demolition works;
Property clearance;
ground investigations;
Property survey works;
archaeological investigation;
erection of any fences and hoardings around the Property or;
laying, installation, connection or diversion of service media (including the construction and installation of an electricity substation);
and Commence and Development Commences shall be construed accordingly.

Commencement Date: the date the Development Commences.

Contributions:	Any one or number of the financial contributions required to be paid to the Borough Council or County Council pursuant to Schedules One to Four (inclusive) of this Deed, each of which shall be Index Linked.
Decision Letter:	a decision in writing issued by either the Secretary of State or an Inspector determining the Appeal.
Development:	the development of the Property authorised by the Planning Permission.
Inspector:	a planning inspector appointed by the Secretary of State to consider the Appeal under delegated powers.
Index Linked:	For the purposes of the Highways Contribution in Schedule One means adjusted in accordance with the Retail Price Index published by the Office for National Statistics (or amendment or replacement thereof) by the payment due by a fraction whose denominator shall be the last monthly Index figure published before the date of this Deed and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure; and For the purposes of the Primary Education Contribution and Secondary Education Contribution in Schedule One means adjusted in accordance with the Building Cost Information Service All In Tender Price Index (or amendment or replacement thereof) by

multiplying in each case the payment due by a fraction whose denominator shall be the last monthly figure published before the date of this Deed and whose numerator shall be the last published Building Cost Information Service All In Tender Price Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure; and

For the purposes of Schedule Three, means adjusted in accordance with the Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before April 2020 and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure; and

For the purposes of the Open Space Maintenance Contribution in Schedule Four, means adjusted in accordance with the Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before April 2016 and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure; and

For the purposes of any other payment or financial contribution due under this Deed means adjusted in accordance with the

Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before the date of this Deed and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure.

Interest: interest at 4 per cent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment).

Inflationary Index: the Retail Prices (All Items) Index (“RPI”) (or any replacement index).

NPPF: the National Planning Policy Framework published on 19 February 2019 or any replacement or modification of the same.

Occupation: occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration; marketing; or security and Occupy and Occupied shall be construed accordingly.

Open Market Units: has the meaning afforded to it at Schedule Two.

Plan 1: the plan attached at Appendix A and labelled “Plan 1”.

Planning Application:	the application for outline planning permission for the demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure, with all matters except access to be reserved, registered by the Borough Council under reference number P/18/1118/OA.
Planning Permission:	any outline planning permission to be granted by the Secretary of State or an appointed Inspector pursuant to the Appeal.
Property:	Land adjoining Newgate Lane, Fareham shown for the purposes of identification edged red on Plan 1 and being the land registered at HM Land Registry with absolute title under title number HP731073.
Reserved Matters:	those aspects (defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015) of the Development which through the Planning Application were reserved for later determination.
Reserved Matters Application:	an application for approval of Reserved Matters pursuant to the Planning Permission and “Reserved Matters Approval” shall mean any approval granted pursuant to a Reserved Matters Application.
Residential Unit:	any dwelling (including a house apartment or maisonette, and including Affordable Housing Units and Open Market Units as defined in

Schedule Two) the subject of a Reserved Matters Approval and constructed pursuant to the Planning Permission and Residential Units shall be construed accordingly.

Secretary of State: the Secretary of State for Housing, Communities and Local Government.

Statutory Undertaker: all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies.

TCPA 1990: Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Borough Council and the County Council the successors to its respective statutory functions.
- 1.8 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.
- 1.9 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.
- 1.10 A reference to writing or written excludes faxes and e-mail.
- 1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and paragraphs and Schedules and Appendices are to the clauses and paragraphs and Schedules and Appendices of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 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.
- 1.15 Where an obligation fails to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This Deed is made pursuant to Section 106 of the TCPA 1990.

2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns, subject to clause 3.1.

2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Borough Council and County Council as local planning authorities and, where appropriate, the County Council as local highway authority and local education authority, in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

3.1 With the exception of clauses 1, 2, 3, 5, 6, 7 9 and 12 (which take effect from the date of this deed), this deed is conditional upon the grant and issue of the Planning Permission and (save in respect of any obligation which requires performance prior to the Commencement of Development) the Commencement of Development.

4. UNDERTAKINGS IN FAVOUR OF THE BOROUGH COUNCIL AND COUNTY COUNCIL

4.1 The Owner undertakes to the Borough Council to:

4.1.1 observe and perform the covenants, restrictions and obligations contained in Schedules Two to Four inclusive; and

4.1.2 give at least three Working Days' written notice to the Borough Council of the intended Commencement Date and date of Occupation.

4.2 The Owner undertakes to the County Council to

4.2.1 observe and perform the covenants, restrictions and obligations contained in Schedule One; and

- 4.2.2 give at least five Working Days' written notice to the County Council of the intended Commencement Date and date of Occupation.
- 4.3 The undertakings set out at clause 4.1 and 4.2 above are given on the condition that:
- 4.3.1 any person who has disposed of their interest in the Property (or any part thereof) shall be released from all liability pursuant to this deed in relation to the Property or the part of the Property to which the disposal relates except in respect of any breach subsisting prior to parting with such interest; and
- 4.3.2 the obligations and restrictions contained in this deed shall not be enforceable against:
- 4.3.2.1 any freehold or leasehold owners or occupiers of Residential Units save in respect of any restriction on Occupation of such Residential Unit (or their respective mortgagees or chargees), or a HARP (as defined in Schedule Two), other than paragraph 1 of Schedule Two which shall be enforceable against those parties with an interest in any Affordable Housing Unit subject to the exclusion of liability provisions set out at paragraphs 1.9 and 1.18 of Schedule Two; or
- 4.3.2.2 any mortgagee who has the benefit of a charge or mortgage on all or part of the Property from time to time save for any breach committed whilst that mortgagee is in actual possession of the Property; or
- 4.3.2.3 land forming part of the Property owned or leased by any of the Statutory Undertakers for their operational purposes

4.3.3 If the Decision Letter concludes that any of the obligations or restrictions set out in this Deed do not meet the three tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and therefore would not comprise a reason for granting planning permission, then the relevant obligation(s) shall from the date of the Decision Letter immediately cease to have effect and the Owner shall be under no obligation to comply with it/them.

4.3.4 If any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

5. DETERMINATION OF DEED

5.1 The obligations in this deed (with the exception of clause 8) shall cease to have effect if before the Commencement of Development, the Planning Permission:

5.1.1 expires;

5.1.2 is varied or revoked other than at the request of the Owner; or

5.1.3 is quashed following a successful legal challenge.

5.2 Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

6. LOCAL LAND CHARGE

This deed may be registered as a local land charge by the Borough Council.

7. BOROUGH COUNCIL AND COUNTY COUNCIL'S COSTS

The Owner shall pay on or before the date of this deed, the Borough Council's and County Council's reasonable and proper legal costs (which will

include a County Council's development control costs of three thousand two hundred and sixty two pounds (£3,262).

8. OWNERSHIP

8.1 If the Planning Permission is granted, then until the covenants, restrictions and obligations in Schedules One to Four inclusive have been complied with, the Owner will give to the Borough Council and County Council within 5 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

8.1.1 the name and address of the person to whom the disposition was made; and

8.1.2 the nature and extent of the interest disposed of by reference to a plan

PROVIDED THAT this obligation shall not apply in respect of the disposal of any Residential Unit or any freehold or leasehold disposal of part of the Property to a Statutory Undertaker.

9. THIRD PARTY RIGHTS

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

10. VALUE ADDED TAX

10.1 Each amount stated to be payable pursuant to this deed is exclusive of VAT (if any).

11. INTEREST ON LATE PAYMENTS

Any amount due from the Owner under this deed which is not paid on the due date shall be payable with Interest.

12. GOVERNING LAW

12.1 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.

12.2 This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

13. INDEXATION

Each and every one of the Contributions which are to be paid under the terms of this Deed shall be Index Linked.

14. NOTIFICATION OF COMMENCEMENT/OCCUPATION

14.1 The Owner undertakes to the Borough Council and the County Council that they will:

14.1.1 notify the Borough Council and County Council in writing of the date of Implementation within five Working Days of it occurring;

14.1.2 notify the Borough Council and County Council in writing of the date of Commencement of Development within five Working Days of it occurring;

14.1.3 notify the Borough Council and County Council in writing of the date of Occupation for the first time of any Residential Unit within five Working Days of it occurring; and

14.1.4 pay to the Borough Council and County Council upon written demand its reasonable fees for additional monitoring caused by the Owner's non-compliance with 15.1.1 15.1.2 or 15.1.3.

15. NO FETTER ON DISCRETION OR WAIVER

15.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

15.2 No waiver (whether expressed or implied) by the Borough Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

16. NOTICES

16.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or by email in the following manner:

16.1.1 on the Borough Council at the address shown above or by email to devcontrol@fareham.gov.uk marked "for the attention of the Head of Development Management" and bearing the reference "s106-P/19/0460/OA-Newgate Lane South";

16.1.2 on the County Council at the address as detailed above;

16.1.3 on the Owner at the address as detailed above or as notified by the Owner in writing to the Borough Council; and

16.1.4 on the Developer at the address as detailed above or as notified by the Developer in writing to the Borough Council.

17 PAYMENT OF THE CONTRIBUTIONS

17.1 The Owner undertakes to pay the Contributions to the Borough Council and/or the County Council by either:

17.1.1 cheque made payable to Fareham Borough Council or Hampshire County Council as appropriate;

17.1.2 by BACS or telegraphic transfer.

17.2 All payments must state the Application reference number and the address to which this Deed relates.

17.3 Payment by cheque shall be sent to the Borough Council or the County Council in accordance with the details set out in clause 18.1 identifying the obligation to which the payment relates.

18 DEVELOPER'S CONSENT

The Developer consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed PROVIDED THAT the Developer shall not be personally liable for any breach of the obligations unless or until the Developer completes the purchase of the freehold interest in the Property having acquired it pursuant to its contractual interest in the Property.

SCHEDULE ONE

HIGHWAY CONTRIBUTION, HIGHWAYS WORKS, TRAVEL PLAN AND EDUCATION

DEFINITIONS

In this Schedule the following terms have the following meanings:

"Director"	the County Council's Director of Economy Transport and Environment or his appointed representative for the time being or successor
"Framework Travel Plan"	The framework travel plan agreed by the County Council annexed at Appendix D
"Highways Contribution"	<p>A financial contribution of One Hundred and Sixty Four Thousand and Seventy Three Pounds (£164,073) Index Linked to be used for improvements to the existing the highway network and sustainable travel as follows:</p> <ul style="list-style-type: none"> • A contribution of Ninety-Five Thousand Four Hundred and Ninety-Five Pounds (£95,495) to support bus services and associated infrastructure in the vicinity of the Property; and • A contribution of Sixty-Eight Thousand Five Hundred and Seventy-Eight Pounds (£68,578) towards improvements to school routes at Gosport Road and the junction of Bells Lane, Stubbington Lane and Eric Road
"Highway Works Agreement"	Any agreement or agreements for the On Site Highway Works and if appropriate a separate agreement for the Off Site Highway Works to be entered into by the Owner and the County Council pursuant to (inter alia) section 278 and/or section 38 of the Highways Act 1980 in a form to be agreed by the County Council to provide for the execution of the On Site Highway Works and/or the Off Site Highway Works as appropriate by the Owner at the

	Owner's expense.
"Highway Works Completion Standard"	Completion of the On Site Highway Works or Off Site Highway Works as appropriate to the reasonable satisfaction of the County Council as evidenced by the issue of a certificate of completion for the On Site Highway Works or Off Site Highway Works performed under an agreement pursuant to section 278 Highways Act 1980 or the issue of a part 2 certificate for On Site Highway Works or Off Site Highway Works performed under an agreement pursuant to section 38 Highways Act 1980.
" Off Site Highway Works"	The junction improvement scheme at the junction of Old Newgate Lane/Newgate Lane East as shown in principle on drawing reference BRS.4989 AHJ/1 annexed at Appendix C (the implementation of which is to be determined as part of the Appeal) (or such alternative plan as approved in writing by the County Council) .
" On Site Highway Works"	The site access namely a bellmouth access from Old Newgate Lane into the Development and associated works as shown in principle on drawing reference BRS.4989_Figure 8 Rev D annexed at Appendix B (or such alternative plan as approved in writing by the County Council).

<p>“Primary Education Contribution”</p>	<p>A financial contribution (Index Linked) calculated in accordance with the Primary Education Contribution Formula towards investment in infrastructure related to the impact on pupil places and school facilities as a result of the additional housing . Investment to be made at either Crofton Anne Dale Infant School, Crofton Anne Dale Junior School and further the total Primary Education Contribution payable pursuant to this Deed will not exceed Two Hundred and Forty-Two Thousand Five Hundred and Thirty-Nine Pounds (£242,539)</p>
<p>“Primary Education Contribution Formula”</p>	<p>Number of Qualifying Residential Units x Primary Child Yield x Primary Cost Per Place</p> <p>Where:</p> <p>Qualifying Residential Units is defined below</p> <p>Primary Child Yield = 0.3</p> <p>Primary Cost Per Place = 50% of £14,267</p>
<p>“Qualifying Residential Units”</p>	<p>Those Residential Units having two or more bedrooms.</p>
<p>“Secondary Education Contribution”</p>	<p>A financial contribution (Index Linked) calculated in accordance with the Secondary Education Contribution Formula towards investment in infrastructure related to the impact on pupil places and school facilities as a result of the additional housing such investment to be made at Crofton Secondary School and further the total Secondary Education Contribution payable pursuant to this Deed will not exceed One Hundred and Eighty-One Thousand One Hundred and Sixty-Six Pounds (£181,166)</p>
<p>“Secondary Education Contribution Formula”</p>	<p>Number of Qualifying Residential Units x Secondary Child Yield x Secondary Cost Per Place</p> <p>Where:</p> <p>Qualifying Residential Units is defined above</p>

	<p>Secondary Child Yield = 0.21</p> <p>Secondary Cost Per Place = 30% of £25,162</p>
“Travel Plan”	The final and full form Travel Plan based on the Framework Travel Plan such travel plan to be approved by the County Council and/or any amendment or variation thereof to be submitted by the Owner at the Owner’s expense to the County Council for approval.
“Travel Plan Approval Fee”	The sum of one thousand five hundred pounds (£1,500.00) for the consideration and approval of the Travel Plan.
“Travel Plan Bond”	A bond on terms and by a surety approved by the County Council in the sum of Forty-Five Thousand Seven Hundred and Fifty Pounds (£45,750) being the sum of the cost of implementation and compliance with the Travel Plan (as estimated by the County Council) plus ten per cent (10%) thereof on terms that it shall be maintained for the five year life of the Travel Plan and thereafter any unused or uncommitted portion shall be released.
“Travel Plan Coordinator”	An individual or company appointed to deliver the measures set out in the Travel Plan.
“Travel Plan Monitoring Fee”	The sum of Fifteen Thousand Pounds (£15,000) payable by the Owner to the County Council towards the costs to be incurred by the County Council in monitoring the Travel Plan.

<p>“Travel Plan Security deposit”</p>	<p>A sum of Forty-Five Thousand Seven Hundred and Fifty Pounds (£45,750) to be paid to the County Council as security for the Travel Plan being the sum of the cost of implementation and compliance with the Travel Plan (as estimated by the County Council) plus ten per cent (10%) thereof but paid on condition that it shall be held by the County Council for the five year life of the Travel Plan and thereafter any unspent or uncommitted portion shall be repaid to the paying party with accrued interest.</p>
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1. The Owner undertakes to the County Council –
 - 1.1 To pay to the County Council the Highways Contribution in the following tranches:
 - 1.1.1 50% of the Highways Contribution prior to Commencement of the Development;
 - 1.1.2 the balance of the Highways Contribution prior to the Occupation of any Residential Unit within the Development.
 - 1.2 Not to:
 - 1.2.1 Commence or permit Commencement of the Development unless and until 50% of the Highways Contribution has been paid to the County Council;
 - 1.2.2 permit the Occupation of any Residential Unit within the Development until the balance of the Highways Contribution has been paid to the County Council.
2. The Owner undertakes to the County Council, unless otherwise agreed in writing with the County Council:-
 - 2.1 To enter into the Highway Works Agreement for the On Site Highway Works with the County Council before the Commencement of the Development.

- 2.2 Not to Commence or permit Commencement of the Development unless and until the Owner has entered into the Highway Works Agreement with the County Council for the On Site Highway Works.
- 2.3 That the Owner shall at its own expense carry out and complete the On Site Highway Works in a good and workmanlike manner in accordance with the Highway Works Agreement and to Highway Works Completion Standard.
- 2.4 That the Owner shall not Occupy or permit Occupation of any of the Residential Units on the Development unless and until the On Site Highway Works have been completed to the satisfaction of the County Council to the Highway Works Completion Standard SAVE in the event the Director has in his absolute discretion granted written consent in advance of any such Occupation and specified the Residential Unit(s) in the Development which may be so Occupied.
- 2.5 To enter into a Highway Works Agreement with the County Council for the Off Site Highway Works before the Commencement of the Development unless a Highway Works Agreement has been entered into with the County Council for the Off Site Highway Works by another party in relation to the planning application under reference number P/18/1118/OA prior to the Commencement of Development
- .
- 2.6 Not to Commence or permit Commencement of the Development unless and until the Owner has entered into the Highway Works Agreement with the County Council for the Off Site Highway Works unless a Highway Works Agreement has been entered into with the County Council for the Off Site Highway Works by another party in relation to the planning application under reference number P/19/0460/OA.
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- .2.7 That if the Owner enters into a Highway Works Agreement for the Off Site Highway Works the Owner shall at its own expense carry out and complete the Off Site Highway Works in a good and workmanlike manner in accordance with the Highway Works Agreement and to Highway Works Completion Standard.

- 2.8 That the Owner shall not Occupy or permit Occupation of any of the Residential Units on the Development unless and until the Off Site Highway Works have been completed to the satisfaction of the County Council to the Highway Works Completion Standard SAVE in the event the Director has in his absolute discretion granted written consent in advance of any such Occupation and specified the Residential Unit(s) in the Development which may be so Occupied.
3. The Owner undertakes to the County Council -
- 3.1 No Development that is the subject of a Reserved Matters Approval shall Commence unless and until the Owner has notified the County Council in writing of the value of the Primary Education Contribution (Index Linked) pursuant to the said Reserved Matters Approval calculated in accordance with the Primary Education Contribution Formula.
- 3.2 To pay to the County Council the Primary Education Contribution (Index Linked) in respect of each and every Reserved Matters Approval as follows:
- 3.2.1 50% of the Primary Education Contribution (Index Linked) prior to the Occupation of the first Residential Unit within the Development permitted by the relevant Reserved Matters Approval.
- 3.2.2 the remaining 50% of the Primary Education Contribution (Index Linked) to the County Council prior to the Occupation of more than 50% of the Residential Units within the Development permitted by the relevant Reserved Matters Approval.
- 3.3 Not to Occupy or permit the Occupation of any Residential Unit within the Development permitted by any Reserved Matters Approval unless and until 50% of the Primary Education Contribution (Index Linked) due pursuant to that Reserved Matters Approval has been paid to the County Council.
- 3.4 Not to Occupy or permit Occupation of more than 50% of the Residential Units within the Development permitted by any Reserved Matters Approval unless and until the remaining 50% of the Primary Education Contribution

(Index Linked) due pursuant to that Reserved Matters Approval has been paid to the County Council.

3.5 No Development that is the subject of a Reserved Matters Approval shall Commence unless and until the Owner has notified the County Council in writing of the value of the Secondary Education Contribution (Index Linked) pursuant to the said Reserved Matters Approval calculated in accordance with the Secondary Education Contribution Formula.

3.6 To pay to the County Council the Secondary Education Contribution (Index Linked) in respect of each and every Reserved Matters Approval as follows:

3.6.1 50% of the Secondary Education Contribution (Index Linked) prior to the Occupation of the first Residential Unit within the Development permitted by the relevant Reserved Matters Approval.

3.6.2 the remaining 50% of the Secondary Education Contribution (Index Linked) to the County Council prior to the Occupation of more than 50% of the Residential Units within the Development permitted by the relevant Reserved Matters Approval.

3.7 Not to Occupy or permit the Occupation of any Residential Unit within the Development permitted by any Reserved Matters Approval unless and until 50% of the Secondary Education Contribution (Index Linked) due pursuant to that Reserved Matters Approval has been paid to the County Council.

3.8 Not to Occupy or permit Occupation of more than 50% of the Residential Units within the Development permitted by any Reserved Matters Approval unless and until the remaining 50% of the Secondary Education Contribution (Index Linked) due pursuant to that Reserved Matters Approval has been paid to the County Council.

4. The Owner undertakes to the County Council -

4.1 Not to Occupy or permit the Occupation of any Residential Unit within the Development unless and until the Travel Plan has been submitted to and approved in writing by the County Council.

- 4.2 To pay the Travel Plan Approval Fee and Travel Plan Monitoring Fee to the County Council prior to the Occupation of any Residential Unit within the Development.
- 4.3 Not to Occupy or permit the Occupation of any Residential Unit within the Development unless the Travel Plan Approval Fee and the Travel Plan Monitoring Fee has been paid to the County Council.
- 4.4 To implement from and upon first Occupation of the first Residential Unit within the Development the approved Travel Plan and promote the objectives of the Travel Plan.
- 4.5 In the event that the Travel Plan identifies a requirement for any off-site or on-site works to be undertaken in order to meet the objectives then (unless otherwise agreed in writing with the County Council) those works shall be carried out by the Owner at its own cost in accordance with a timescale to be included within the Travel Plan subject to obtaining all necessary consents or agreements required included but not limited to those required by the Highways Act 1980.
- 4.6 Not to Occupy or permit Occupation of any Residential Unit within the Development until they have 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 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 Residential Unit.
- 5.7 Not to Occupy or permit Occupation of any Residential Unit within the Development until they have provided to the County Council either the Travel Plan Bond or the Travel Plan Security Deposit.
- 5.8 Where the Owner fails at any time to deliver or comply with any or all of the measures/targets contained within the Travel Plan or becomes bankrupt or goes into liquidation or enters administrative receivership the County

Council may call upon the Travel Plan Bond or the County Council shall withdraw such sum as required from Travel Plan Security Deposit so as to pay any sum as may be certified by the Director to be required up to the value of the Travel Plan Bond or the Travel Plan Security Deposit in order to remedy the Owner's failure to achieve and implement the agreed measures/targets contained in the Travel Plan, or to pay any sum required (up to the value of the Travel Plan Bond or the Travel Plan Security Deposit) in respect of such alternative measures as the Director in his absolute discretion determines will achieve the overall aims of the Travel Plan.

SCHEDULE TWO
AFFORDABLE HOUSING

The Owner undertakes to the Borough Council as follows:

1. INTERPRETATION

DEFINITIONS

In this Schedule the following terms have the following meanings:

“Affordable Housing”	affordable housing as defined in the NPPF (Annex 2) or any subsequent amendment or modification or replacement of the NPPF or in any regulation statute or guidance issued and relating to affordable housing.
“Affordable Housing Land”	those parts of the Property upon which the Owner is to construct or procure the construction of the Affordable Housing Units and including all curtilage thereto.
“Affordable Housing Plan”	the plan(s) to be submitted to the Borough Council for the Borough Council’s approval showing the quantity location unit type size and tenure of the Affordable Housing Units which shall accord with the table in paragraph 1.1 of this Schedule Two.
“Affordable Housing Unit(s)”	40% of the total number of Residential Units to be constructed in accordance with the Planning Permission and Affordable Housing Plan.
“Affordable Rent”	the sum of the rent element and the Service Charge payable from the date of first occupation in respect of the relevant Affordable Rent Unit which shall not exceed the lower of 80% of the Market Rent or 100% of Local Housing Allowance Levels PROVIDED THAT such rent in either case may be increased annually in accordance with the arrangements made for such rent increases established by Homes England (or any statutory replacement or successor body).
“Affordable Rent	those Affordable Housing Units let to applicants for

Unit”	Affordable Housing Units at Affordable Rent.
“Chargee”	any mortgagee or chargee of the HARP or other party who has provided loan facilities to the HARP or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including any housing administrator.
“HARP”	A Housing Association Registered Provider of social housing registered with Homes England (or any statutory successor or replacement body) (and which has not been removed from the register) as defined in Section 80 of the Housing and Regeneration Act 2008 and selected by the Owner and which has or will enter into a Nominations Agreement with the Borough Council.
“HARP Transfer”	The transfer deed of the Affordable Housing Units to a HARP incorporating the Transfer Requirements.
“Intermediate Units”	Those Affordable Housing Units to be offered by the HARP to applicants for Affordable Housing which meet the definition set out in paragraph (d) of the term Affordable Housing in Annex 2: Glossary of the NPPF (but not equity loans) or a subsequent or replacement tenure as may be agreed between the Borough Council and the Owner in writing and to be provided in accordance with the requirements of this Schedule Two.
“Local Housing Allowance Levels”	the rental allowance rate for a property of the size and in the location of the relevant Affordable Rent Unit calculated by reference to the tables maintained by the Valuation Office Agency (or such equivalent means of calculation that may vary or replace it) as updated from time to time.
“Market Rent”	An assessment of the best rent reasonably obtainable for a letting of an interest in property on the date of valuation assuming:

	<p>(a) a willing landlord and a willing tenant;</p> <p>(b) an arm's length transaction;</p> <p>(c) that, prior to the date of valuation, there had been a reasonable period for the proper marketing of the interest, for the agreement of the rent and other letting terms, and for the completion of the letting;</p> <p>(d) that the lease terms are appropriate for a letting of the type and class of the subject property;</p> <p>(e) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and</p> <p>(f) that the terms of this Deed are disregarded.</p>
"Nominations Agreement"	A nominations agreement between the HARP and the Borough Council affording the Borough Council nomination rights in respect of the relevant Affordable Housing Unit in accordance with the Nominations Policy.
"Nominations Policy"	The Borough Council's allocations policy (or such other relevant policy as the Borough Council shall from time to time reasonably adopt).
"Open Market Units"	Any Residential Units that are not Affordable Housing Units.
"Open Market Value"	The open market value of the Affordable Housing Units with the benefit of the Planning Permission but disregarding the fact that the Affordable Housing Units are constructed or are to be constructed for Affordable Housing purposes and assuming that there are no Affordable Housing restrictions thereon and further assuming that all the said units are private and available for sale on the open market and having regard to all other relevant circumstances and the Open Market Value shall be agreed between the Owner and the Borough Council or in default determined by an independent chartered surveyor (RICS qualified).
"Protected Tenant"	Any tenant who: <p>(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent</p>

	<p>contractual right) in respect of a particular Affordable Housing Unit or</p> <p>(b) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Housing Unit or</p> <p>(c) has been granted a shared ownership lease by a HARP (or similar arrangement where a share of the Affordable Housing Unit is owned by the HARP) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the HARP all the remaining shares so that the tenant owns the entire Affordable Housing Unit that is subject to the shared ownership lease.</p>
“Register”	The Borough Council’s LetSelect Register or such other register of applicants for housing as the Borough Council shall from time to time reasonably adopt.
“Service Charge”	The amount payable by the occupant of any Affordable Housing Unit for all communal services repairs maintenance improvements insurance of the building and curtilage plus estate management costs and ground rent to the extent that the costs have been reasonably incurred and remain at a reasonable level that will remain affordable for occupants.
“Staircasing”	In connection with the Intermediate Units the acquisition after the date of the initial purchase by the occupier of additional tranches of equity within the said unit and references to “Staircase” or “Staircased” shall be construed accordingly.
“Transfer Requirements”	The requirements of paragraph 1.11 of this Schedule Two.

The Owner undertakes to the Borough Council as follows:-

1 Affordable Housing

- 1.1 The Owner shall at its own cost construct or procure construction of the Affordable Housing Units on the Property in accordance with the Affordable Housing Plan and the unit type, size and tenure mix set out in the table below (unless otherwise agreed in writing by the Borough Council):

Tenure	Type of Accommodation	% of Units
Affordable Rent Units (65% of total number of the Affordable Housing Units) of which:		
Affordable Rent	1 bed Residential Units	30%
Affordable Rent	2 bed Residential Units	18%
Affordable Rent	3 bed Residential Units	32%
Affordable Rent	4 bed Residential Units	10%
Intermediate Units (35% of total number of the Affordable Housing Units) of which:		
Intermediate Units	1 bed Residential Units	20-25%
Intermediate Units	2 bed Residential Units	45-55%
Intermediate Units	3 bed Residential Units	25-35%
Intermediate Units	4 bed Residential Units	0-5%

- 1.2 To submit an Affordable Housing Plan for the approval of the Borough Council as part of each Reserved Matters Application.
- 1.3 That the Affordable Housing Units shall be seamlessly integrated and distributed throughout the Development in clusters of not more than twelve unless otherwise agreed in writing by the Borough Council.
- 1.4 Where the application of a percentage figure in paragraph 1.1 above results in a fraction of a Residential Unit, the Owner and the Borough Council shall use reasonable endeavours to agree on a revised breakdown of Affordable Housing Units by tenure and unit size PROVIDED ALWAYS that the total number of Affordable Housing Units shall not fall below 40% of the total number of Residential Units comprised in the Development.

- 1.5 For the avoidance of doubt where the number of Residential Units in this Schedule Two is set by reference to a percentage, this shall be rounded up or down to the nearest whole number of units (on the basis that if the part number produced is 0.5 or higher it is rounded up and in all other cases it is rounded down) PROVIDED THAT the total number of Affordable Housing Units provided shall not fall below 40% of the total number of Residential Units constructed on the Property.
- 1.6 The Owner undertakes (once its location has been approved by the Borough Council) not to construct the Affordable Housing Units otherwise than in accordance with that set out in the table in paragraph 1.1 above and with the approved Affordable Housing Plan unless otherwise agreed in writing by the Borough Council.
- 1.7 The Affordable Housing Units shall be indistinguishable in external appearance from the Open Market Units.
- 1.8 Subject to paragraphs 1.9 and 1.18 below from the date of practical completion of the Affordable Housing Units the Affordable Housing Units shall not be used other than as Affordable Housing unless otherwise agreed in writing by the Borough Council.
- 1.9 The restrictions set out in this paragraph 1 of this Schedule Two shall not apply to the following:
- (a) any Protected Tenant or any successor in title to a Protected Tenant;
 - (b) any mortgagee or chargee of a Protected Tenant or other party who has provided loan facilities to the Protected Tenant or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise; and
 - (c) any purchaser from any of the parties named in paragraphs (a) and (b) above of an individual Affordable Housing Unit.

- 1.10 Not to Occupy nor permit the Occupation of more than 70% (seventy percent) of the Open Market Units until:
- (a) 100% of the Affordable Housing Units have been constructed; and
 - (b) the freehold of the Affordable Housing Land has been transferred to the HARP with full title guarantee subject to the rights covenants and Staircasing provisions contained in this paragraph 1 of this Schedule Two and ready for immediate Occupation.
- 1.11 Each HARP Transfer shall include:
- (a) a grant of full and free rights of access both pedestrian and vehicular from the public highway or roads intended to become public highway to the Affordable Housing Units;
 - (b) a grant of full and free rights to the passage of services through service media on the Development up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains if applicable; and
 - (c) as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Open Market Units.
- 1.12 Except as otherwise provided for in this paragraph 1 of this Schedule Two not to dispose of or let the Affordable Housing Units otherwise than in accordance with the Borough Council's Nominations Policy to persons or households on the Register unless otherwise agreed in writing by the Borough Council.
- 1.13 Not to let or otherwise permit the letting of any Affordable Rent Unit to any person other than in accordance with the following:
- (a) at an Affordable Rent in respect of each Affordable Rent Unit; and

- (b) that the rent at each re-letting is calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.

- 1.14 Not to use the Intermediate Units for any purpose other than as Intermediate Units.

- 1.15 Unless otherwise agreed in writing the Intermediate Units shall be sold or leased on initial sales or letting for between 25% and 75% of the Open Market Value.

- 1.16 Unless otherwise agreed in writing the initial rent payable in respect of an Intermediate Unit shall not exceed 2.75% of the capital value of the unacquired percentage at the point of initial sale.

- 1.17 The HARP shall apply any net capital receipt received as a result of any Staircasing or other staged purchase by a tenant of an Intermediate Unit to provide Affordable Housing in the Borough of Fareham (less reasonable costs incurred by the HARP as approved by the Borough Council).

- 1.18 Unless otherwise agreed in writing by the Borough Council any Chargee shall prior to seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 1 (one) month's prior written notice to the Borough Council of its intention to dispose and:
 - (a) in the event that the Borough Council responds within 1 (one) month from receipt of the notice referred to above indicating that arrangement for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;

 - (b) if the Borough Council does not serve its response to the notice referred to above within 1 (one) month of receipt of the said notice then the Chargee shall be entitled to dispose free of the restrictions set out in paragraph 1 of this Schedule Two which shall from time of completion of the disposal permanently cease to apply; and

- (c) if the Borough Council cannot within 2 (two) months of the date of service of its response under paragraph (a) above complete such a transfer then provided that the Chargee shall have complied with its obligations under this paragraph 1.18 the Chargee shall be entitled to dispose free of the restrictions set out in paragraph 1 of this Schedule Two which shall from the time of completion of the disposal permanently cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 1.18 shall not require the Chargee to act contrary to its duties under the mortgage or charge **AND PROVIDED ALSO THAT** notwithstanding the other provisions of this paragraph 1.18 the Chargee shall not be required to dispose of the Affordable Housing Units (or any of them) for a consideration that is less than the amount due and outstanding to the Chargee under the terms of the relevant mortgage or charge including all accrued principal monies and interest and all costs and expenses incurred by the Chargee.

SCHEDULE THREE
ENVIRONMENTAL OBLIGATIONS

DEFINITIONS

In this Schedule the following terms have the following meanings:

“Solent Recreation Mitigation Strategy”	The Solent Recreation Mitigation Strategy published December 2017 (or such amended or replaced version published from time to time).
“Solent Recreation Mitigation Strategy Contribution”	A sum towards the implementation of the Solent Recreation Mitigation Strategy such sum (in pounds sterling) to be calculated by reference to the number of Residential Units comprised in the Development as follows: £356 for each Residential Unit comprising a one bedroom Residential Unit. £514 for each Residential Unit comprising a two bedroom Residential Unit. £671 for each Residential Unit comprising a three bedroom Residential Unit. £789 for each Residential Unit comprising a four bedroom Residential Unit. £927 for each Residential Unit comprising a Residential Unit with five bedrooms or more.

The Owner undertakes to the Borough Council as follows:

1. Solent Recreation Mitigation Strategy Contribution

- 1.1 To pay the Solent Recreation Mitigation Strategy Contribution in respect of the Residential Units permitted by any Reserved Matters Approval in full to the Borough Council prior to the Occupation of any Residential Unit permitted by the relevant Reserved Matter Approval.
- 1.2 Not to Occupy nor permit the Occupation of any Residential Unit permitted by a Reserved Matters Approval unless the Solent Recreation Mitigation

Strategy Contribution associated with that Reserved Matters Approval has been paid in full to the Borough Council.

SCHEDULE FOUR

ON-SITE OPEN SPACE, MANAGED LAND AND CAR CLUB

1. INTERPRETATION

The following definitions apply in this Schedule 4:

“Car Club”	a club operated by a Car Club Operator which residents of the Development may join and which makes cars available within the Development for hire to members at either a commercial or part-subsidised rate
“Car Club Operator”	a company that is accredited by Carplus to operate Car Clubs, or such other company operating a Car Club as is agreed with the Borough Council in writing
“Car Club Parking Space”	one parking space on the Development to be allocated to a Car Club
“Carplus”	the national charity known as “Carplus” registered with charity registration number 1093980 in England and Wales
“Common Space”:	any areas of open or greenspace forming part of the Property which do not form part of the Open Space or On-Site Routes and which lies outside the curtilage of any Residential Unit.
“Construction Phase”:	The period of the building out of the Development from Implementation to the time that the final Residential Unit is ready for Occupation
“Drainage Infrastructure”:	such drainage infrastructure as may be located on over or under the Open Space.
“Drainage Management and Maintenance Plan”:	a plan showing how the Drainage Infrastructure is going to be installed and thereafter inspected, maintained, repaired renewed and replaced so as to keep it in

	good working order.
“Interim Open Space Management Plan”:	a plan setting out how Open Space (including the Play Area) will be managed and maintained prior to its transfer to the Borough Council or Management Company as appropriate, as and when it or parts of it becomes available for use by members of the public in accordance with the timetable for delivery in the approved Scheme of Works.
“Managed Land”:	the On-Site Routes the Common Space and if appropriate the Open Space approved pursuant to a Reserved Matters Application(s).
“Management Company”:	a limited company set up inter alia for the purposes of securing the future management of the Managed Land through strict adherence to the Management Plan and if appropriate the Open Space.
“Management Plan”:	<p>a written scheme submitted to the Borough Council which demonstrates the method by which the Managed Land and how the Managed Land and, if appropriate, the Open Space will be transferred to a Management Company and thereafter maintained and financed so as to fulfil the following objectives:</p> <ol style="list-style-type: none"> a. to ensure that each lessee/owner of the Residential Units pays a reasonable service charge for the maintenance and management of the Managed Land and, if appropriate, the Open Space; b. to ensure that sufficient funds are

	<p>raised from time to time to ensure that the requirements of the Management Plan are fully funded and thereafter adhered to; and</p> <p>c. to provide a means by which the Borough Council may verify compliance with the Management Plan.</p>
“Minimum Requirement”:	a size not less than that calculated in accordance with Table 1 at Appendix E
“On-Site Routes”:	the roads, footpaths and footways to be constructed within the Development.
“Open Space”:	land at the Property to be provided as public open space and including the Play Area (but for the avoidance of doubt excluding the Drainage Infrastructure), of such area not less than the Minimum Requirement (which for the purposes of calculating the size required only shall not include the Play Area) as shown for the purposes of indication only shaded green on Plan 1 (or such alternative area being not less than the Minimum Requirement as may be agreed in writing with the Borough Council).
“Open Space Maintenance Contribution”:	the sum of £6 (six pounds) Index Linked per square metre of the Open Space provided on the Property in accordance with the provisions of this Schedule Four to be put towards the maintenance by the Borough Council or Management Company as appropriate of the Open Space.
“Open Space Transfer”:	a transfer of the Open Space in the form attached to this Deed at Appendix F.
“Play Area”:	A local equipped area for play to be

	constructed on the Open Space of at least 400 square metres in size and to be located at least 20 metres from the nearest Residential Unit and to include five pieces of play equipment to a value (inclusive of construction and equipment costs) of at least the Play Area Sum.
“Play Area Sum”:	the sum of £70,000 (seventy thousand pounds).
“Play Area Maintenance Contribution”:	the sum of £38,000 (thirty eight thousand pounds) towards the maintenance of the Play Area.
“Scheme of Works”:	<p>a scheme of works and measures to include the means for the formation, laying out and provision of the Open Space as approved pursuant to a Reserved Matters Application(s), which must include:-</p> <ul style="list-style-type: none"> ▪ a scaled plan identifying the location of the Open Space; ▪ specifications and building materials including specifications of play equipment for the Play Area; ▪ surfacing and boundary treatment; ▪ street furniture, lighting and any other proposed structures; ▪ provision of dog waste bins and associated signage ▪ other cycle and pedestrian paths (if any); and ▪ a timetable for delivery of the Open Space

1. OPEN SPACE

The Owner undertakes to the Borough Council as follows:

- 1.1 Not to submit a Reserved Matters Application for any part of the Property which is proposed to include Open Space unless it makes provision for such Open Space.
- 1.2 Not to Commence the Development pursuant to any Reserved Matters Approval unless the Scheme of Works, the Interim Open Space Management Plan and the Drainage Management and Maintenance Plan relevant to any Open Space forming part of that Reserved Matters Approval has been submitted to and approved in writing by the Borough Council.
- 1.3 To complete layout and equip each parcel of the Open Space in accordance with the approved Scheme of Works Interim Open Space Management Plan and Drainage Management and Maintenance Plan.
- 1.4 Unless otherwise agreed in writing with the Borough Council, not to Occupy nor permit the Occupation of the penultimate Open Market Unit unless:
 - 1.4.1 The Open Space has been laid out and the Play Area has been constructed and equipped in accordance with the approved Scheme of Works;
 - 1.4.2 The Borough Council has given its written approval of the completed Open Space and Play Area PROVIDED THAT if the Borough Council fail to inspect the Open Space and Play Area within 28 days of receiving a request in writing to do so the Borough Council shall be deemed to have given such approval; and
 - 1.4.3 The Owner has (by executing and sending an Open Space Transfer to the Borough Council and releasing the same to the Borough Council for completion) offered to transfer the freehold interest in the Open Space to the Borough Council PROVIDED THAT such offer shall not be made prior to the laying out or the approval of the Open Space pursuant to paragraphs 1.4.1 and 1.4.2 above.

- 1.5 If the Borough Council does not execute and complete the Open Space Transfer within 56 days of receipt (such date to be calculated in accordance with section 196 of the Law of Property Act 1925) then the Owner shall subject to paragraph 2.6 below (by executing and sending the Open Space Transfer to the Management Company and releasing the same to the Management Company for completion) offer to transfer the freehold interest in the Open Space to the Management Company.
- 1.6 Unless otherwise agreed in writing with the Borough Council, not to Occupy nor permit the Occupation of the penultimate Open Market Unit to be Occupied unless the Open Space Maintenance Contribution and the Play Area Maintenance Contribution have been paid to whichever of the Borough Council or Management Company has executed and completed the Open Space Transfer.
- 1.7 To install and connect into any Drainage Infrastructure to be located within the Open Space prior to the completion of the Open Space Transfer
- 1.8 Following completion of the installation of the Drainage Infrastructure, to thereafter carry out a programme of inspection, maintenance, repair or replacement of the Drainage Infrastructure in accordance with the details in the approved Drainage Management and Maintenance Plan (unless otherwise agreed in writing with the Borough Council) in order to keep the Drainage Infrastructure in good working order and for the avoidance of doubt responsibility for compliance with the Drainage Management and Maintenance Plan shall remain with the Owner, to the exclusion of the Borough Council, even if the Borough Council enter into and complete the Open Space Transfer.
- 1.9 Following completion of the laying out of each area of Open Space pursuant to paragraph 1.4.1 above, and until such time as an Open Space Transfer is completed, the Owner undertakes to the Borough Council to:
 - 1.9.1 keep the Open Space in a tidy condition and free from rubbish and as often as may be necessary maintain and replace any trees or plants or grassland which might die through whatsoever cause;

1.9.2 comply with the approved Interim Open Space Management Plan;
and

1.8.3 not develop the Open Space nor build nor erect any buildings upon the Open Space nor cause or permit any building or erection upon the Open Space except in each case any such erection forming part of the Scheme of Works.

2. **MANAGED LAND AND ON-SITE ROUTES**

The Owner undertakes to the Borough Council as follows:

2.1 To submit the Management Plan to the Borough Council for its approval within three months of the Commencement Date.

2.2 In the event the Owner fails to submit the Management Plan in accordance with paragraph 2.1 above, the Owner shall cease to carry out the Development on the Property PROVIDED THAT in such case the Development may recommence upon submission of the Management Plan.

2.3 Within 6 months of the Commencement Date, the Owner shall submit the details of the proposed Management Company including draft memorandum and articles of association to the Borough Council for its approval.

2.4 Not to Occupy or cause or permit to be Occupied any Residential Unit unless the Management Plan and details of the proposed Management Company have been approved in writing by the Borough Council PROVIDED THAT if the Borough Council fail to respond in writing in respect of the Management Plan or Management Company within 28 days of receipt the Borough Council shall be deemed to have approved it/them.

2.5 To thereafter maintain the Managed Land in accordance with the Management Plan.

2.6 If the Borough Council does not execute and complete the Open Space Transfer within 56 days of receipt pursuant to paragraph 1.5 above then

prior to any offer to transfer the Open Space to the Management Company the Owner shall update the Management Plan to include proposals for the maintenance of the Open Space and shall not submit the offer to transfer the Open Space to the Management Company until the updated Management Plan has been approved by the Borough Council PROVIDED THAT if the Borough Council fail to respond in writing in respect of the updated Management Plan within 28 days of receipt the Borough Council shall be deemed to have approved it.

2.7 Not to Occupy or cause or permit to be Occupied any Residential Unit or to sell or cause or permit any Residential Unit to be sold at the Development other than by way of a transfer or lease unless it shall:

2.7.1 include a covenant from the transferee or lessee of the Residential Unit to contribute a fair and reasonable proportion by way of service charge towards the cost of maintaining and managing the Managed Land in accordance with the Management Plan and this Schedule PROVIDED THAT the service charge in relation to any Affordable Housing Unit shall comply with any relevant restrictions as to service charge set out in Schedule Two to this Deed and in any event shall not exceed the amount of the service charge attributable to the equivalent Open Market Unit type;

2.7.2 in which the Owner covenants with the transferee or lessee of the Residential Unit to maintain and manage, or to procure maintenance and management of the Managed Land through the Management Company in accordance with the Management Plan, and this Schedule to the Deed, and following the transfer of the Managed Land to the Management Company to require the Management Company to apply any service charge received from the transferee or lessee of a Residential Unit for such management and maintenance.

2.8 Not to Occupy more than fifty percent (50%) of the Residential Units until the Owner has incorporated the Management Company.

2.9 Unless otherwise agreed with the Borough Council acting at its sole discretion, upon completion of the On-Site Routes or such part thereof, to make the On-Site Routes available for use by the public PROVIDED THAT nothing in this Deed shall prevent the Owner from displaying appropriate notices or lodging appropriate statements to prevent the public claiming use as of right or public or private rights of way accruing over it nor any part in the case of emergency or for safety, maintenance and repair requirements (and nothing shall prevent the reasonable use of the relevant areas by emergency, operational, refuse or maintenance/servicing vehicles).

3. **CAR CLUB**

The Owner undertakes to the Borough Council as follows unless otherwise agreed in writing with the Borough Council:

3.1 To liaise with at least one Car Club Operator and to use all reasonable endeavours to establish a Car Club within the Property to serve the Development through the provision of a car for use by the Car Club in a Car Club Parking Space for a minimum period of three years from the first Occupation of a Residential Unit.

3.2 If a Car Club Operator agrees to operate pursuant to paragraph 3.1 above then:

3.2.1 for a minimum period of three years from the date of the first Occupation of a Residential Unit to provide marketing literature relating to the Car Club to each resident of a Residential Unit; and

3.2.2 To provide the first occupier of each Residential Unit with a free 12 month membership of the Car Club.

Executed as a deed by **SUSTAINABLE LAND PRODUCTS LIMITED** acting by a director, in the presence of:

..... Director

Name:

Address:

Occupation:

Executed as a deed by **BARGATE HOMES LIMITED** acting by a director, in the presence of:

..... Director

Name:

Address:

Occupation:

APPENDIX A

Plan 1

APPENDIX B
On Site Highway Works

APPENDIX C

Off Site Highway Works

APPENDIX D
Framework Travel Plan

APPENDIX E

Minimum Requirement

Table 1	
Calculating Open Space based on units comprised in the Development	
Unit Size	Square metres per unit
1 Bed	20.70
2 Bed	29.40
3 Bed	38.70
4 Bed	46.35
5+ Bed	49.80
Studio	15.00
Elderly 1bed	15.00
Elderly 2 bed	18.00

APPENDIX F

Open Space Transfer

Land Registry
Transfer of part of registered title(s)

TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

<p>Leave blank if not yet registered.</p>	<p>1 Title number(s) out of which the property is transferred: HP731073</p>
<p>When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.</p>	<p>2 Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:</p>
<p>Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.</p> <p>Place 'X' in the appropriate box and complete the statement.</p> <p>For example 'edged red'.</p> <p>For example 'edged and numbered 1 in blue'.</p> <p>Any plan lodged must be signed by the transferor.</p>	<p>3 Property:</p> <p>Land Adjacent to Newgate Lane, Fareham</p> <p>The property is identified</p> <p><input type="checkbox"/> on the attached plan and shown:</p> <p><input type="checkbox"/> on the title plan(s) of the above titles and shown:</p>
	<p>4 Date:</p>
<p>Give full name(s).</p> <p>Complete as appropriate where the transferor is a company.</p>	<p>5 Transferor:</p> <p>For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix:</p> <p>For overseas companies (a) Territory of incorporation:</p> <p>(b) Registered number in England and Wales including any prefix:</p>

Complete as necessary.

- Use this panel for:
- definitions of terms not defined above
 - rights granted or reserved
 - restrictive covenants
 - other covenants
 - agreements and declarations
 - any required or permitted statements
 - other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

12 Additional provisions

Definitions

12.1 In this Transfer the following definitions and interpretation shall apply:

12.1.1 **Estate:** the freehold property at Peel Farm, Newgate Lane, Fareham being the remainder of the land (excluding the Property) within the ownership of the Transferor registered at the Land Registry under title number HP732916 as at the date of this Transfer.

12.1.2 **LPMPA 1994:** the Law of Property (Miscellaneous Provisions) Act 1994.

12.1.3 **Service Media:** all sewers, drains, watercourses, pipes, cables, wires and other channels or conduits designed for the passage of Services and all related chambers, tanks or other infrastructure.

12.1.4 **Services:** water, sewage, electric, gas, telephone, soil and other services or supplies.

12.1.5 **S106 Agreement:** an unilateral undertaking under section 106 of the Town and Country Planning Act 1990 relating to the Property and the Estate made by the Transferor and Bargate Homes Limited in favour of Fareham Borough Council and Hampshire County Council and dated []

12.1.7 Words importing the masculine gender include the feminine and vice versa.

12.1.8 Words importing the singular include the plural and vice versa.

- 12.1.9 References to persons include bodies corporate and vice versa.
- 12.1.10 References to the Transferor shall include its successors in title to the Estate and the owners and occupiers of the Estate from time to time.
- 12.1.11 References to the Transferee shall include its successors in title to the Property and the owners and occupiers of the Property from time to time.
- 12.1.12 Reference to any right exercisable by the Transferor or by the Transferee whether or not in common with another party includes (where appropriate) the exercise of such right by all persons authorised by the Transferor or the Transferee (as appropriate) and all other persons having a like right.
- 12.1.13 Reference to any right of access or entry onto land for the purpose of carrying out works includes (where appropriate) access or entry by agents, employees and contractors with all necessary tools, plant, equipment and materials.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

- 12.1 Rights granted for the benefit of the property
The Transferor grants for the benefit of the Property.
 - (a) A right at all times in common with all others similarly entitled of entry onto the unbuilt upon parts of the Estate for the purposes of maintaining repairing and

reinstating any structures boundary walls fences gutters and pipes on the Property such right only to be exercised on reasonable notice in writing being given (except in the case of emergencies) and subject to the minimum of inconvenience being caused and to all damage thereby occasioned being made good forthwith or as soon as reasonably practicable or monetary payment being made for any damage not capable of being made good

- (b) A right at all times for the Transferee and its employees contractors and agents to have access to and egress from the Property with or without vehicles plant and machinery over any roadway laid upon the Estate for the purpose only of maintaining the Property as amenity or recreational land, and for the general public a right of way on foot only over and along the said roadway for the purpose of access to and egress from the Property for the proper use of the same as recreational and open amenity land or open space until such time (if ever) as the roads and footways shall be adopted and become highways maintainable at the public expense

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

12.2 Rights reserved for the benefit of other land

Exceptions and Reservations

The Property is transferred subject to the following exceptions and reservations which are excepted and reserved for the benefit of each and every part of the Estate and for the statutory authorities and utility companies providing gas water electricity communications and other services to adjoining or neighbouring

properties.

- (a) A right in common with all others similarly entitled to use and where necessary and expedient to install renew repair replace and/or remove such Service Media as may now or in the future serve the Estate but pass in on over or under the Property together with a right of entry exercisable on reasonable notice in writing (except in the case of emergencies) onto the Property for the purposes of inspection renewal maintenance repair and reinstatement of the Service Media and for moving installing laying and connecting to the Service Media subject to the minimum of inconvenience being caused and to all damage occasioned thereby being made good forthwith or as soon as reasonably practicable or monetary payment being made for any damage not capable of being made good

- (b) A right in common with all others similarly entitled of entry onto the Property for the purposes of maintaining repairing and reinstating any structures boundary walls fences roofs gutters and pipes on the Estate but which pass in on over or under the Property such right only to be exercised on reasonable notice in writing being given (except in the case of emergencies) and subject to the minimum of inconvenience being caused and to all damage thereby occasioned being made good forthwith to the satisfaction of the Transferee or as soon as reasonably practicable or monetary payment being made for any damage not capable of being made good

Include words of covenant.

12.3 Restrictive covenants by the transferee

THE Transferee HEREBY COVENANTS with the Transferor for the benefit of the Estate and for the benefit of the land now or formerly comprised in the Title above mentioned not henceforth to use the Property other than as for open space land which expression shall mean amenity or recreational land to be made available for the use of the public PROVIDED THAT nothing herein contained shall be construed to mean "open space land" within the meaning of the Open Spaces Act 1906.

Include words of covenant.

12.4 Restrictive covenants by the transferor

NONE

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

12.5 Other

Indemnity covenant by Transferee

WITH the object of affording to the Transferor a full and sufficient indemnity in respect of a breach of the covenants and stipulations referred to in the Property and Charges Registers of the title number set out in panel 1 of this Transfer (but not further or otherwise) the Transferee hereby covenants with the Transferor that the Transferee and its successors in title will indemnify and keep indemnified the Transferor and his/their respective estates from and against all claims actions demands and liability in respect of any non-observance or non-performance of the said covenants and stipulations insofar as the same are still subsisting and capable of taking effect and being

enforced and affect the Property

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

13 Execution

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.