

Dated:

2021

LAWRENCE TREVOR HAMBLÉN and MICHAEL HAMBLÉN

and

FOREMAN HOMES LIMITED

to

FAREHAM BOROUGH COUNCIL

and

HAMPSHIRE COUNTY COUNCIL

UNILATERAL UNDERTAKING

pursuant to section 106 of the Town and Country
Planning Act 1990 (as amended) and other
powers relating to development of land to the
south of Romsey Avenue Fareham Hampshire

**Southampton & Fareham Legal Services Partnership
Southampton City Council
Civic Offices
Southampton
SO14 7LY**

**Ref: FBC/ENV-022227
Ref: HCC/DL/138900**

THIS DEED made on

2021

IS GIVEN BY:

- (1) **LAWRENCE TREVOR HAMBLÉN** and **MICHAEL HAMBLÉN** both of Winnham Farm, The Thicket, Portchester, Hampshire PO16 8JX ("the Owner")
- (2) **FOREMAN HOMES LIMITED** (Co. Reg. No. 03313213) whose registered office is at Unit 1 Station Industrial Park, Duncan Road Park Gate, Southampton, Hampshire, SO31 1BX ("the Appellant")

TO:

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

RECITALS

- A The Borough Council and the County Council are the local planning authorities for the purposes of the Act for the area in which the Land is situated.
- B The County Council is the local highway authority for the purposes of the 1980 Act and local education authority for the purposes of the Education Act 1996 for the area in which the Land is situated.
- C The Owner is the freehold owner of the Land registered with title absolute at the Land Registry under title number HP215695, held subject to the terms of an agreement dated 19 January 2017 for the benefit of the Appellant
- D The Appellant submitted the Application to the Borough Council.
- E The Appellant has submitted the Appeal to the Secretary of State.
- F The Owner and the Appellant enter into this Deed to give the following obligations in the manner hereinafter appearing.
- G The Owner and Appellant undertake that the Development shall be carried out only in accordance with the Permission and any Reserved Matter Approvals along with the rights and obligations set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 In addition to the definitions set out below, a series of specific definitions are included in each of the schedules to this Deed giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the schedules shall apply throughout this Deed where the relevant terms and expressions are used.
- 1.2 In this Deed the following expressions shall have the meanings indicated:

"1980 Act"	The Highways Act 1980
"Act"	The Town and Country Planning Act 1990 (as amended)

"Appeal"	the appeal submitted to the Secretary of State for refusal of the Application by the Borough Council registered under reference number APP/A1720/W/21/3271412
"Application"	the application for outline planning permission for the Development relating to the Site and allocated reference number P/18/1073/FP
"Borough Council's Legal Costs"	the Borough Council's legal costs in connection with the preparation and completion of this Deed
"Commence"	the carrying out of a "material operation" (as defined in section 56(4) of the Act) in connection with the Development save that for the purposes of this Deed and for no other purpose operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be included (and "Commencement" and "Commenced" shall be construed accordingly)
"Completed"	practically complete save for minor snagging items such that it is reasonably fit for Occupation (and "Complete" and "Completion" shall have the same meaning)
"Contributions"	any one or number of the financial contributions required to be made pursuant to this Deed
"County Council's Legal Costs"	the County Council's legal costs related to this Deed
"County Council's Monitoring Fee"	the sum of three thousand five hundred pounds (£3500) to be paid to the County Council in relation to the monitoring and reporting upon compliance with the obligations in schedules four, five and six to this Deed
"Decision Letter"	the letter issued by the Inspector determining the outcome of the Appeal
"Deed"	this unilateral undertaking made by deed
"Development"	the outline proposal for residential development of 225 dwellings, bird conservation area and area of public open space with all matters reserved except for access carried out pursuant to the Permission granted in accordance with the Planning Application and any Reserved Matters Approval
"Development Control Fees"	the County Council's highways development control costs in connection with the negotiation of this Deed being the sum of five thousand pounds (£5000)
"Enabling Powers"	section 111 of the Local Government Act 1972 (as amended) section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the covenants, restrictions and obligations created by this Deed
"Index Linked"	for the purposes of schedule two, means adjusted in accordance with the Retail Prices Index by multiplying in each case the payment due by a fraction whose denominator shall be the last RPI monthly figure published before April 2020 and whose numerator shall be the

	<p>last published RPI monthly figure available before the date on which payment is due;</p> <p>for the purposes of schedule three, means adjusted in accordance with the Retail Prices Index by multiplying in each case the payment due by a fraction whose denominator shall be the last RPI monthly figure published before April 2021 and whose numerator shall be the last published RPI monthly figure available before the date on which payment is due;</p> <p>for the purposes of schedules four, five and six (save for the Travel Plan Bond and the Travel Plan Approval and Monitoring Contribution) means adjusted in accordance with the BCIS all in TPI (or amendment or replacement thereof) from the date of the Application to the date that the payment is received by the County Council but which for the avoidance of doubt shall not fall below the original payment figure; and</p> <p>for the purposes of the Travel Plan Bond and the Travel Plan Approval and Monitoring Contribution (under schedule six), means adjusted in accordance with the Retail Prices Index by multiplying in each case the payment due by a fraction whose denominator shall be the last RPI 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 paid; and</p> <p>for any other payment or financial contribution due under this Deed, means adjusted in accordance with the Retail Prices Index by multiplying in each case the payment due by a fraction whose denominator shall be the last RPI 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 payable</p>
Initiation	the beginning of the Development by the carrying out of a material operation as defined in section 56(4) of the Act pursuant to the Permission (irrespective of non-compliance with any condition of the Permission) and the phrase "Initiate/d" shall be construed accordingly
"Inspector"	the Planning Inspector appointed by the Secretary of State for Housing, Communities and Local Government to determine the Appeal
"Interest"	interest at four per cent (4%) 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)
"Land"	the part of the Site known as land lying to the south of Romsey Avenue Fareham the freehold to which is registered with title absolute at the Land Registry under title number HP215695 and described edged in red on Plan 2 appended to this Deed
"Occupation"	occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
"Permission"	the outline planning permission subject to conditions that may be granted pursuant to the Appeal

Commented [LD1]: The appellant's draft references the wrong plan. Plan 2 describes the Land, and Plan 1 describes the Site.

"Plan 1"	'Location Plan 16.140.01 revision C (August 17)' drawing appended to this deed
"Plan 2"	'Location Plan access road not shown 16.140.SK50 (August 21)' drawing appended to this Deed
"Residential Units"	individual units within the Development to be used for residential purposes (and for the avoidance of doubt this definition shall include houses and flats as appropriate) as approved by the Permission and any Reserved Matters approval and "Residential Unit" shall be construed accordingly
"Reserved Matters Application"	a further planning application to obtain consent for those matters not included in the Permission but which are subject to approval by the Borough Council
"Reserved Matters Approval"	an approval by the Borough Council of a Reserved Matters Application
"Site"	the area to which the Application relates as shown edged in red on Plan 1 which includes the Land
"Statutory Undertakers"	organisations licensed by the government which include all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies
"Working Day"	a day (other than a Saturday, Sunday or public holiday) when banks in England are open for business

Commented [LD2]: Should show full plan details so no risk of ambiguity as to what is meant by Plan 1, or 2. Not sure why this has been changed in the version circulated by the appellants on 17/821 when it has previously been agreed and as set out in this document.

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to a statute shall include any modification, extension or re-enactment of that statute for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that statute or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council and the County Council the successors to their respective statutory functions.
- 2.6 References to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

3 STATUTORY AUTHORITY

- 3.1 This Deed is made pursuant to section 106 of the Act and the Enabling Powers.
- 3.2 The undertakings, covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and subject to clause 3.3 and/or as otherwise provided in this Deed are enforceable by the Borough Council and County Council as local planning authorities against the Owner and any person deriving title in the Land or any part of it from the Owner.
- 3.3 The undertakings, covenants and obligations on the part of the Owner in this Deed shall not apply and shall not be enforceable by the Borough Council or the County Council if the person appointed to determine the Appeal states clearly in the Decision Letter upholding the Appeal that such obligations, or any of them, are unnecessary in order to mitigate the impact of the Development or otherwise fail to meet the statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 PROVIDED THAT if any obligations are determined by the decision maker to be unnecessary or otherwise fail to meet the statutory tests it shall not affect the lawfulness of the balance of the covenants and obligations in this Deed which continue to be enforceable.
- 3.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

4 EFFECT OF THE DEED

- 4.1 This Deed shall take effect on the day and year first before written SAVE THAT the obligations contained in schedules one to six (inclusive) to this Deed shall take effect from the grant of [Permission](#).

5 THE OWNER'S UNDERTAKINGS

- 5.1 The Owner undertakes to the Borough Council and the County Council that it will observe and perform the obligations on its part contained in schedules one to six (inclusive).

6 RELEASE AND LAPSE

- 6.1 The Owner shall not be liable for a breach of any of its obligations under this Deed (save for antecedent breaches) after it shall have parted with all of its interests in the Land or the relevant part of it.
- 6.2 This Deed shall lapse and be of no further effect if:
- 6.2.1 the Permission shall lapse without having been Initiated; or
- 6.2.2 the Permission shall be varied or revoked other than with the consent of the Owner; or
- 6.2.3 the Permission is quashed following a successful legal challenge.
- 6.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the [Site](#) in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.4 This Deed shall not be enforceable against Statutory Undertakers who have an interest in or arising purely in connection with their apparatus or operational land situated within the Development.
- 6.5 This Deed shall not be enforceable against any owners or occupiers of a Residential Unit save in respect of any restriction on Occupation of such Residential Unit.

Commented [LD3]: The proposed clause 6.2.4 in the appellant's draft conflicts with this provision and creates ambiguity/raises an issue of legal enforceability of this clause WHICH IS THE DISTRICT COUNCIL'S STANDARD PROVISION provides that the obligations will not kick in, in the event the Permission is not granted e.g. the appeal is not upheld. Clauses 11.1 and 11.2 are required to be satisfied in full on date of deed. Clause 11.3 does not kick in, in the event the Appeal s refused.

Commented [LD4]: This is factually correct. It is usual to refer to the red line rather than a particular part of the Site (in this case 'the Land') owned by the Owner.

7 LOCAL LAND CHARGE

- 7.1 This Deed is a local land charge and is given on the basis that it shall be registered as such by the Borough Council.
- 7.2 Upon the full compliance with any terms of this Deed the Owner may request that the Borough Council procure that this is noted in the register of local land charges relating to it as soon as reasonably practicable.

8 NO FETTER ON DISCRETION OR WAIVER

- 8.1 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.
- 8.2 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 the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9 WARRANTY AS TO TITLE

- 9.1 The Owner hereby warrants to the Borough Council and the County Council that no person other than the Owner has any interest in the Land for the purposes of section 106 of the Act.

10 SEVERABILITY

- 10.1 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.

11 THE COUNCIL'S COSTS

- 11.1 The Appellant undertakes to the Borough Council that it will on or before the date of this Deed pay the Borough Council's Legal Costs.
- 11.2 The Appellant undertakes to the County Council to pay in full to the County Council on or before the date of this Deed the County Council's Legal Costs and the Development Control Fees
- 11.3 The Appellant undertakes to the County Council to pay in full to the County Council within ten (10) Working Days of the grant of the Permission the County Council's Monitoring Fee.

12 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 12.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the Borough Council and/or the County Council and any person against whom the covenants, restrictions and obligations under this Deed are enforceable without the consent of any such third party.

13 NOTIFICATION OF COMMENCEMENT/OCCUPATION

- 13.1 The Owner undertakes to the Borough Council and the County Council that it will:

- 13.1.1 notify the Borough Council and the County Council in writing of the date of Commencement of the Development within five (5) Working Days of it occurring; and
- 13.1.2 notify the Borough Council and the County Council in writing of the date of Occupation for the first time of any part of the Development within five (5) Working Days of it occurring;
- 13.1.3 notify the County Council in writing of the date of Occupation for the first time of the twentieth (20th) Residential Unit on the Development within five (5) Working Days of it occurring; and
- 13.1.4 notify the Borough Council in writing of the date of Occupation for the first time of sixty percent (60%) of the Open Market Units (as defined in schedule one) within five (5) Working Days of it occurring;
- 13.1.5 notify the Borough Council in writing of the date of Occupation for the first time of forty percent (40%) of the Residential Units within five (5) Working Days of it occurring; and
- 13.1.6 pay to the Borough Council upon written demand its reasonable and properly incurred legal fees incurred for additional monitoring caused by the Owner's non-compliance with clauses 13.1.1 13.1.2, 13.1.3, 13.1.4 or 13.1.5.

14 NOTICES

- 14.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post by hand or by email (in the case of the Borough Council) in the following manner:
 - 14.1.1 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 "P/18/1073/FP"; and
 - 14.1.2 on the County Council at the address shown above and marked for the attention of Highways Development Planning (and for the avoidance of doubt it is acknowledged by the Owner that the County Council does not accept service of notice by email); and
 - 14.1.3 on the Owner at the address as detailed above or as notified by the Owner in writing to the Borough Council; and
 - 14.1.4 on the Appellant at the address as detailed above or as notified by the Appellant in writing to the Borough Council.

15 INDEX LINKING

- 15.1 Each and every one of the Contributions which are to be paid under the terms of this Deed shall be Index Linked (unless otherwise specified in this Deed).

16 PAYMENT OF THE CONTRIBUTIONS

- 16.1 The Owner shall pay the Contributions to the Borough Council or the County Council (as the case may be) by either:
 - 16.1.1 cheque made payable to the Borough Council or the County Council (as the case may be);
 - 16.1.2 by BACS or telegraphic transfer.

16.2 All payments shall state the Permission reference number P/18/1073/FP and the address to which this Deed relates.

16.3 Payment by cheque shall be sent to the Borough Council or the County Council (as the case may be) in accordance with clause 14.1 and the details set out in clause 16.2 identifying the obligation to which the payment relates.

17 INTEREST ON LATE PAYMENTS

17.1 Any amount due from the Owner under this Deed which is not paid by the due date shall be payable with interest.

18 MORTGAGEE CLAUSE

18.1 Notwithstanding clause 3.2, no obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgage or receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates.

19 NOTIFICATION OF SUCCESSORS IN TITLE

19.1 Save in the case of the disposal of a Residential Unit, the Owner covenants to the Borough Council and the County Council that it will give immediate written notice to the Borough Council and the County Council of any change of ownership of the Land if at such time the obligations contained within this Deed have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

20 VAT

20.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

21 DISPUTE RESOLUTION

21.1 Where it is provided in this Deed that a matter is to be approved (or another cognate expression is used) by the Borough Council or County Council (as the case may be) and such approval has been refused or given conditionally in accordance with the provisions of this Deed and the Owner wishes to dispute such refusal or conditions, then the Owner may:

21.1.1 first attempt to resolve that dispute or difference amicably by inviting the Borough Council or the County Council (as the case may be) to a meeting attended by at least one senior representative from each party;

21.1.2 if the parties are unable to resolve the dispute amicably pursuant to clause 21.1.1, invite the Borough Council or the County Council (as the case may be) to agree that the dispute be referred for resolution in accordance with clause 21.2.

21.2 Any such dispute or difference to be referred for resolution pursuant to clause 21.1.2 shall be referred to an independent and suitable person holding appropriate professional qualifications, in light of the subject matter in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

21.3 Nothing in this clause 21 shall be taken to fetter the ability of the Borough Council or County Council (as the case may be) to carry out its statutory functions as local planning authority with power to enforce any breach of the obligations entered into by the Owner in this Deed or any other planning breach in respect of the Development.

22 APPELLANT'S CONSENT

22.1 The Appellant hereby consents to this Deed being entered into by the Owner and to the obligations becoming binding on the Land notwithstanding any registration by or on behalf of the Appellant to protect its interest in the Land pursuant to the agreement referred to in [Recital C](#).

23 JURISDICTION

23.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

24 DELIVERY

24.1 This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as it is dated.

SCHEDULE ONE

AFFORDABLE HOUSING OBLIGATIONS

DEFINITIONS

"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 Development upon which the Owner is to construct or procure the construction of the Affordable Housing Units and including all curtilage thereto
"Affordable Housing Units"	forty percent (40%) of the total number of Residential Units to be constructed in accordance with the Permission and any Reserved Matters Approval (together with associated car parking spaces to comply with the Borough Council's minimum parking standards for residential dwellings) and used for the purposes of Affordable Housing as an Affordable Rent Unit, a Social Rent Unit or an Intermediate Housing Unit (as the case may be) and an "Affordable Housing Unit" shall be construed accordingly
"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 eighty percent (80%) of the Market Rent or the Local Housing Allowance Levels
"Affordable Rent Unit"	those Affordable Housing Units let to applicants for 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 body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) including a housing association or associations or housing company or companies or a trust or trusts registered as a registered social landlord (pursuant to the Housing Act 1996) with the HE and/or a non-profit registered provider of social housing pursuant to section 80 of the Housing and Regeneration Act 2008 and which has been approved in writing by the Borough Council
"HARP Transfer"	the transfer deed of the Affordable Housing Units to a HARP at the Transfer Price and incorporating the Transfer Requirements
"HE"	Homes England (or its successor in function from time to time)
"Intermediate Housing 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) ("Intermediate Housing") 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 one
"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"	<p>an assessment of the best rent reasonably obtainable for a letting of an interest in property on the date of valuation assuming:</p> <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> <p>and the Market Rent shall be approved by the Borough Council, such approval not to be unreasonably withheld or delayed</p>
"NPPF"	the National Planning Policy Framework document as published in July 2021 and any subsequent revision or replacement of it together with any technical guidance and policy documents or circulars issued thereunder
"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
"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"	the Residential Units which are general market housing for sale on the open market and which are not Affordable Housing Units
"Open Market Value"	the open market value of the Affordable Housing Units with the benefit of the 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 approved by the Borough Council
"Protected Tenant"	<p>any tenant who:</p> <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 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 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
"Social Rent"	a rent set in accordance with the Government's rent policy for social rent
"Social Rent Unit"	those Affordable Housing Units let to applicants for Affordable Housing Units at a Social Rent
"Staircasing"	in connection with the Affordable Housing 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 Price"	<p>A consideration that allows the HARP:</p> <p>(a) to provide the Affordable Rent Units at an Affordable Rent in accordance with paragraph 4 of this schedule one,</p> <p>(b) to provide the Social Rent Units at a Social Rent in accordance with paragraph 5 of this schedule one,</p> <p>(c) to provide any Intermediate Housing Units which are shared ownership or shared equity units at an initial tranche of equity share transferred to a tenant of not more than twenty five percent (25%) of the Open Market Value and place a limit on the rental element of shared ownership or shared equity units up to a maximum annual rent equivalent to two point seven five percent (2.75%) of the equity retained by the HARP (excluding reasonable Service Charges) and that ensure that the Affordable Housing Units shall remain affordable to occupiers when taking into account all mortgage costs rent and Service Charges in respect of the Affordable Housing Units</p>
"Transfer Requirements"	the requirements of paragraph 2.2 of this schedule one

OBLIGATIONS

The Owner undertakes to the Borough Council as follows:-

1 Amount, tenure type, size and location of Affordable Housing

1.1 to construct or procure the construction of the Affordable Housing Units on the Land in accordance with paragraphs 1.2, 1.3, 1.4 and 1.5 of this schedule one.

1.2 The Affordable Housing Units shall consist of:

1.2.1 65% (sixty five percent) Affordable Rent Units and Social Rent Units;

1.2.2 35% (thirty five percent) Intermediate Housing Units.

1.3 The Affordable Housing Units shall comprise the following mix of sizes and tenures unless otherwise agreed with the Borough Council in writing:

Type of Accommodation	% of Total Number of Affordable Housing Units according to tenure
<u>Affordable/Social Rent Units</u>	
1 bed dwelling (flat or house)	40%
2 bed dwelling (flat or house)	20%
3 bed house	30%
4 bed house	10%
<u>Intermediate Housing Units</u>	
1 bed dwelling (flat or house)	20-25%
2 bed dwelling (flat or house)	45-55%
3 bed house	25-35%
4 bed house	0-5%

1.4 The Affordable Housing Units shall be seamlessly integrated and distributed throughout the Development in not more than clusters of twelve (12) unless otherwise agreed in writing by the Borough Council.

1.5 The exact size (in square metres), tenure and location of the Affordable Housing Units shall be agreed in writing with the Borough Council prior to the Commencement of the Development and the Owner shall not Commence the Development until the specific size, tenure and location of each Affordable Housing Unit has been agreed in writing with the Borough Council. For the avoidance of doubt, and subject to the provisions of paragraph 1.3 of this schedule one, a variety of sizes (in square metres) of Affordable Housing Unit shall be included so as to provide for different household sizes.

2. Delivery of Affordable Housing

- 2.1. Not to Occupy nor permit the Occupation of more than 60% (sixty percent) of the Open Market Units until:
 - 2.1.1 one hundred percent (100%) of the Affordable Housing Units have been constructed; and
 - 2.1.2 the unencumbered freehold of the Affordable Housing Land has been transferred to the HARP with full title guarantee for not more than the Transfer Price subject to the rights covenants and Staircasing provisions contained in this schedule one and ready for immediate Occupation.
- 2.2. Each HARP Transfer shall include:
 - 2.2.1 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;
 - 2.2.2 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; and
 - 2.2.3 as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Open Market Units.

3. Intermediate Housing Units

- 3.1. Not to use the Intermediate Housing Units for any purpose other than for the provision of Intermediate Housing.
- 3.2. The Intermediate Housing Units shall be sold or leased on initial sales or letting of between twenty five percent (25%) and seventy five percent (75%) of the Open Market Value unless otherwise agreed in writing with the Borough Council.
- 3.3. The initial rent payable in respect of an Intermediate Housing Unit shall not exceed two point seven five percent (2.75%) of the capital value of the unacquired percentage at the point of initial sale.

4. Affordable Rent Units

- 4.1. Not to let or otherwise permit the letting of any Affordable Rent Unit to any person other than in accordance with the following:
 - 4.1.1 at an Affordable Rent in respect of each Affordable Rent Unit
 - 4.1.2 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.
- 4.2. Not to dispose of or let the Affordable Rent Units otherwise than in accordance with the Nominations Agreement and the Nominations Policy to persons or households on the Register unless otherwise agreed in writing by the Borough Council.

5. Social Rent Units

- 5.1. Not to let or otherwise permit the letting of any Social Rent Unit to any person other than in accordance with the following:

5.1.1 at a Social Rent in respect of each Social Rent Unit

5.1.2 that the rent at each re-letting is calculated prior to the grant of any new tenancy to ensure that it is a Social Rent.

5.2. Not to dispose of or let the Social Rent Units otherwise than in accordance with the Nominations Agreement and the Nominations Policy to persons or households on the Register unless otherwise agreed in writing by the Borough Council.

6. Staircasing

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

7. Release of affordable housing provisions

7.1. The restrictions set out in this schedule one shall not apply to the following:

7.1.1 any individual occupier owner or tenant of an individual Open Market Unit or their successors in title or their mortgagee or chargee and respective successors in title;

7.1.2 any Protected Tenant or any successor in title to a Protected Tenant;

7.1.3 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;

7.1.4 any purchaser from any of the persons named in paragraphs 7.1.2 and 7.1.3 above of an individual Affordable Housing Unit;

7.1.5 a Chargee who seeks to dispose of the whole or any part of the Affordable Housing Land where there has been a default by the HARP of the terms of such mortgage or financial charge PROVIDED THAT the 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 one (1) month's prior written notice to the Borough Council of its intention to dispose and:

7.1.5.1. in the event that the Borough Council responds within one (1) 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

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

7.1.5.3. if the Borough Council cannot within two (2) 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

7.1.5 the Chargee shall be entitled to dispose free of the restrictions set out in this schedule one 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 7.1.5 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 7.1.5 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 TWO
OPEN SPACE OBLIGATIONS

DEFINITIONS

"Minimum Requirement"	a size not less than that calculated in accordance with Table 1 at Appendix 1
"NEAP"	a neighbourhood equipped area of play of not less than 1,000 square metres in size to be provided as a play area
"NEAP Contribution"	the sum of £150,000 (one hundred and fifty thousand pounds) towards the provision by the Borough Council of the NEAP
"NEAP Land"	the part of the Land where the NEAP is to be located
"NEAP Maintenance Contribution"	the sum of £92,000 (ninety two thousand pounds) towards the maintenance by the Borough Council of the NEAP
"Open Space"	land to be provided as public open space of such area not less than the Minimum Requirement (which for the purposes of calculating the size shall not include the NEAP)
"Open Space Maintenance Contribution"	the sum of £6.73 (six pounds and seventy three pence) (Index Linked) per square metre) of the Open Space provided on the Land in accordance with the provisions of this schedule two towards the maintenance of the Open Space
"Scheme of Works"	<p>a scheme of works to include the means for the formation, laying out and provision of the Open Space and the NEAP Land, which must include:</p> <ul style="list-style-type: none"> • a scaled plan identifying the location of the Open Space and the NEAP Land <u>and the NEAP</u>; • specifications and building materials; • surfacing and boundary treatment; • street furniture, lighting and any other proposed structures or sculptures; • location and number of dog waste bins; • cycle and pedestrian paths; and • details of the play equipment for the NEAP .

Commented [LD5]: Surely you need to know where the NEAP is to be located.

OBLIGATIONS

The Owner undertakes to the Borough Council as follows:-

1. Open Space

1.1 Not to submit a Reserved Matters Application for any part of the Land which is proposed to include any part of the Open Space unless it makes provision for such Open Space.

4.41.2 Not to Commence the Development unless the Scheme of Works has been submitted to and approved in writing by the Borough Council.

4.21.3 Not to Occupy nor permit the Occupation of more than forty percent (40%) of the Residential Units unless the Open Space has been Completed in accordance with the approved Scheme of Works and to the written satisfaction of the Borough Council and has been transferred to the Borough Council for £1 (one pound) ("the Transfer") together with such reasonably necessary rights, access, easements to permit the Borough Council to access the Open Space for management and maintenance purposes and for the public to access the Open Space.

4.31.4 Not to Occupy nor permit the Occupation of more than forty percent (40%) of the Residential Units unless the Open Space Maintenance Contribution has been paid in full to the Borough Council (which for the avoidance of doubt must not be paid later than the date of the Transfer).

4.41.5 To pay the Open Space Maintenance Contribution in full to the Borough Council prior to the earlier of the Occupation of forty percent (40%) of the Residential Units of the date of the Transfer pursuant to paragraph 1.3 of this schedule two

2 NEAP

2.1 Not to submit a Reserved Matters Application for any part of the Land which is proposed to include the NEAP Land unless it makes provision for such NEAP Land.

2.2 To either:

2.2.1 lay out, equip and complete the NEAP Land and the NEAP in accordance with the approved Scheme of Works and to the reasonable written satisfaction of the Borough Council and

2.2.2 transfer the NEAP to the Borough Council for £1 (one pound) prior to Occupation of forty percent (40%) of the Residential Units together with such reasonably necessary rights, access, easements to permit the Borough Council to access the NEAP Land for management and maintenance purposes and for the public to access the NEAP Land.

or:

2.2.3 transfer the NEAP Land to the Borough Council for £1 (one pound) prior to Occupation of forty percent (40%) of the Residential Units together with such reasonably necessary rights, access, easements to permit the Borough Council to access the NEAP/NEAP Land for management and maintenance purposes and for the public to access the NEAP/NEAP Land and

2.2.4 pay to the Borough Council the NEAP Contribution in full prior to or on the transfer of the NEAP Land.

2.3 Not to Occupy or permit Occupation of more than forty percent (40%) of the Residential Units until either:

2.3.1 The NEAP has been completed in accordance with the approved Scheme of Works and to the reasonable written satisfaction of the Borough Council and the NEAP Land has been transferred to the Borough Council in accordance with paragraphs 2.2.1 and 2.2.2 above; or

2.3.2 The NEAP Land has been transferred to the Borough Council and the NEAP Contribution has been paid in full to the Borough Council in accordance with paragraphs 2.2.3 and 2.2.4 above.

2.4 To pay to the Borough Council the NEAP Maintenance Contribution in full prior to or on the Transfer of the NEAP Land to the Borough Council.

Commented [LD6]: Appellant to check formatting in its document – spacing between the word forty percent (40%)

- 2.5 Not to Occupy or permit the Occupation of more than forty percent (40%) of the Residential Units until the NEAP Maintenance Contribution has been paid in full to the Borough Council.

SCHEDULE THREE

ENVIRONMENTAL AND HABITAT OBLIGATIONS

DEFINITIONS

"Bird Aware Solent"	a Partnership for South Hampshire project to mitigate the harmful impact of additional recreational activity on nesting/wading birds, within the Solent region, resulting from new residential development within the Solent region's three (3) special protection areas
"Bird Aware Solent Contribution"	<p>a sum towards Bird Aware Solent such sum (in pounds sterling) to be calculated by reference to the number of Residential Units comprised in the Development as follows:</p> <ul style="list-style-type: none">• £361 for each Residential Unit comprising a one (1)-bedroom dwelling• £522 for each Residential Unit comprising a two (2)-bedroom dwelling• £681 for each Residential Unit comprising a three (3)-bedroom dwelling• £801 for each Residential Unit comprising a four (4)-bedroom dwelling• £940 for each Residential Unit comprising a dwelling with five (5) bedrooms or more

Commented [LD7]: Any property 5 bed or more surely attracts £940 contribution? Or does it attract a flat rate – what types of properties attract a flat rate? Should the flat rate reference be left in?

OBLIGATION

The Owner undertakes to the Borough Council as follows:-

1. Bird Aware Solent

1.1 The Owner undertakes to the Borough Council not to Initiate the Development unless the Bird Aware Solent Contribution has been paid in full to the Borough Council

1.2 The Owner undertakes to the Borough Council to pay the Bird Aware Solent Contribution in full to the Borough Council prior to the Initiation of the Development

Commented [LD8]: You need to know that this very important issue has been mitigated in full before the scheme begins as defined under s56. This is needed to be paid after RMA is secured but before the development COD's as defined. The COD definition is too late.

SCHEDULE FOUR

EDUCATION

DEFINITIONS

"Primary Education Contribution"	the sum of £1,181,947.00 (ONE MILLION ONE HUNDRED AND EIGHTY ONE THOUSAND NINE HUNDRED AND FORTY SEVEN POUNDS) (Index Linked) towards additional infrastructure at Wicor Primary School including the production of a school travel plan, additional sustainable travel infrastructure such as scooter/cycle storage and improvements to sustainable travel routes in the vicinity of the school.
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OBLIGATIONS

The Owner undertakes to the Borough Council and the County Council as follows:-

1. To pay the Primary Education Contribution in full to the County Council prior to the Occupation of fifty percent (50%) of the Residential Units.
2. Not to Occupy or cause or permit the Occupation of more than fifty percent (50%) of the Residential Units unless and until it has paid the Primary Education in full to the County Council

SCHEDULE FIVE
COUNTRYSIDE SERVICE

DEFINITIONS

"Fareham Footpath 110 Contribution"	the sum of £26,260 (TWENTY SIX THOUSAND TWO HUNDRED AND SIXTY POUNDS) (Index Linked) to be used for resurfacing of 296m of Fareham Footpath 110
"Fareham Footpath 111a Contribution"	the sum of £52,260 (FIFTY TWO THOUSAND TWO HUNDRED AND SIXTY POUNDS) (Index Linked) to be used for resurfacing of 589m of Fareham Footpath 111a
"Wicor Countryside Service Site Contribution"	the sum of £11,812 (ELEVEN THOUSAND EIGHT HUNDRED AND POUNDS) (Index Linked) towards management of the Wicor Countryside Service Site, near Portchester

OBLIGATIONS

The Owner undertakes to the Borough Council and the County Council as follows:-

1. to pay the Fareham Footpath 110 Contribution in full to the County Council prior to the Occupation of fifty percent (50%) of the Residential Units.
2. not to Occupy or cause or permit the Occupation of more than fifty percent (50%) of the Residential Units unless and until it has paid the Fareham Footpath 110 Contribution in full to the County Council
3. to pay the Fareham Footpath 111a Contribution to the County Council in full prior to the Occupation of fifty percent (50%) of the Residential Units.
4. Not to Occupy or cause or permit the Occupation of more than fifty percent (50%) of the Residential Units unless and until it has paid the Fareham Footpath 111a Contribution in full to the County Council
5. To pay the Wicor Countryside Service Site Contribution in full to the County Council prior to the Occupation of fifty percent (50%) of the Residential Units.
6. Not to Occupy or cause or permit the Occupation of more than fifty percent (50%) of the Residential Units unless and until it has paid the Wicor Countryside Service Site Contribution in full to the County Council

SCHEDULE SIX

TRANSPORT

DEFINITIONS

"Completion Certificate"	a certificate issued by the County Council to confirm that the Highway Works have been completed to its satisfaction
"Highways Agreement"	an agreement pursuant to the Highways Act 1980 or other relevant legislation
"Highway Works"	the works shown on drawings 5611.025 Rev C and 5611.002 Rev D (or any revision thereof approved in writing by the County Council)
"Traffic Regulation Order Contribution"	the sum of £6000 (SIX THOUSAND POUNDS) (Index Linked) towards traffic regulation orders for Beaulieu Avenue and Romsey Avenue
"Transport Contribution"	<p>the sum of £1,120,252 (ONE MILLION ONE HUNDRED AND TWENTY THOUSAND TWO HUNDRED AND FIFTY TWO POUNDS (Index Linked) to be used for the following purposes -</p> <ul style="list-style-type: none">• improvements in the vicinity of Delme Roundabout• improvements in the vicinity of Downend Rd/A27• Cornaway Ln Roundabout cycle improvements• Footway widening in the vicinity of the Site• Walking audit measures• School Travel Plan
"Travel Plan"	a plan to reduce the reliance on motorised vehicles and promote sustainable transport measures at the Development
"Travel Plan Approval and Monitoring Contribution"	the sum of £15,000 (FIFTEEN THOUSAND POUNDS) (Index Linked) towards the approval and monitoring of the Travel Plan
Disposal	transfer, grant, lease, licence
"Travel Plan Bond"	a bond in the sum of £97,250 (NINETY SEVEN THOUSAND TWO HUNDRED AND FIFTY POUNDS) (Index Linked) to secure the obligations of the Travel Plan

OBLIGATIONS

The Owner undertakes to the Borough Council and the County Council as follows:-

1. To pay the Transport Contribution in full to the County Council prior to the first Occupation of the Residential Units.
2. Not to cause or allow the Occupation of the Residential Units unless and until it has paid the Transport Contribution in full to the County Council
3. To pay the Traffic Regulation Order Contribution in full to the County Council prior to the first Occupation of the Residential Units.
4. Not to cause or allow the Occupation of any Residential Unit unless and until it has paid the Traffic Regulation Order Contribution in full to the County Council

5. To pay the Travel Plan Approval and Monitoring Contribution in full to the County Council prior to Commencement of the Development
6. Not to Commence the Development unless and until it has paid the Travel Plan Approval and Monitoring Contribution in full to the County Council
7. Not to Commence the Development unless it has entered into a Highways Agreement with the County Council and not to Occupy or permit the first Occupation of the Development until the Highway Works have completed in full as evidenced by the issue of a Completion Certificate
8. Not to Occupy nor permit Occupation of any Residential Unit unless and until it has prepared the Travel Plan and secured the County Council's written approval of it ("**Approved Travel Plan**"). To thereafter implement and comply with the Travel Plan in accordance with the requirements and timetable of the Approved Travel Plan
9. Without prejudice to the Approved Travel Plan not to Occupy nor permit Occupation of the Development unless and until it has appointed a Travel Plan co-ordinator for the whole of the Development to implement the Approved Travel Plan and has notified the County Council in writing of such appointment
10. Not to Occupy nor permit Occupation of the Development unless and until it has provided to the County Council the Travel Plan Bond to the effect that if in the opinion of the County Council acting reasonably the Owner unreasonably fails at any time within five (5) years of the date of first Occupation of the Development to deliver the agreed measures/ targets and/or comply with any/all of the measures/targets contained within the Approved Travel Plan the surety shall pay to the County Council on demand such sum as may be certified by the County Council to be required up to the amount of the Travel Plan Bond in order to [cover the cost to the County Council](#) to remedy the failure to achieve and implement the agreed measures/targets contained within the Approved Travel Plan or [to put in place](#) such alternative measures as the County Council shall in its absolute discretion determine will achieve the overall aims of the Approved Travel Plan or such alternatives measures as the County Council shall in its absolute discretion determine will at no greater cost to the Owner to achieve the overall aims of the Approved Travel Plan
11. The Owner shall implement the Approved Travel Plan or the paragraph 10 measures relating to the Development or such part of the Development comprising the Residential Units and shall use all reasonable endeavours to achieve the targets or secure the measures set therein
12. The Owner shall secure in every Disposal of a Residential Unit a covenant that the disponee to comply with the Approved Travel Plan or paragraph 10 measures and shall use all reasonable endeavours to enforce such obligations against any such disponee

APPENDIX 1

Table 1

Calculating Minimum Requirement based on the number and size of Residential Units comprised in the Development	
	Open Space (square metres per Residential Unit)
Unit Size	
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

IN WITNESS whereof the Owner and the Appellant have executed this deed on the day and year first before written

EXECUTED AS A DEED by)
LAWRENCE TREVOR HAMBLER)

In the presence of:)
)
Witness Signature:)
Witness Name:)
Witness Address:)
)
Witness Occupation:)

EXECUTED AS A DEED by)
MICHAEL HAMBLER)

In the presence of:)
)
Witness Signature:)
Witness Name:)
Witness Address:)
)
Witness Occupation:)

EXECUTED AS A DEED by)
FOREMAN HOMES LIMITED, acting by a director,)
In the presence of:)
)
Witness Signature:)
Witness Name:)
Witness Address:)
)
Witness Occupation:)

