

**DEED OF AGREEMENT  
pursuant to Section 106  
Town and Country Planning Act 1990  
and Section 111 Local Government Act 1972**

relating to

**Land at Wychwood, Nursling Street, Nursling, Southampton SO16 0XH**

**RICHARD MICHAEL MOYSE, SIMON JONATHAN RYLATT, AND CARL STUART  
JACKSON (1)**

and

**TEST VALLEY BOROUGH COUNCIL (2)**

IF/(003776)

Karen Dunn, Head of Legal and Democratic  
Services,  
Test Valley Borough Council

THIS AGREEMENT is made the 10<sup>th</sup> day of July 2023

**BETWEEN:**

- (1) RICHARD MICHAEL MOYSE, SIMON JONATHAN RYLATT, AND CARL STUART JACKSON of New Kings Court, Tollgate, Chandler's Ford, Eastleigh SO53 3LG and of The Estate Office, Longdown, Marchwood, Southampton SO40 4UH acting in their capacity as Trustees of the Barker-Mill Discretionary Trust ("the Owner")
- (2) TEST VALLEY BOROUGH COUNCIL of Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ ("the Council")

**RECITALS**

**A Definitions**

- A.1 Words and phrases used in this Agreement are defined in clause 2.1

**B Interests in the Site**

- B.1 The Owner is registered at the Land Registry under title no. HP673089 with absolute freehold title as proprietor of the Site

**C The Council**

- C.1 The Council is a local planning authority for the purposes of section 106 of the Act for the area within which the Site is situated

**D Planning**

- D.1 The Owner has submitted the Application to the Council for the Development of the Site
- D.2 In the event of planning permission being granted for the Development the parties hereto agree the need for the planning obligations contained in this Agreement both for the benefit of the Development and in the interests of the proper planning of the area and in particular so as to ensure that nitrate deposits resulting from the Development are adequately mitigated.

## OPERATIVE PROVISIONS

### 1. Operative Powers

This Agreement is entered into pursuant to section 106 of the Act and section 111 of the Local Government Act 1972 and all other enabling powers

### 2. Interpretation

2.1. In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:

"the Act"	The Town and Country Planning Act 1990 (as amended)
"Administration Fee"	The sum of <b>ONE HUNDRED POUNDS</b> (£100.00) (plus VAT) (Index Linked) payable under this Agreement to be used by the Council at its discretion but only in relation to its costs incurred in administering, reviewing and implementing the Nitrates Mitigation Contribution in this Agreement
"the Application"	The planning application for the Development submitted to the Council and validated by them under reference 22/02354/FULLS on 9 <sup>th</sup> September 2022
"Commencement"	The carrying out on the Site of a material operation as defined in section 56(4) of the Act pursuant to the Permission but not otherwise save that for the purpose of this definition the carrying out of any works of demolition works of site clearance ground investigation and site survey works construction of temporary boundary fencing or hoardings construction of temporary accesses archaeological investigation site decontamination or remediation works landscaping or ecological works laying of sewers and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation and "Commence" and "Commenced" shall be construed accordingly

“Completion”	The date of issue of building regulation completion certificate to the Owner’s architect or other authorised agent of the Owner or in the event that the Development is constructed by a party other than the Owner the date of issue of the building regulation completion certificate to the other party’s architect or other authorised agent (whether by the local authority or an approved inspector) and “Complete” shall be construed accordingly
“Contribution”	Any contribution secured by way of a planning obligation set out in the Schedule
“the Development”	Development of the Site by the erection of a dwelling with new access, parking and landscaping, and alterations to existing access
“Dwelling”	The dwelling comprised in the Development
“Index Linked”	Index linked in accordance with Clause 5
“New Forest SPA Contribution”	The sum of <b><u>ONE THOUSAND THREE HUNDRED POUNDS</u></b> (£1300.00) (Index Linked) by way of contribution towards the cost of measures to mitigate the impacts of the Development on the New Forest Special Protection Area
“Nitrate Mitigation Contribution”	The sum of <b><u>THREE THOUSAND SIX HUNDRED POUNDS</u></b> (£3600.00) (plus VAT) (Index Linked) by way of contribution towards costs incurred by the Council in funding providing or otherwise facilitating measures for the mitigation of nitrate deposits from the Development
“Occupation”	Beneficial permanent occupation of the Development or any part thereof other than occupation for the purposes of construction fitting out security or repair and “Occupy” and ‘Occupied’ shall be construed accordingly
“Plan 1”	The plan marked “Plan 1” annexed hereto
“the Permission”	Planning permission granted for the Development pursuant to the Application
“Relevant Indexation Base Date”	In relation to the Nitrate Mitigation Contribution means 1 <sup>st</sup> April 2021 and in

	relation to any other Contribution means 1 <sup>st</sup> April 2022
"RPI"	The "All Items" Index of Retail Prices published by the Office for National Statistics
"the Schedule"	The Schedule hereto
"the Site"	The land at Wychwood, Nursling Street, Nursling, Southampton, SO16 0XH shown edged red on Plan 1
"Solent and Southampton Water SPA Contribution"	The sum of <b><u>FIVE HUNDRED AND SIXTY THREE POUNDS</u></b> (£563.00) (Index Linked) by way of contribution towards the costs incurred by the Council in providing measures to mitigate the impacts of recreational disturbance on wildlife within the Solent and Southampton Water Special Protection Area which result from the Development
"Working Day"	Any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year's Day.

- 2.2 Where in this Agreement reference is made to a clause sub-clause paragraph schedule annex plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule annex plan or recital of or (in the case of a plan or annex) attached to this Agreement
- 2.3 Words denoting any one gender only shall include both genders and may be used interchangeably and words denoting natural persons include firms companies and corporations and vice versa
- 2.4 Words importing the singular number only shall include the plural number and vice versa and where there is more than one covenantor the obligation of such covenantors shall be joint and several
- 2.5 Any reference to a statute or statutory instrument (whether or not specifically named) includes any statute or statutory instrument amending consolidating or replacing them respectively and for the time being in force and references

to a statute include all statutory instruments orders plans regulations byelaws permissions and directions for the time being made issued or given or deriving validity therefrom

- 2.6 Where the agreement approval consent or an expression of satisfaction is required by the Owner or other party under the terms of this Agreement from the Council that agreement approval consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed
- 2.7 Save where the context otherwise requires references to any party shall include the successors in title of that party
- 2.8 References in this Agreement to the Council shall include references to any successors to its statutory functions as a local planning authority

### **3. Legal Effect**

- 3.1 This Agreement is executed by the parties as a deed and shall constitute a planning obligation for the purposes of section 106 of the Act to the intent that it shall bind the Owner and their successors in title to each and every part of the Site
- 3.2 This Agreement shall be enforceable by the Council
- 3.3 Any person shall upon parting with all interest in any part of the Site be released from all obligations rights and duties under the terms of this Agreement insofar as they relate to such part of the Site (save in respect of liability for any antecedent breach of this Agreement) and shall upon parting with the entirety of their interest in the Site as a whole be released from all liability whatsoever under the terms of this Agreement (save in respect of liability for any antecedent breach of this Agreement)

- 3.4 Clauses 1 to 3 and 6 to 12 shall take effect on the date hereof but in all other respects this Agreement shall not take effect until the following conditions precedent have been satisfied
- 3.4.1 the Permission has been granted; and
  - 3.4.2 Commencement of the Development
- 3.5 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the Council or on appeal after the date of this Agreement
- 3.6 If any individual clause or paragraph in this Agreement is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and shall be severed from this Agreement **PROVIDED HOWEVER THAT** the severing of such a clause or paragraph shall not affect the continuing enforceability of the remainder of this Agreement
- 3.7 If the Permission shall expire within the meaning of sections 91, 92 and 93 of the Act or is revoked modified or otherwise withdrawn by the Council then this Agreement shall cease to have further effect
- 3.8 Nothing contained within this Agreement shall fetter the Council in their future exercise of rights and powers under the Act the Local Government Act 1972 or any other statutory power
- 3.9 No-one other than the parties and their successors in title has any rights under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

#### **4. Obligations**

The Owner hereby covenants with the Council to observe and perform the

obligations contained in the Schedule

## **5. Indexation**

- 5.1 For the purposes of this Agreement any reference to any Contribution as being "Index Linked" shall mean such Contribution as adjusted in accordance with the following formula namely

$$\frac{A \times B}{C}$$

Where

A is the Contribution specified in this Agreement

B is the figure at which the RPI stands when such Contribution is paid to the Council

C is the figure at which the RPI stood at the Relevant Indexation Base Date

- 5.2 If the RPI is re-based or replaced an appropriate alternative index shall be substituted by agreement between the parties hereto and any dispute concerning that substitution shall be resolved pursuant to Clause 9
- 5.3 It is hereby declared and agreed between the parties hereto that indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at the Relevant Indexation Base Date

## **6. Costs**

- 6.1 The Owner covenants with the Council to pay on demand its reasonable legal costs in connection with the preparation and completion of this Agreement
- 6.2 The Owner covenants with the Council to pay on demand its Administration Fee including VAT if applicable. For the avoidance of doubt the Administration Fee shall be in addition to the costs referred to in sub-clause 6.1 above, and all other Contributions (if applicable) in this Agreement



## **7. Local Land Charge**

This Agreement is a local land charge and shall be registered as such by the Council

## **8. Service Provisions**

8.1 Any notice or other written communication to be served upon or given by one party to any other under the terms of this Agreement shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

8.2 The address for any notice or other written communication shall only be within the United Kingdom and is

8.2.1 for the Owner at the address as specified above

8.2.2 for the Council at the address as specified above marked for the attention of the Head of Planning and Building Services

8.3 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council (as appropriate) by an officer or duly authorised signatory

## **9. Dispute Resolution**

9.1 Save for matters of construction (which shall be matters for the Court) in the event of any dispute arising between the parties or any of them in respect of any matter contained in this Agreement including questions of value and any question of reasonableness the same shall be referred to an expert ("Expert") to be agreed upon between the parties or at the request and option of either

of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors and the Expert's decision shall be final and binding on the parties hereto and whose costs (including the reimbursement of the costs of any other expert's fees) shall be at his discretion

- 9.2 The Expert shall have at least ten years post qualification experience in the subject matter of the dispute
  - 9.3 The Expert shall be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in accordance with the timescales set out in Clause 9.4 below
  - 9.4 Within 10 Working Days of his appointment the Expert shall be required to give notice to each of the parties inviting each of them to submit to him within such period as he shall reasonably determine written submissions and supporting material and shall afford to each of the parties an opportunity to make counter submissions within a further 10 Working Days in respect of any such submissions and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties
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9.5 It is hereby declared and agreed between the parties hereto that nothing in this Clause 9 shall be taken to fetter the ability of the Council to seek legal redress in respect of any breach of the obligations entered into by the Owner to this Deed

#### **10. Warranty**

The Owner hereby warrants to the Council that as at the date of this Agreement their legal interest in the Site is as set out in this Agreement at Recital B.1 and that they have not granted any legal interest in the Site to any person (other than as disclosed to the Council at the date hereof) and consents to their interest in the Site being bound by the obligations contained in this Agreement

#### **11. s73 Permissions**

Unless otherwise agreed between the parties if a planning permission pursuant to s73 of the Act ("a s73 Permission") is granted by the Council in relation to the Development then with effect from the date that each such Section 73 Permission is granted

- i) the obligations in this Agreement shall (in addition to continuing to bind the Site in respect of the Permission) relate to and bind each such Section 73 Permission and the Site itself without any further act by the parties; and
- ii) the definition of "the Application" "the Development" and "the Permission" in this Agreement shall be construed to include reference to any application under Section 73 of the Act the Section 73 Permission granted pursuant to any such application and the development permitted by such Section 73 Permission

#### **PROVIDED THAT**

- a) nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the Act; and
- b) to the extent that any of the obligations of this Agreement have already been discharged at the date that any Section 73 Permission is granted they shall remain discharged for the purposes of the Section 73 Permission”

## **12. Value Added Tax**

- 12.1 All consideration and/or any Administration Fee given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof
- 12.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid on receipt of a valid VAT invoice.

## THE SCHEDULE

### Obligations given to the Council

1. Prior to Occupation of the Dwelling to pay to the Council the New Forest SPA Contribution and not to Occupy or cause or permit Occupation of the Dwelling until the New Forest SPA Contribution has been paid to the Council as aforesaid.
2. Prior to Occupation of the Dwelling to pay to the Council the Nitrate Mitigation Contribution and the Administration Fee and not to Occupy or cause or permit Occupation of the Dwelling until the Nitrate Mitigation Contribution and the Administration Fee have been paid to the Council as aforesaid
3. Prior to Occupation of the Dwelling to pay to the Council the Solent and Southampton Water SPA Contribution and not to Occupy or cause or permit Occupation of the Dwelling until the Solent and Southampton Water SPA Contribution has been paid to the Council as aforesaid
4. To notify the Council in writing of the date of Completion of the Development and the date of first Occupation of the Dwelling not later than seven (7) days after such event shall have occurred

**IN WITNESS** whereof the parties hereto have executed this instrument as a deed  
the day and year first above written

**EXECUTED AS A DEED** by the said  
**RICHARD MICHAEL MOYSE**  
in the presence of:-

Signature of witness: \_\_\_\_\_

Name (in BLOCK CAP \_\_\_\_\_

Address: \_\_\_\_\_

**EXECUTED AS A DEED** by the  
**SIMON JONATHAN RYLATT**  
in the presence of:-

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS): \_\_\_\_\_

Address: \_\_\_\_\_

**EXECUTED AS A DEED** by the said  
**CARL STUART JACKSON**  
in the presence of:-

Signature of witness: \_\_\_\_\_

Name (in BLOCK CAP \_\_\_\_\_

Address: \_\_\_\_\_

THE COMMON SEAL OF THE BOROUGH COUNCIL  
OF TEST VALLEY was hereunto affixed in the presence of:-

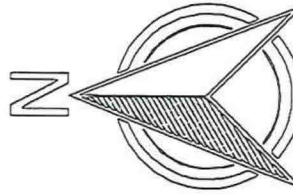
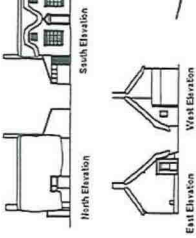


Authorised Officer Signatory



25604

"PLAN 1"



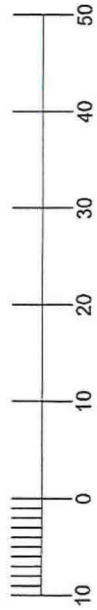
Produced on 14 April 2021 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date.

This map shows the area bounded by 437670 116284, 437749 116286, 437746 116341, 437672 116347, 437670 116284

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25604

Date	Description	Scale

Project: Wychwood  
Nursing Street  
Nursing SO16 0XH  
Client: Longdown Management Ltd.  
Drawing: Location Plan

Date: June 2022  
 Scale: 1:500 @ A3  
 Job No: 2106  
 Drawing: D-100  
**crafted architects RIBA #**  
 100, Gypsy Lane, West Wyalvington, Wiltshire, Wiltshire, Wiltshire, Wiltshire  
 01249 990110 | info@craftedarchitects.co.uk