

DATED 27 JUNE

2017

**DEED**

Between

**WINCHESTER CITY COUNCIL**

and

**HAMPSHIRE COUNTY COUNCIL**

and

**BISHOPS WALTHAM PARISH COUNCIL**

and

**JOHN ERIC YOULES and LESLIE JOY YOULES**

and

**CAUSEQUEST LIMITED and GRACESHIRE LIMITED**

and

**CREST NICHOLSON OPERATIONS LIMITED**

and

**CREST NICHOLSON PLC**

**STATUTORY POWERS**

Under (inter alia) Sections 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004) in respect of Affordable Housing, Open Space Off-Site Strategic Footpath and Cycleway, Education, Employment and Skills Plan and the Solent Recreation Mitigation Partnership

**SITE**

Land to the West of Tangier Lane, Bishops Waltham, Hampshire, SO32 1BU

**PLANNING APPLICATION NUMBER**

16/01322/FUL

H. Bone, LL.B (Hons)  
Head of Legal and Democratic Services  
Winchester City Council  
City Offices  
Colebrook Street  
Winchester SO23 9LJ  
Legal ref: EE



THIS DEED OF AGREEMENT is made the 27 day of JUNE 2017  
BETWEEN

- (1) WINCHESTER CITY COUNCIL of City Offices Colebrook Street Winchester Hampshire SO23 9LJ ("the Council");
- (2) HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire SO23 8UJ ("the County Council");
- (3) BISHOPS WALTHAM PARISH COUNCIL of The Jubilee Hall Little Shore Lane Bishops Waltham Southampton SO32 1ED ("the Parish Council");
- (4) JOHN ERIC YOULES and LESLIE JOY YOULES of The Vineyard, Tangier Lane, Bishops Waltham, Hampshire, SO32 1BU ("the First Owners");
- (5) CAUSEQUEST LIMITED (Company registration number 2250088) whose registered office is situate at 21 River Green, Hamble, Southampton, Hampshire, SO31 4JA and GRACESHIRE LIMITED (Company registration number 1321231) whose registered office is situate at Brundene Exbury Road, Blackfield, Southampton, SO45 1XE ("the Second Owners");
- (6) CREST NICHOLSON OPERATIONS LIMITED (Company registration 1168311) whose registered office is situate at Crest House, Pyrcroft Road, Chertsey, Surrey, KT16 9GN ("the Developer"); and
- (7) CREST NICHOLSON PLC (Company Registration Number 01040616) whose registered office is situate at Crest House, Pyrcroft Road, Chertsey, Surrey, KT16 9GN ("the Surety")

**WHEREAS:-**

1. This Agreement constitutes a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 as amended and all other powers enabling the parties hereto
2. Words and phrases appearing in these recitals have the meanings ascribed to them in clause 1 of this Agreement
3. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
4. The County Council is also a local planning authority for the purposes of the Act for the area in which the Land is situated and is also the Local Education Authority for the area
5. The First Owners are the registered proprietor of that part of the Land which is registered at the Land Registry with freehold title absolute as part of the land registered under Title Number HP621913



6. The Second Owners are the registered proprietor of that part of the Land which is registered at the Land Registry with freehold title absolute under Title Number HP469710
7. The First Owners and the Second Owners are collectively referred to in this Agreement as "the Owners"
8. The Developer has the benefit of a Unilateral Notice in respect of an Agreement dated 21 October 2013 in respect of that part of the Land registered under Title Number HP621913 and the benefit of a Unilateral Notice in respect of an Agreement for Sale dated 5 June 2013 in respect of that part of the Land registered under Title Number HP469710
9. The Developer has made the Application to the Council for planning permission for the Development under planning reference 16/01322/FUL
10. The Development generates the following requirements:-
  - (i) an Affordable Housing requirement as detailed herein and in Schedule One;
  - (ii) a requirement relating to open space, a play area, an offsite strategic footpath and cycleway as detailed herein and in Schedule Two;
  - (iii) an Education Contribution requirement as detailed herein and in Schedule Three;
  - (iv) a requirement to provide an Employment and Skills Plan as detailed herein and in Schedule Four
  - (v) a requirement to contribute financially towards the Solent Recreation Mitigation Partnership
11. The Council is satisfied that the Development is such as may be approved subject to conditions provided that the parties hereto enter into this Agreement in the manner hereinafter appearing. The parties agree that the obligations contained in this Agreement meet the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 in that they are (a) necessary to make the Development acceptable (b) directly related to the Development and (c) fairly related in scale and kind to the Development

**NOW THIS DEED WITNESSETH AS FOLLOWS:-**

**1. INTERPRETATION**

In this Agreement:

- 1.1 Where the context so admits words importing the masculine gender include the feminine and neuter genders and all such words shall be construed interchangeable in that manner



- 1.2 Where the context so admits words importing the singular where the context so admits include the plural and vice versa
- 1.3 Words importing persons include companies and corporations and vice versa
- 1.4 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
- 1.5 An obligation on a party not to do something includes an obligation not to allow that thing to be done
- 1.6 Any reference to a clause or paragraph, schedule or recital is to a clause, paragraph, schedule or recital in this Agreement
- 1.7 Any reference to an Act of Parliament includes any statutory modification, extension or re-enactment of it and shall include all statutory instruments, orders, plans, regulations, permissions or directions made or issued or given under the act or deriving validity from it
- 1.8 References to any party to this Agreement 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 Council includes the successor to its statutory functions as local planning authority
- 1.9 Agreed or Approved means agreed or Approved in writing and given for the purpose of this Agreement and for the purposes of amending or varying the plan showing the location or extent of the Affordable Housing Land such agreement or Approval will not require a deed of variation to this Agreement and will be deemed to be satisfied by an exchange of correspondence between the Council and the Owners appending any amended or substituted plan showing the Affordable Housing Land to this Agreement
- 1.10 Save as expressly provided by this Agreement the covenants and obligations given by any of the parties hereto shall attach to the Land and each and every part of it and shall bind their successors in title and assignees or any persons claiming by under or through them

**Definitions:**

- 1.11 In this Agreement the following words and phrases shall unless the context otherwise admits or requires have the following meanings:

the Act	the Town and Country Planning Act 1990 as amended
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#### Access

the provision of roads, footways, footpaths, cycleways, cycle paths and cycle tracks to an adoptable standard together with all rights and easements over the said roads, footways, footpaths, cycleways, cycle paths and cycle tracks as are necessary to facilitate the construction and occupation of Dwellings upon the Affordable Housing Land until the adoption of the said roads, footways, footpaths, cycleways, cycle paths and cycle tracks as public highway

#### Affordable Housing

Social Rented, Affordable Rented and Intermediate Housing provided to Eligible Persons whose needs are not met by the market the aggregate amount of which to be provided pursuant to both the Application and planning application 16/01324/OUT shall equate to 40% of the overall Dwellings as authorised by the Application and planning application 16/01324/OUT. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should include provisions so that it will remain at an affordable price to future Eligible Persons or for the subsidy to be recycled for alternative Affordable Housing provision

#### Affordable Housing Land

that part of the Land shown hatched blue on Plan 1 or such plan as amended or such other plan as substituted as may have been Approved by the Council and which is intended for and shall comprise the Affordable Housing Units, their curtilages and parking provision and to which the provisions of Schedule One shall apply



Affordable Housing Units	those Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and/or Shared Equity Units and/or Intermediate Rented Units (as specified in Table 1 of Part 1 of Schedule One the location of which are shown for identification purposes only marked on Plan 1) or any other such forms of Affordable Housing as set out in the NPPF subject to such being agreed with the Council and which shall (subject to the provisions of this Agreement) be occupied exclusively by Eligible Persons in perpetuity
Affordable Rented	rented housing with tenancies granted for at least 5 years and 11 months duration (which duration shall include the period of any starter tenancy) that are owned and managed by Registered Providers let on tenancies at rents which are set at between target rents as determined through the national rent regime and 80% of the local market rent (including service charges, where applicable) and which rents would not exceed the Local Housing Allowance rates unless otherwise agreed in writing with the Council PROVIDED THAT the rents may be increased annually during the tenancy in accordance with arrangements made for such rent increases established by the HCA and "Affordable Rent" shall be construed accordingly
Affordable Rented Units	units for Affordable Rent
Affordability Test for Intermediate Housing	at first sale or on the first letting the total housing costs (to include mortgage and/or rent and service/management charges) payable by



	<p>the occupant(s) of all Intermediate Housing Units shall not average more than 30% of the median gross household income of those applicants on the Help to Buy Agency for Hampshire and the Isle of Wight's (or other successor body's) housing register applying for Shared Ownership Units or Shared Equity Units or other Intermediate Housing units and for the purpose of calculating the median incomes the bottom 10% of those on the appropriate housing register shall be excluded (and for the avoidance of doubt this shall not prevent Registered Providers from disposing/letting of properties to specific Eligible Persons in accordance with their normal affordability criteria)</p>
Allocations Scheme	<p>the Hampshire Home Choice Allocations Framework designed to meet the requirements of Part VI of the Housing Act 1996 (as amended by the Homelessness Act 2002), the Localism Act 2011, all other relevant legislation and the Council's Allocations Scheme and which has due regard to the Code of Guidance issued by the Secretary of State for Communities and Local Government in June 2012 and December 2013</p>
the Application	<p>the planning application reference number 16/01322/FUL to develop the Land</p>
Approval	<p>approval in writing by the Council (which approval will not be unreasonably withheld or delayed) and the words "Approve" and "Approved" shall be construed accordingly</p>
Clean Condition	<p>free from any contamination which would in the opinion of the Council (acting reasonably)</p>



otherwise prejudice the use of the Land for Affordable Housing and with the Owner having completed to the satisfaction of the Council all necessary preparatory work including any archaeological investigations, demolition, site clearance, site or soil investigations, site remediation, the laying of services or temporary works such as the erection of fencing or hoardings

**Common Parts**

the Landscaped Areas and Incidental Green Spaces (if any) and the parts of the Land which do not comprise a Dwelling or the curtilage of a Dwelling and which shall include any roads, communal parking areas, footways, footpaths, cycle ways which are not to be adopted and are instead to be managed and maintained by the Management Company as shown for identification purposes only shaded light mauve on Plan 2

**Commencement Date**

the date on which the Development commences by the carrying out on the Land pursuant to the Permission of a material operation as specified in section 56 (4) of the Act and the words "Commence" and "Commencement" "Commence Development" and "Commencement of Development" shall be construed accordingly

**Community Lettings Plan**

a plan to be devised by the Council which specifies the basis on which the Affordable Housing is to be occupied and with review periods

**Development**

the development of the Land permitted by the Permission



Dwelling an Affordable Housing Unit and/or an Open Market Unit as the context so admits and "Dwellings" shall be construed accordingly

Education Contribution means the sum of three hundred and fifty eight thousand nine hundred and thirty four pounds (£358,934) Index-Linked payable by the Owners to the County Council by way of a contribution towards 1 Form Entry expansion at Bishops Waltham Infant School and 1 Form Entry expansion at Bishops Waltham Junior School payable in accordance with the provisions in Schedule Three and for the avoidance of doubt both Bishops Waltham Infant School and Bishops Waltham Junior School are to be treated as 2 separate pieces of infrastructure

Eligible Persons persons who are unable to afford housing accommodation on the open market (whether by renting or buying) within the administrative area of the Council and who are:

- (a) on those registers retained or referred to by the Council from time to time in the discharge of the Council's housing function; or
- (b) otherwise certified by the Council (at all times acting reasonably consistently with the discharge of its housing function) as being eligible to reside in the Affordable Housing Units; or
- (c) those persons identified as eligible under the Community Lettings Plan (if any)

Employment and Skills Plan a plan, the details of which shall be in accordance with the requirements set out in



Schedule Four, setting out employment, training and learning opportunities available during the construction and operation of the Development

HCA

the Homes and Communities Agency or any successor or other body having the same function as the HCA whether solely or with other functions

Head of Legal and  
Democratic Services

the Council's Head of Legal and Democratic Services or such other officer appointed by the Council to be responsible for legal services

Index

(a) in relation to the Off-Site Strategic Footpath and Cycleway Contribution, the LEAP Contribution the LEAP Maintenance Contribution and the Open Space Maintenance Contribution the Retail Prices Index (All Items) ("RPI"); and

(b) in relation to the Education Contribution the BCIS All-in Tender Price Index (TPI) Index

or if either of those indices cease for any reason to be published in the United Kingdom, such other indices issued as may be agreed between the Council the Parish Council or the County Council (as the case may be) and the Owners

Index-Linked

any contribution or sum expressed in this Agreement to be Index-Linked shall be increased in relation to the relevant Index for that contribution or sum as shown herein and/or in the relevant Schedule



Informal Green Open Space	that part of the Land shown shaded green on Plan 3 and marked "Informal Green Open Space" and which is to be offered to the Parish Council in accordance with Part 3 of Schedule Two and to which the provisions of Schedule Two shall apply
Informal Green Open Space and Open Space Maintenance Contribution	a contribution of nine pounds ninety two pence per square metre (£9.92) up to a maximum of 0.66 hectares (sixty five thousand four hundred and seventy two pounds (£65,472) towards the future maintenance of the Informal Green Open Space and/or the Open Space (as appropriate)
Interest in Default	interest at the rate of 4% over the base lending rate of the National Westminster Bank PLC from time to time in force
Intermediate Housing	affordable housing for sale and rent provided at a cost above social rent, but below market levels, including Shared Ownership and Shared Equity and other low cost homes for sale and Intermediate Rent, but not Affordable Rented housing, and which complies with the Affordability Test for Intermediate Housing
Intermediate Rented Units	Intermediate Housing for rent
Land	all that piece or parcel of land known as



- The Vineyard Tangier Lane Bishops Waltham SO32 1BU; and
- Land on the South East Side of Albany Road Bishops Waltham

Both shown for identification purposes only edged red on Plan 1 (but excluding The Vineyard as hereinafter defined)

Landscaped Areas  
and Incidental  
Green Spaces

the parts of the Land which do not comprise a Dwelling or the curtilage of a Dwelling and are landscaped areas and incidental green spaces which are not to be adopted and are instead to be managed and maintained by the Management Company as shown for identification purposes only shaded mauve on Plan 2 and which form part of the Common Parts

LEAP

means a local equipped area for play as described in the Fields in Trust Document "Guidance for Outdoor Sport and Play" October 2015

LEAP Contribution

Fifty Thousand Pounds (£50,000.00) for the supply and installation of play equipment together with any safety surfacing, fencing, seating and litter bins on the LEAP Land which shall be Index-Linked by reference to the difference in the Index as at 1 April 2017 and the 1st day of the month immediately preceding Occupation of the first Dwelling on the Land,

LEAP Land

the area of land upon which a LEAP is to be provided by the Parish Council which is in their ownership and lies adjacent to the Land as shown for identification purposes only shaded red on Plan 3 or such other land as may be Approved by the Council



LEAP Maintenance  
Contribution

Twenty Five Thousand Pounds (£25,000.00) payable to the Parish Council for the future maintenance of the LEAP on the LEAP Land which shall be Index-Linked by reference to the difference in the Index as at 1 April 2017 and the 1st day of the month immediately preceding the Occupation of the last Dwelling on the Land

LEAP Maintenance  
Period

the period starting on the date when the Council notifies the Parish Council in writing that the LEAP has been completed to its satisfaction pursuant to paragraph 3 of Part 1 Schedule Two and ending one year thereafter

Local Housing  
Allowance

the maximum level of means-tested housing benefit established through the Social Security Contributions and Benefits Act 1992 which can be paid to Eligible Persons who pay rent in the private sector

Management  
Company

a company to be charged with the management of the Common Parts in accordance with Part 5B of Schedule Two

Occupation

the completion of a tenancy agreement, Shared Ownership Lease or Shared Equity Lease in respect of any one or more of the Affordable Housing Units or the completion of a transfer, lease or tenancy agreement in respect of any one or more of the Open Market Units and "Occupy" and "Occupied" shall be construed accordingly



Off-Site Strategic Footpath and Cycleway Contribution	a contribution in the amount of twenty one thousand, seven hundred and twenty nine pounds nineteen pence (£21,729.19) towards a strategic footpath and cycleway along the southern edge of Bishops Waltham which contribution shall be Index-Linked
Open Market Unit	any Dwelling to be constructed upon the Land not being an Affordable Housing Unit and "Open Market Units" shall be construed accordingly
Open Market Value	the open market value of a Dwelling as determined in accordance with sections 156 and 158 of the Housing Act 1985 (as amended)
Open Space	that area of public open space on the Land shown coloured blue on Plan 3 being the area marked and designated as a SINC and which is to be offered to the Parish Council in accordance with Part 3 of Schedule Two and to which the provisions of Schedule Two shall apply
Open Space Strategy	the Winchester Open Space Strategy as Approved by the Council from time to time, including any amendments, revisions or re-issues thereof
Open Space Works	a scheme of works in relation to the Landscaped Areas and Incidental Green Spaces which has been Approved by the Council and which is in accordance with the Council's Specification for Soft Landscape Works but which for the avoidance of any doubt shall not include the Informal Green Open Space or the Open Space
Permission	the grant of planning permission pursuant to the Application



Plan 1	means the plan marked "Plan 1" annexed hereto with drawing reference 2064-A-1100-B upon which the Land is shown edged red and the Affordable Housing Land is shown hatched blue
Plan 2	means the plan marked "Plan 2" annexed hereto with drawing reference 2064-A-1101 -C upon which the Common Parts are identified and The Vineyard
Plan 3	means the plan marked "Plan 3" annexed hereto with drawing reference 2064-A-1102-A upon which the Informal Green Open Space the Open Space and the LEAP Land are identified
Practical Completion	means the issue of a certificate of practical completion by the Owners' architect or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect
Registered Provider	any registered provider of social housing within the meaning of section 111 of the Housing and Regeneration Act 2008 Approved by the Council and for the avoidance of doubt approved Registered Providers include (i) the Winchester Housing Trust (ii) the Council itself and (iii) any registered provider who is a partner in the Hampshire Home Choice Scheme
Service Installations	sewers, drains, culverts, channels, outlets, mains, wire cables, ducts, flues, soakaways and other conducting media for the supply of Services, substations, regulator valves and all other infrastructure whatsoever for Services all of which shall be laid by the Owners in, on, over or under the Land









KEY

- SITE BOUNDARY
- LAND TO BE ADOPTED BY PARISH
- OTHER LAND
- THE VINEYARD



SCALE 0 25m 50m

PLAN 2

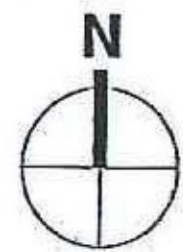
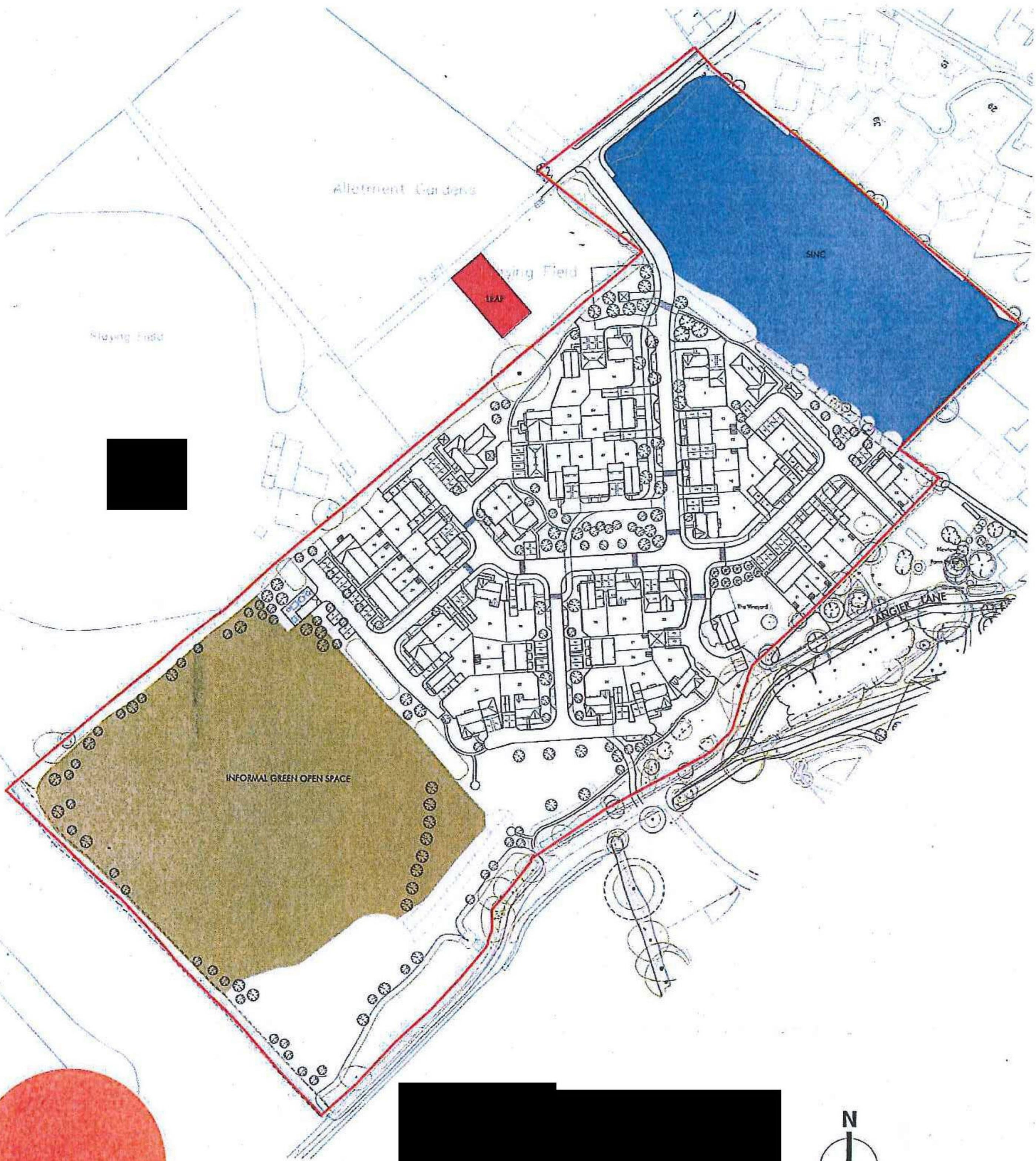
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 2064-A-1101-D

36/8238

OMEGA

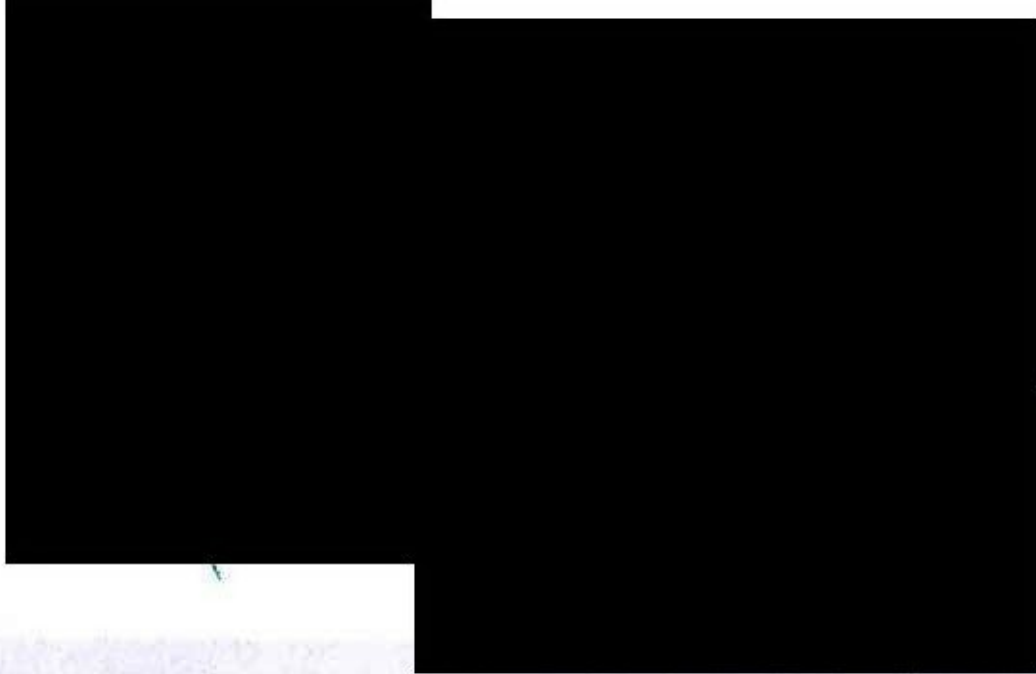
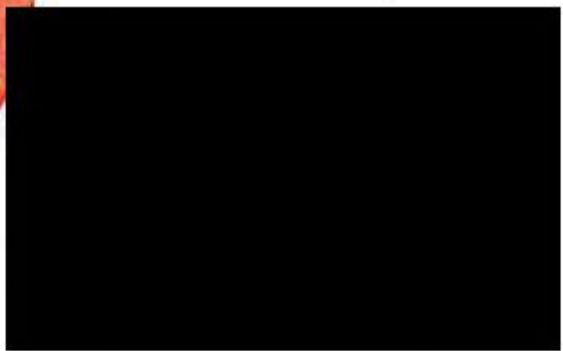
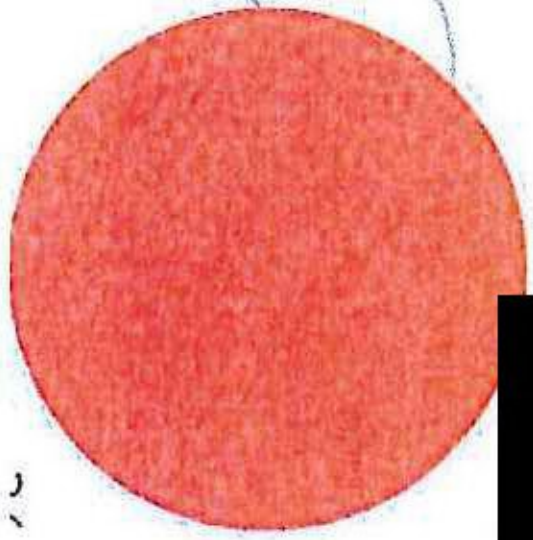
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3	300m	1:600
4	400m	1:800
5	500m	1:1000





SCALE 0 25m 50m

PLAN 3



2011/10/10

OMEGA



Services	electricity, telephone, gas, water, foul drainage, surface water drainage, broadband, cable television and other services running through the Service Installations
Shared Equity Units	intermediate housing which permits a buyer to purchase a share of the unit with the remaining share being held by the Registered Provider and with no rent being charged in respect of the share retained by the Registered Provider and which shall comply with the Affordability Test for Intermediate Housing and "Shared Equity" shall be construed accordingly
Shared Ownership Units	intermediate housing a share of which is leased to a lessee on payment of a premium calculated by reference to the value of the Affordable Housing Units with the remaining share being retained by the Registered Provider and with rent being charged on the share retained by the Registered Provider and which shall comply with the Affordability Test for Intermediate Housing and "Shared Ownership" shall be construed accordingly
SINC	a Site of Importance for Nature Conservation
Social Rented	affordable housing for which guideline target rents are determined through the national rent regime. They may also include rented housing owned and provided under equivalent rental arrangements and as agreed with the Council or the HCA as a condition of grant and "Social Rent" shall be construed accordingly
Social Rented Units	units for Social Rent
Solent Recreation Mitigation Partnership Contribution	a contribution towards the cost of providing mitigation for the impact of the Development on the Special Protection Area in the sum of one hundred and eighty



one pounds (£181) per Dwelling (price correct from 1 April 2017) or such updated amount per Dwelling as the Solent Recreation Mitigation Partnership may have specified at the date when the Contribution is due

Specification for Soft  
Landscape Works

Council's Specification for Soft Landscape  
Works annexed hereto [and any variations thereto as  
may be published by the Council from time to time]

"The Vineyard"

the dwellinghouse and the curtilage thereof as shown  
coloured dark mauve on Plan 2 and marked "The  
Vineyard" being part of the freehold land owned by the  
First Owners and known as The Vineyard Tangier  
Lane Bishops Waltham SO32 1BU and registered  
under Title Number HP621913

Voluntary Right to Buy

the right afforded to tenants of Affordable Housing  
which allows them to purchase their homes as  
described in any Voluntary Right to Buy Scheme  
agreed between the Government and private  
Registered Providers

Working Day

any day excluding Saturdays, Sundays, bank and  
public holidays

## **LEGAL BASIS**

1. This Agreement is made as a deed pursuant to section 106 of the Act, section 1 of the Localism Act 2011 and all other powers so enabling the parties hereto
2. The covenants hereinafter given by the Owners are planning obligations for the purposes of section 106 of the Act and are made with the intent that the said covenants shall be binding on and run with the Land and shall be enforceable by the Council as the local planning authority for the area in which the Land is situated against the Owners and their successors in title and assigns to the Land



3. This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit themselves to the non-exclusive jurisdiction of the Courts of England and Wales

#### **COMMENCEMENT**

4. This Agreement is conditional upon (i) the grant of the Permission and (ii) Commencement of Development save that clauses 1 to 20 shall come into effect on the date hereof

#### **GENERAL PROVISIONS**

5. This Agreement shall not apply to
  - (i) any of the Land that is owned by statutory undertakers for the purpose of their undertaking, but not any of the Land owned in any other capacity;
  - (ii) statutory undertakers in respect of any other rights granted over the Land in connection with the operation of their undertaking, but not in any other capacity;
  - (iii) any individual owner, occupier or tenant of the Open Market Units or The Vineyard or any successors in title or any mortgagee to such a person;
6. No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
7. If the Permission expires before the Development Commences or is quashed, revoked or otherwise withdrawn or (without the consent of the Owners) is modified by any statutory procedure this Agreement shall forthwith determine and cease to have effect
8. In the event that any part of this Agreement is subject to challenge review deletion or otherwise rendered null, void or voidable this shall not affect the balance of the Agreement which shall remain in full force and effect



9. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Agreement
10. Subject to the provisions of clause 9 nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act of Parliament PROVIDED ALWAYS that this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission in respect of the Land which may be or has been at any time issued by the Council or any other appropriate person or authority
11. No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default
12. None of the provisions of this Agreement are intended to operate so as to confer a benefit pursuant to the Contract (Rights of Third Parties) Act 1999 on any person who is not named as a party to this Agreement
13. This Agreement shall be registered as a local land charge by the Council
14. Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
15. The Owners hereby agree that permission shall be granted to authorised officers of the Council and/or their representatives to gain access to the Land in order to monitor compliance with this Agreement upon reasonable notice being given by the Council and at reasonable times (except in an emergency when no notice shall be required) and subject to any instructions which any contractor may give to ensure safety for the Council's officers and/or their representatives
16. All approvals, certificates, consents, agreements, satisfactions, confirmations or calculations (or anything of a similar nature) that may be requested by the



Owners and given by the Council or its officers in accordance with this Agreement shall be in addition to any other approvals, consents, agreements, confirmations or calculations that may be required by the Act or by any other statute or regulations (together with all determinations as to whether for the purposes of this Agreement Dwellings have been completed) and shall not be unreasonably delayed or withheld

17. Any notice to be served on the Council under this Agreement shall be deemed to be sufficiently served if delivered personally or sent by pre-paid first class recorded delivery post to the Council at the address specified in this Agreement
18. The Owners covenant to pay to the Council on the date hereof the Council's reasonable legal costs in connection with the preparation and completion of this Agreement in the sum of [       ] and the sum of Three Thousand Two Hundred and Seventy Three pounds and Sixty Pence (£3,273.60) towards the Council's costs in supervising the Open Space Works
- 19 The Owners covenant to pay to the County Council on the date hereof the County Council's reasonable legal costs in connection with the preparation and completion of this Agreement in the sum of [       ] pounds (£       )]
- 20 The Owners covenant to pay to the Parish Council on the date hereof the Parish Council's reasonable legal costs in connection with the preparation and completion of this Agreement in the sum of [       ] pounds (£       )]

#### **GENERAL PLANNING OBLIGATION**

21. The Owners with the intention of binding the Land and each and every part thereof covenants with the Council the Parish Council and the County Council and the Council the Parish Council and the County Council covenant with the Owners:
  - (a) as set out in Schedule One in respect of Affordable Housing;
  - (b) as set out in Schedule Two in respect of the LEAP, the Informal Green Open Space, the Open Space, the Common Parts and the Off-site Strategic Footpath and Cycleway;
  - (c) as set out in Schedule Three in respect of Education; and
  - (d) as set out in Schedule Four in respect of the Employment and Skills Plan



(e) as set out in Schedule Five in respect of the Solent Recreation Mitigation Partnership Contribution

22. The Surety hereby covenants with the Council that if the Owners

- (i) fail to perform any of the obligations and covenants contained herein which are on their part to be performed or observed; or
- (ii) if they are adjudicated bankrupt or if they shall go into liquidation voluntarily or otherwise; or
- (iii) if they execute a deed of assignment for the benefit of or otherwise compound with their creditors (except for the purpose of reconstruction or amalgamation)

then the Council may, without prejudice to its other rights, remedies and powers for such non-performance or non-observance, carry out and/or complete the Common Parts and the Surety will forthwith pay to the Council a sum equivalent to the reasonable and proper expenditure which the Council may incur in carrying out and/or completing the Common Parts together with the Council's reasonable and proper legal costs incurred in implementing the terms of this Agreement PROVIDED THAT that the Surety shall not be liable to pay a greater sum than One Hundred Thousand pounds £100,000.00.

23. Where a transfer of land to the Parish Council or the Management Company is required by this Agreement and in the event of that transfer not taking place the Owners hereby further covenant with the Council that it will permit the use of the said land for the purposes in respect of which the transfer was intended and will grant all such rights whatsoever as are necessary to enable (i) the enjoyment of the said land by the Council and the public for the intended purposes and (ii) the maintenance of the said land by the Parish Council or the Management Company (as the case may be) PROVIDED ALWAYS THAT the provisions of this clause 21 shall not apply where the Parish Council do not accept the offer to transfer the Informal Green Open Space to them pursuant to Part 2 of Schedule Two

24. The Owners hereby warrant to the Council that the information contained in the recitals as to ownership of and interests in the Land is in all respects correct as at the date of this Agreement



## DISPUTES

25. Where any of the parties hereto are in dispute or disagreement as to any part of this Agreement they shall use their reasonable endeavours to resolve the dispute or disagreement within 20 Working Days of the dispute or disagreement arising
26. If the dispute or disagreement is not settled within 20 Working Days it shall be referred for determination in accordance with the provisions of clauses 25 to 29
27. The dispute shall be referred to a single expert ('Expert') qualified to deal with the subject matter of the dispute or disagreement and the Expert shall be jointly nominated by the parties within 10 Working Days of the failure of the parties to resolve the dispute, but if the parties fail to agree on the joint nomination of an Expert the current President of the Law Society shall be requested to appoint an Expert
28. The Expert shall be subject to a requirement that a decision is reached and communicated to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute or disagreement
29. The Expert shall determine responsibility for costs and that decision shall be binding upon the parties
30. Save in the case of manifest error the decision of the Expert shall be final and binding upon the parties
31. The provisions of this clause will not affect the ability of any of the parties to apply for and be granted any of the following:
  - (a) declaratory relief,
  - (b) injunction,
  - (c) specific performance,
  - (d) payment of any sum,
  - (e) damages,
  - (f) any other means of enforcing this Agreement and consequential and interim orders and relief



in order to enforce the decision of the Expert or the terms and/or conditions thereof

IN WITNESS WHEREOF the Council the County Council the First Owners and the Second Owners and the Developer have executed this Agreement as a deed the day and year first before written

EXECUTED AS A DEED by affixing

The Common Seal of

WINCHESTER CITY COUNCIL

In the presence of



Authorised Signatory



EXECUTED AS A DEED by affixing

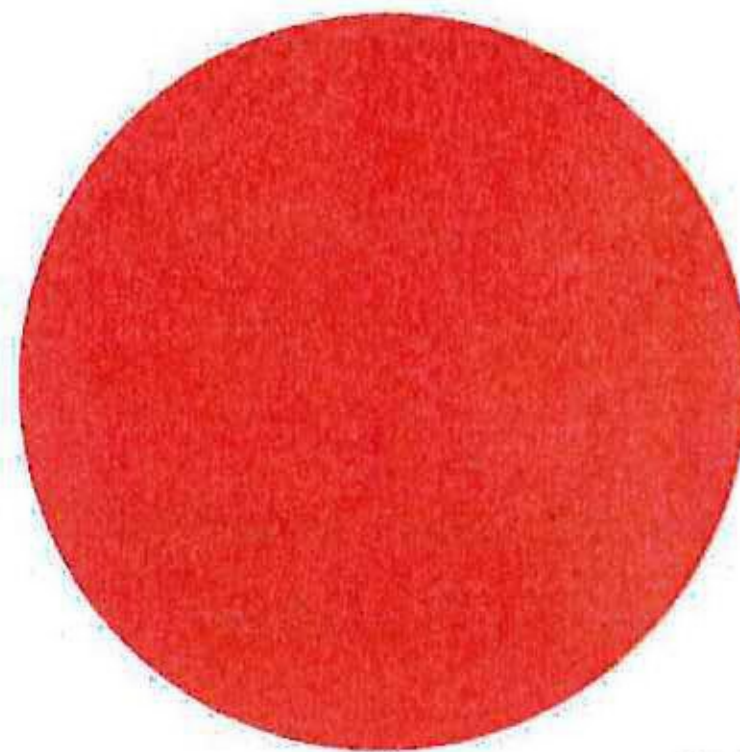
The Common Seal of

HAMPSHIRE COUNTY COUNCIL

In the presence of



Authorised Signatory



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EXECUTED AS A DEED by affixing

The Common Seal of

BISHOPS WALTHAM PARISH COUNCIL

In the presence of

Authorised Signatory

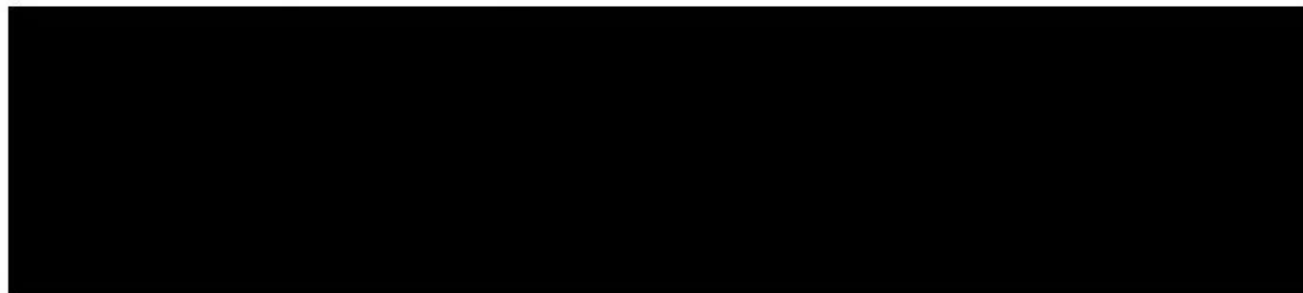




EXECUTED AS A DEED by

JOHN ERIC YOUNES

In the presence of



Witness Signature



Witness Print Name

ELIZABETH BRYSON  
TRETOWANS LLP SOLICITORS  
THE PAVILION

Address

BOTLEIGH GRANGE BUSINESS PARK  
HEDGE END  
SOUTHAMPTON SO30 2AF

Occupation

Licensed Conveyancer

EXECUTED AS A DEED by

LESLIE JOY YOUNES

In the presence of

Witness Signature



Witness Print Name

ELIZABETH BRYSON  
TRETOWANS LLP SOLICITORS  
THE PAVILION  
BOTLEIGH GRANGE BUSINESS PARK  
HEDGE END  
SOUTHAMPTON SO30 2AF

Address

Occupation

Licensed Conveyancer



EXECUTED AS A DEED by

CAUSEQUEST LIMITED

Acting by its ~~authorised~~

~~officers~~ a director, in the presence of:

[Redacted Signature]

(as above)

Director

[Redacted Signature]

Moore Blatch LLP  
Gateway House  
Tollgate  
Chandler's Ford  
Eastleigh  
Southampton  
SO53 3TG

Director/Company Secretary

EXECUTED AS A DEED by

GRACESHIRE LIMITED

Acting by its ~~authorised~~

~~officers~~ a director, in the presence of:

[Redacted Signature]

(as above)

Director

[Redacted Signature]

Director/Company Secretary



EXECUTED AS A DEED by  
CREST NICHOLSON OPERATIONS LIMITED

~~Acting by its authorised~~  
~~officers~~ in the presence of:-

Witness:

Name: OLIVER KIDD

Address: Crest Nicholson  
Pycroft Road  
Chertsey  
Surrey  
KT16 9GN

Occupation: ADMINISTRATION

~~Director/Company Secretary~~

EXECUTED AS A DEED by  
CREST NICHOLSON PLC

~~Acting by its authorised~~  
~~officers~~ in the presence of:-

Witness:

Name: OLIVER KIDD

Address: Crest Nicholson  
Pycroft Road  
Chertsey  
Surrey  
KT16 9GN

Occupation: ADMINISTRATION

~~Director/Company Secretary~~



## SCHEDULE ONE

### AFFORDABLE HOUSING

#### Part 1 - AFFORDABLE HOUSING DETAILED PROVISION

**Table 1 – details of Affordable Housing Units**

<b>Tenure</b>  <b>To be confirmed prior to Commencement</b>	<b>Plot</b>	<b>House/ Flat</b>	<b>Number of bedrooms</b>	<b>Bed spaces (e.g. 2 bed 3 person/2 bed 4 person)</b>
Rented	3,5, 49, 51,52, 54	Flat	One	1B2P
Rented	2, 4, 50, 53	Flat	Two	2B3P
Rented	14, 15, 19, 20	House	Two	2B4P
Shared ownership	10, 11, 12, 13			
Rented	40, 41, 42, 43	House	Three	3B5P
Shared ownership	17, 18, 21, 39			
Rented	44	House	Four	4B7P



## **Part 2 - AFFORDABLE HOUSING OBLIGATION - GENERAL**

1. The Owners shall (unless the same have been agreed during the consideration and determination of the Application and are not already set out on in Table 1 of Part 1) prior to the Commencement Date submit to the Council for its Approval full details of:-
  - (i) the extent of the Affordable Housing Land (accompanied where appropriate by a plan on which the Affordable Housing Land is shown)
  - (iii) the location, type, standard and size of the Affordable Housing Units;
  - (iv) a programme for the provision of the Affordable Housing Units; and
  - (v) The tenure type of the Affordable Housing Units
2. The details and programme submitted in accordance with paragraph 1 above together with the details set out in Table 1 of Part 1 shall constitute the Affordable Housing Scheme
3. The Owners shall not Commence Development until they have first obtained the Approval of the Council to the Affordable Housing Scheme and once Approved the Affordable Housing Scheme shall be known as the "Approved Affordable Housing Scheme" PROVIDED ALWAYS THAT the details set out in Table 1 of Part 1 are deemed to be Approved
4. The Owners shall not Occupy any Open Market Units until they have first entered into a binding contract with a Registered Provider for the transfer of the Affordable Housing Land to the Registered Provider unless otherwise agreed with the Council SAVE THAT for the purposes of this paragraph 4, Occupation shall be taken to exclude occupation in relation to the fitting out of Dwellings for the purpose of marketing and for no other reason
5. The Owners shall transfer the Affordable Housing Land and (if constructed) the Affordable Housing Units to a Registered Provider in



accordance with the Approved Affordable Housing Scheme and this Part of this Schedule

6. The Affordable Housing Land shall be transferred together with all Service Installations having been installed and Access provided up to at least the boundary of the Affordable Housing Land
7. The Affordable Housing Land shall be transferred together with the following rights:
  - (a) a right to pass and repass over the Access on foot and/or with or without vehicles (as appropriate) for the purpose of access to and egress from the Affordable Housing Land
  - (b) a right of taking passage and running (as appropriate) of Services through the Service Installations
  - (c) a right to maintain enjoy and use any Services and any projections in over or under the remainder of the Land so far as may be necessary for any purpose connected with the Affordable Housing Land
  - (d) a right to enter upon the remainder of the Land including any Access so far as may be reasonably necessary (but avoiding (i) any land transferred to any statutory undertaker or over which they have an interest connected with their function as a statutory undertaker or (ii) any land upon which Open Market Units have been constructed and the curtilages thereof) for any purpose connected with the Affordable Housing Land, the Services, the Service Installations and any projections
  - (e) any such necessary rights of support, shelter and protection from the Land
  - (f) subject to the Registered Provider paying a fair and reasonable proportion towards the repair and maintenance thereof (if so requested by the Owners) a right for the occupiers of the Affordable Housing Units their servants, agents, visitors, successors and assigns to the use and enjoyment of the Common Parts
8. The Owners shall transfer the Affordable Housing Land in a Clean Condition



9. The Affordable Housing Units shall be constructed to the Technical housing standards – nationally described space standard and M4(2) of the Building Regulations 2010

#### **DELIVERY**

10. No Open Market Units on the Land shall be Occupied until the Affordable Housing Land has been transferred to the Registered Provider (either by way of freehold transfer or where the Affordable Housing Units comprise flats apartments or maisonettes by way of lease for a minimum term of 125 years) and on terms to be agreed with the Registered Provider
11. No more than 50% of the Open Market Units shall be Occupied unless 50% of the Affordable Housing Units have been Practically Completed and no more than 75% of the Open Market Units shall be Occupied unless 100% of the Affordable Housing Units have been Practically Completed
12. The Owners hereby covenant as follows:-
  - (a) Subject to the provisions of this Agreement, the Affordable Housing Land shall not be used other than for the provision of Affordable Housing Units
  - (b) The Affordable Housing Units shall only be Occupied by Eligible Persons nominated by the Council in accordance with the Council's Allocations Scheme and Community Lettings Plan (if any) and in accordance with paragraphs (c) and (d) below
  - (c) The Owners (or the relevant Registered Provider) will notify the Council in writing of each Affordable Housing Unit for which the Council becomes entitled to nominate occupants and will ensure as far as reasonably possible that the proposed occupant(s) will accept the Affordable Housing Unit upon the terms offered by the Registered Provider
  - (d) The Council will only nominate Eligible Persons and the Registered Provider will accept the Council's nomination save that where the



Registered Provider has reasonable grounds to believe that the nominated Eligible Persons are not suitable the Registered Provider may request that the Council nominate different Eligible Persons instead

13. Unless otherwise agreed in writing with the Council and subject to the provisions of this paragraph the Affordable Housing Units shall not be Occupied other than as specified in the Approved Affordable Housing Scheme PROVIDED THAT in the event of a change in any relevant legislation so that any such tenancies as are specified in Table 1 are no longer capable of being granted then the Council shall nominate such other categories of tenure which are as close as possible in character to those contained in Table 1 and which are approved by the HCA
14. In granting Shared Ownership leases and Shared Equity leases in respect of the Affordable Housing Units the Owners (or the relevant Registered Provider) will include a provision that in the event that the owner, occupier or lessee of an Affordable Housing Unit wishes to re-sell or dispose of the Affordable Housing Unit they will first offer to sell or dispose of the Affordable Housing Unit to the Registered Provider or its successors in title at a value calculated under the provisions of the lease through which the Affordable Housing Unit was demised
15. It is agreed that the Dwellings to be constructed under the Permission as Affordable Housing Units pursuant to this Schedule shall be used for Affordable Housing in perpetuity PROVIDED THAT none of the covenants of paragraphs 12 to 15 shall apply to or be binding upon:-
  - (a) a tenant of a Dwelling held under a Shared Ownership lease or Shared Equity lease (which contains a right of pre-emption in favour of the Registered Provider) who has exercised his right to "staircase" to 100% and/or in the case of a freehold house (as opposed to a flat) has taken the transfer of the landlord's freehold interest in the Affordable Housing Unit; and
  - (b) a tenant who has exercised a statutory right to buy an Affordable Housing Unit under the "right to acquire" provisions of the Housing Act 1996 (or any legislation amending or replacing the same)



- (c) a tenant who has exercised a Voluntary Right to Buy in respect of an Affordable Housing Unit

16. In the event only that there is a default under any legal charge or mortgage of an Affordable Housing Unit then a chargee, mortgagee, manager or receiver (including an administrative receiver appointed pursuant to the Law of Property Act 1925) ("the Mortgagee") shall be entitled to exercise its power of sale in respect of the Affordable Housing Unit free from the obligations contained in this Schedule PROVIDED THAT the Mortgagee shall follow the procedure set out below prior to exercising such power of sale:

- (a) The Mortgagee shall give written notice ("Notice") to the Council of its intention to exercise its power of sale and shall when giving Notice make an offer to sell ("the Offer") the Affordable Housing Unit to the Council for an amount ("the Purchase Price") to be agreed or determined in accordance with sub-clause (c) hereinafter
- (b) The Council shall notify the Mortgagee in writing within one month of the date of the Offer whether or not it wishes to accept the Offer. Should the Council wish to accept the Offer its acceptance shall be conditional upon the Purchase Price being agreed. However, if the Council declines the Offer, the Council may instead nominate a nominee to accept the Offer in its place ("Nominee") and the Council will advise the Mortgagee accordingly
- (c) If pursuant to sub-paragraph (b) above the Council accepts the Offer or if it nominates a Nominee then the Mortgagee and the Council (or the Nominee as the case may be) shall endeavour to agree the Purchase Price, which shall be the Open Market Value of the Affordable Housing Unit, subject to any tenancies subsisting at the date of the Notice, but disregarding the provisions of this Agreement which restrict Occupation to persons on the Council's Housing Register. In default of agreement the Purchase Price shall be determined by an independent surveyor ("the Surveyor") on the same basis of valuation. If the parties cannot agree on the appointment of the Surveyor, then either party may request the appointment of the



President of the Royal Institution of Chartered Surveyors (or a person acting on his behalf) as the Surveyor. The Surveyor shall act as an expert and save in the case of manifest error his determination shall be binding on both parties. The Surveyor's costs shall be borne equally by the parties or on such other basis as the Surveyor may determine

- (d) Subject to sub-paragraph (c) above the transfer to the Council (or to the Nominee as the case may be) shall be completed within two months of the date on which the Purchase Price is agreed or determined in accordance with the foregoing provisions and further subject to this being no later than three months from the date on which the Council receives the Notice served pursuant to sub-paragraph (a) above ("the Completion Period")
- (e) In any of the following circumstances any party may at any time give to the other party written notice of its intention to discontinue with the sale/purchase of the Affordable Housing Unit:-

- (i) If the Council shall fail to give notice of intention to accept the Offer within one month of the date on which the Council receives the Offer;

- (ii) If the Council shall decline the Offer and fail to nominate a Nominee within one month of the date on which the Council receives the Offer;

- (iii) If either the Council or the Nominee shall at any time serve notice in writing of their intention to discontinue; or

- (iv) If the transfer of the Affordable Housing Unit is not completed within the Completion Period notwithstanding the readiness willingness and ability of the Mortgagee to complete the transfer

then in any of the above circumstances the Mortgagee shall be entitled (subject to compliance with Sections 39 to 50 of the Housing Act 1996 so far as is applicable) to exercise its power of sale unfettered by the obligations contained in this Schedule which shall not bind any purchaser of the Affordable Housing Unit from the Mortgagee or any subsequent successor in title.



In this instance and at the written request of the Mortgagee the Council shall confirm in writing that the obligations contained in this Schedule are not binding upon the Affordable Housing Unit in question and the Council shall take the necessary action to cancel any local registration of the obligations insofar as they may be recorded against the Affordable Housing Unit in question

17. Subject to the foregoing paragraphs the Affordable Housing Units to be constructed on the Affordable Housing Land shall at all times be occupied and managed in accordance with the objects of a Registered Provider and in accordance with such published housing waiting list and allocation system as may be adopted by the Council from time to time
18. Within 14 days of the completion of a tenancy agreement or sale in respect of any Social Rented Unit, Affordable Rented Unit or Intermediate Housing Unit the Owners (or the relevant Registered Provider) shall notify the Council of the date upon which the tenancy agreement or sale was completed and will provide the name and previous address of the occupant of the Social Rented Unit, Affordable Rented Unit or Intermediate Housing Unit and the total household income levels of the tenant or purchaser and in the case of an Intermediate Housing Unit the percentage share of the unit that has been purchased
19. The Owners (or the relevant Registered Provider) shall upon request provide the Council with such details of the occupancy of any Affordable Housing Unit as the Council may reasonably require to ensure that the provisions of this Agreement are being complied with



**SCHEDULE TWO**  
**LEAP, INFORMAL GREEN OPEN SPACE AND OPEN SPACE, COMMON PARTS,**  
**OFF-SITE STRATEGIC FOOTPATH AND CYCLEWAY**

**Part 1 – Laying out of the LEAP**

**The LEAP**

1. The Owners on behalf of themselves and their successors in title lessees and assigns hereby covenant with the Parish Council as follows:-
  - (a) To pay to the Parish Council prior to Occupation of the first Open Market Unit the LEAP Contribution and no Open Market Units shall be Occupied unless and until the LEAP Contribution has been paid to the Parish Council
  - (b) To pay to the Parish Council prior to the expiration of the LEAP Maintenance Period the LEAP Maintenance Contribution
- 2 The Parish Council agrees to apply the LEAP Contribution towards the supply and installation of play equipment together with any safety surfacing, fencing, seating and litter bins on the LEAP Land and thereafter to apply the LEAP Maintenance Contribution towards the maintenance thereof
- 3 The Parish Council covenant with the Council
  - (a) That prior to commencement they will submit to the Council for its Approval details of the LEAP including inter alia details of its:
    - (i) layout;
    - (ii) specification (to comply with any current relevant standards published by the Council at the time of submission);
    - (iii) a programme for the laying out of the LEAP;
    - (iv) the play equipment to be provided on the LEAP Land;
    - (v) any safety surfacing, fencing, seating and litter bins
  - (b) That they will in respect of any play equipment to be installed on the LEAP Land obtain a post-installation report from the Royal Society for the Prevention of Accidents ('RoSPA') and thereafter carry out at their



own expense all recommendations made by RoSPA to the reasonable satisfaction of the Council

- (c) That they will lay out and complete the LEAP in accordance with the specification and details Approved by the Council under paragraph 3(a) above in accordance with the Approved programme (or such longer period as may be agreed by the Council) at their own expense and to the reasonable satisfaction of the Council
- (d) That having laid out the LEAP the Parish Council shall request in writing that the Council inspects the LEAP and provided the Council is satisfied that the requirements of paragraphs 3(b) and 3(c) have been complied with the Council shall notify the Parish Council and the Owners in writing of the date on which the LEAP Maintenance Period is to commence
- (e) That having complied with the requirements in paragraphs 3(b) – (d) above the Parish Council shall during the LEAP Maintenance Period:
  - (i) make the LEAP available to the public
  - (ii) keep the LEAP in a good condition and repair, replacing and renewing the same when necessary
  - (iii) keep any safety surfacing, fencing, seating and litter bins in good condition and repair, replacing and renewing the same when necessary

- 4 If or to the extent the LEAP Contribution shall not have been applied and spent in accordance with the provisions of paragraph 2 above within 12 months of the Occupation of the last Open Market Unit the Parish County Council shall on such date refund to the party that paid the contribution any unexpended sum together with interest thereon from the date of receipt of the contribution to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis

## **Part 2 – Future Management of Informal Green Open Space and Open Space**

- 1. The Owners on behalf of themselves and their successors in title hereby covenant with the Council and the Parish Council as follows:-



- (a) As soon as reasonably practicable after the Commencement Date and in any event within two months thereof to serve notice in writing on the Parish Council offering to transfer the Informal Green Open Space and the Open Space to the Parish Council in accordance with the provisions of Parts 3 and 4 of this Schedule (the "**Offer**") AND should the Parish Council wish to accept the Offer they shall serve notice in writing on the Owners within one month of receipt of the Offer (the "**Offer Period**") (the "**Acceptance**")
  - (b) Subject to the provisions of paragraph 3 of this part 2 to Schedule Two to pay to the Parish Council on the date the transfer of the Informal Green Open Space and/or the Open Space is completed the Informal Green Open Space and Open Space Maintenance Contribution
2. Following the transfer of the Informal Green Open Space and/or the Open Space (as the case may be) to the Parish Council the Informal Green Open Space and/or the Open Space (as the case may be) shall be maintained by the Parish Council as public open space and amenity land
- 3 Subject to the provisions of paragraph 1.1.2 of Part 5B below of this Schedule Two in the event that the Parish Council does not serve an Acceptance THEN the Owners shall be at liberty to deal with the Informal Green Open Space and the Open Space as they see fit and the provisions of paragraph 1(b) and 2 above shall not apply PROVIDED ALWAYS THAT the Parish Council may serve an Acceptance in relation to either the Informal Green Open Space or the Open Space and should they do so the provisions of paragraphs 1(b) and 2 above and parts 3 and 4 of Part 3 below of this Schedule Two shall apply to the Informal Green Open Space or the Open Space only (as the case may be)

### **Part 3 – Terms of Transfer of Informal Green Open Space and Open Space**

1. The transfer of the Informal Green Open Space and/or the Open Space (as the case may be) shall be in accordance with the terms set out in Part 4 of this Schedule or upon such other terms as may be agreed between the parties or otherwise as may be required by the Land Registry from time to time



2. Completion of the transfer of the Informal Green Open Space and the Open Space shall take place on a date to be agreed between the Owners and the Parish Council which shall be as close as possible to the first working day falling one month after the Acceptance
3. The Owners shall transfer the Informal Green Open Space and/or the Open Space with full title guarantee and with vacant possession on completion
4. Title shall be deduced in accordance with the Land Registration Act 2002
5. The Law Society's Standard Conditions of Sale (Fourth Edition) shall apply to the said transfer in so far as they are applicable to a sale by private agreement and are not varied by or inconsistent with the express terms of this Agreement
6. The Owners will upon completion of the transfer pay the reasonable legal costs and disbursements (including any Stamp Duty Land Tax and Value Added Tax or any other tax or fee payable on the deed of transfer including the Land Registry fee) incurred by the Parish Council in connection with the transfer

#### **Part 4 – Transfer Provisions**

- 1 The transfer will be at a consideration of One Pound (if demanded)
- 2 The transfer will include a covenant preventing the use of that land for any purposes other than public open space and amenity land and preventing any structures being erected upon that land other than notice boards signposts boundary fencing seating waste and dog bins lighting and other structures consistent with the land's use as public open space and amenity land
- 3 The land will be transferred free of all financial charges
- 4 There shall be reserved out of the transfer such rights as may be reasonably necessary for the construction occupation and good estate management of the Development
- 5 **Rights to be Granted to the Parish Council:**
  - a. The right of way with or without vehicles (except in relation to footpaths cycleways and bridleways in which case rights to be restricted as appropriate) over any roads footpaths cycleways and



bridleways which may be constructed at the date of the transfer or to be constructed on or over the Owners adjoining land which are intended to be adopted by the highways authority as highways maintainable at the public expense such rights of way to cease in respect of a particular way on the adoption of that way

- b. The right to enter upon such part or parts of the Owner's adjoining land as may be reasonably necessary (but avoiding (i) any land transferred to any statutory undertaker or over which they have an interest connected with their function as a statutory undertaker or (ii) any land upon which Open Market Units have been constructed and the curtilages thereof) to connect to any such roads footpaths cycleways and bridleways at such points to be approved by the Owners (such approval not to be unreasonably withheld or delayed) subject to the person exercising such right causing as little damage as possible and making good any damage caused
- c. The reasonable right (subject always to the purpose for which the particular parcel of land is transferred) to the free and uninterrupted passage of Services through the Service Installations
- d. The right to enter upon such part or parts of the Owners' adjoining land as may be reasonably necessary (but avoiding (i) any land transferred to any statutory undertaker or over which they have an interest connected with their function as a statutory undertaker or (ii) any land upon which Open Market Units have been constructed and the curtilages thereof) for the purposes of making connections to the Service Installations at such points to be approved by the Owners (such approval not to be unreasonably withheld or delayed) and of inspecting repairing renewing and cleansing any such Service Installations subject to the person exercising such right causing as little damage as possible and making good any damage caused
- e. any necessary rights of support, shelter and protection from the Owners adjoining land

## **Part 5 – Common Parts Management Company**

### **Part 5 A**

- 1 The Owners covenant with the Council as set out in this Part 5A of this Schedule as follows



1.1 As soon as practicable after the Commencement Date and in any event within 2 months that they will submit to the Council for its Approval details of the Open Space Works including inter alia details of its:

- (i) layout;
- (ii) specification (to comply with the Council's Specification for Soft Landscape Works (as applicable and given the nature and extent of the Open Space Works)); and
- (iii) a programme for the laying out of the Open Space Works;

1.2 That they will lay out and complete the Open Space Works in accordance with the specification and details Approved by the Council under paragraph 1.1 above and in accordance with the Approved programme (or such longer period as may be agreed by the Council) at their own expense and to the reasonable satisfaction of the Council

#### **Part 5B**

1. The Owners covenant with the Council as set out in this Part 5B of this Schedule as follows:-

1.1 That within six months of the Commencement Date they will submit to the Head of Legal and Democratic Services for Approval by the Council:

1.1.1 a draft memorandum and articles of association for the Management Company; and

1.1.2 proposals for arrangements to secure the future management and maintenance of the Common Parts by the Management Company (which may include a transfer of the Common Parts to the Management Company or the granting of a long lease of the Common Parts by the Owners in favour of the Management Company) so as to ensure that the Common Parts are properly maintained, such proposals to include details of how the costs of managing and maintaining the Common Parts shall be met (by residents of the Dwellings or otherwise) AND for the purposes of this Part 5B to Schedule Two the reference to "Common Parts" shall include the Open Space should the Parish Council not wish the Open Space to be transferred to them pursuant to Part 2 above of this Schedule Two



- 1.2 Any submission of documents and/or provision of details to the Council pursuant to this Part of this Schedule shall include the reference number of the Planning Permission, the date of and parties to this Agreement and the paragraph of the Agreement under which the Council's Approval is sought together with the date by which Approval must be given by the Council
- 1.3 The Council shall within one month of receipt of the documents and/or the details submitted to it under paragraph 1 above give notice in writing to the Owners of its decision to either Approve (with or without such reasonable modifications as the Council considers appropriate) or to refuse to Approve the draft memorandum and articles and the proposals for the future management and maintenance of the Common Parts and in the event that the Council fails to give such notice the draft memorandum and articles and the proposals for the future management and maintenance of the Common Parts as submitted shall (provided that the Owners have submitted all the details as required under this Schedule) be deemed to have been Approved
- 1.4 Forthwith after the Approval by the Council of the proposed memorandum and articles of association the Owners shall take all necessary steps to secure the formation and registration of the Management Company at Companies House and shall within seven working days of the completion of the registration of the Management Company notify the Council accordingly
- 1.5 Within one month of the registration of the Management Company at Companies House or as soon as practicable thereafter the Owners shall take such steps as are necessary in accordance with the Approved proposals to secure the future management and maintenance of the Common Parts and shall notify the Council upon completion of those steps
- 1.6 The Owners shall maintain (which shall include any necessary repairs to) the Common Parts in accordance with the Approved proposals to the reasonable satisfaction of the Council:-
  - 1.6.1 until such time as the Management Company is registered at Companies House and the steps necessary to effect the Approved



proposals for the management and maintenance of the Common Parts have been completed and all Dwellings on the Land have been sold or leased; and

1.6.2 at any time during which the Management Company fails to maintain the Common Parts to the reasonable satisfaction of the Council

1.7 At any time prior to the expiry of six months from the date of Commencement the Owner may submit to the Council for its Approval alternative proposals for the management and maintenance of the Common Parts the provisions of this Schedule shall apply to the submission to the Council and Approval by the Council of such alternative proposals and in this event the Owner shall remain responsible for the management and maintenance of the Common Parts until such alternative proposals (as Approved by the Council) have been fully implemented

#### **Part 6 – Off-Site Strategic Footpath and Cycleway Contribution**

1.1 The Owners hereby covenant with the Council to pay to the Council prior to first Occupation of any Open Market Units the Off-Site Strategic Footpath and Cycleway Contribution

##### **Indexation of Off-Site Strategic Footpath and Cycleway Contribution**

1.2 The Off-Site Strategic Footpath and Cycleway Contribution payable under Paragraph 1.1 hereof shall be re-calculated for Index-Linking as follows:

1.2.1 If payment of the Off-Site Strategic Footpath and Cycleway Contribution is due under the terms of this Agreement on or before the 31 March following the date of this Agreement the sum of twenty one thousand seven hundred and twenty nine pounds nineteen pence (£21, 729.19)

1.2.2 If payment of the Off-Site Strategic Footpath and Cycleway Contribution is due under the terms of this Agreement on or after the 1 April following the date of this Agreement then the Off-Site Strategic Footpath and Cycleway Contribution calculated in paragraph 1.2.1 above shall be adjusted for inflation on the 1 April following the date of this Agreement and on each succeeding 1 April until payment of the Off-Site Strategic Footpath and Cycleway Contribution becomes due



and the adjustments shall be calculated as provided in sub-paragraphs 1.2.3 and 1.2.4 below

1.2.3 On each 1 April the Off-Site Strategic Footpath and Cycleway Contribution shall be increased by the annual percentage change in the Index published in respect of the December prior to the 1 April in question

1.2.4 The annual percentage increase shall be applied to the Off-Site Strategic Footpath and Cycleway Contribution as previously adjusted at any preceding 1 April

1.3 If the Off-Site Strategic Footpath and Cycleway Contribution (or any part thereof) shall remain unpaid after the same has become due the Owners shall pay Interest in Default on the Off-Site Strategic Footpath and Cycleway Contribution in respect of the period from the date when the Off-Site Strategic Footpath and Cycleway Contribution became due to be paid until the date of final payment thereof

1.4 The Council agrees to apply the Off-Site Footpath and Cycleway Contribution towards a strategic footpath and cycleway along the southern edge of Bishops Waltham

1.5 If or to the extent the Off-Site Footpath and Cycleway Contribution shall not have been spent and applied pursuant to the provisions of paragraph 1.4 above within 10 (ten) years of receipt of the contribution the Council shall on such date refund to the party that paid the contribution any unexpended sum together with interest thereon from the date of receipt of the contribution to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis



## **SCHEDULE THREE**

### **Education**

- 1 The Owners covenant to pay to the County Council:
  - 1.1 50% of the Education Contribution prior to the Occupation of the first Open Market Unit and the Owners shall not Occupy or permit the Occupation of the first Open Market Unit unless and until 50% of the Education Contribution has been paid to the County Council and further to notify the County Council that such payment has been made within 14 days;
  - 1.2 The remaining 50% of the Education Contribution prior to the Occupation of the 31<sup>st</sup> Open Market Unit and the Owners shall not Occupy or permit the Occupation of the 31<sup>st</sup> Open Market Unit unless and until the remaining 50% of the Education Contribution has been paid to the County Council and further to notify the County Council that such payment has been made within 14 days;
- 2 The County Council agrees to apply the Education Contribution towards 1 Form Entry expansion at Bishops Waltham Infant School and 1 Form Entry expansion at Bishops Waltham Junior School
- 3 If or to the extent the Education Contribution shall not have been spent and applied pursuant to the provisions of paragraph 2 above within 10 (ten) years of receipt of the contribution the County Council shall on such date refund to the party that paid the contribution any unexpended sum together with interest thereon from the date of receipt of the contribution to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis



## **SCHEDULE FOUR**

### **Employment and Skills Plan**

1. The Owners hereby covenant with the Council that prior to Commencement they will submit an Employment and Skills Plan to the Council for the Council's Approval
2. The Employment and Skills Plan submitted pursuant to paragraph 1 above shall as far as is reasonably possible follow the templates, benchmarks and principles of the Construction Industry Training Board's 'Client Based Approach' as endorsed by the Council on 9 September 2015.
3. The aims of the Employment and Skills Plan should be:-
  - (a) to help local jobseekers find work through a range of paid and unpaid roles;
  - (b) to create training and development opportunities for those already employed; and
  - (c) to stimulate awareness of careers in construction, green technologies and other sectors related to the Development.
4. The Employment and Skills Plan should include arrangements setting out how the Owners will and, to the extent that they are not the same person, how any developer or occupier and their contractors will be required to work directly with local employment and/or training agencies, including but not limited to:
  - (a) voluntary and private sector providers;
  - (b) schools, sixth form colleges, colleges of further education and universities;
  - (c) Job Centre Plus;
  - (d) Hampshire County Council's 'Hampshire Futures' Team.
5. Unless otherwise agreed in writing with the Council, Development shall not Commence unless and until written approval of the Employment and Skills Plan has been received from the Council.
6. Following written approval by the Council of the Employment and Skills Plan, the Owners shall (i) implement and, where necessary, procure the



implementation of the Employment and Skills Plan; (ii) promote the objectives of the approved Employment and Skills Plan; and (iii) ensure so far as reasonable that the objectives of the approved Employment and Skills Plan are met.

7. Monitoring reports indicating how the Employment and Skills Plan has been delivered shall be submitted to the Council at agreed intervals, the format and timing of which shall be agreed with the Council as part of the Council's approval of the Employment and Skills Plan



## **SPECIFICATION FOR SOFT LANDSCAPE WORKS**

### **APPENDIX TO S106 AGREEMENT**

#### **Standards of Workmanship and Materials**

- 1.1 All landscape operations are to be undertaken by skilled persons working under an experienced supervisor, to good horticultural standards in accordance with all current British Standards and Codes of Practice, to the satisfaction of the Council.
- 1.2 All plant material to be in accordance with the appropriate British Standard ('BS'), shall be well branched and have a balanced shape and the correct habit for the particular species, with a good fibrous root system. Plant stock shall conform to that specified on the approved plans and schedules of planting.
- 1.3 No roots shall be subjected to adverse conditions, such as exposure to drying wind, frosts or waterlogging. The rootball shall be free from weed growth.
- 1.4 When workmanship or materials are not fully specified they are to be suitable for the purposes of the works, comply with any relevant British Standards and Codes of Practice and have the approval of the Council.
- 1.5 Chemicals – All herbicides and pesticides used must comply with the "Control of Pesticides Regulations" and any relevant Code of Practice issued by MAFF and be on the current list of approved products. A Certificate of Competence must be held by any person handling or applying pesticides. The developer is responsible for making good any damage resulting from negligence in the application, storage or disposal of chemicals.

#### **2.**

##### **Protection and Ongoing Care of Retained Features**

- 2.1 All existing site features and vegetation to be retained shall be adequately protected to the satisfaction of the Council. Protection of trees and hedges shall be in line with BS 5837.
- 2.2 All retained trees, shrubs and hedges shall be inspected for safety and condition. Remedial work shall be carried out as agreed with the Council and they shall then be maintained in accordance with sound arboricultural and horticultural standards.
- 2.3 Areas of grass to be retained for amenity open space should be kept fenced, maintained in a tidy condition, free of broad leaf weeds and mown regularly throughout the period of the agreement. The land should not be used for storage or for rubbish, burning etc, unless specifically agreed otherwise with



the Council.

- 2.4 If necessary for establishment purposes, new seeding and planting shall be protected by temporary fencing.

3. Site Investigations and Remedial Actions

- 3.1 Topsoil – Existing depths and quality of topsoil should be investigated to ascertain that it will sustain active and healthy growth of the intended planting or that it can be rendered suitable for such purposes. Measures must be taken to ensure that this is achieved.

- 3.2 Sub-soil – On some sites, in particular where there has been filling or contamination, it will be necessary to inspect underlying soils, to determine its nature and to undertake any remedial measures necessary to ensure that it is capable of sustaining healthy plant growth.

- 3.3 Drainage – Sites subject to waterlogging may require installation of land drains to the approval of the Planning Authority (see also 6.4). Where development will result in a lowering of the water table or interfere with natural drainage patterns or water sources, which will have an adverse effect on retained vegetation or features (e.g. springs, ponds and streams or ditches), measures will be necessary to address this.

4. Demolitions

- 4.1 Disused structures such as foundations, manholes etc. should be demolished to minimum depths below finished levels, as follows:

a) grass areas	450mm
b) ground cover & perennial planting areas:	450mm
c) shrub planting areas:	600mm
d) tree planting areas:	900mm

5. Site Preparation

- 5.1 The contractor shall undertake complete weed and bramble control and clearance. The land shall be left fallow until the soil is weed free and uncontaminated before further work is undertaken.

- 5.2 The subsoil and topsoil shall have a good physical structure, be friable, retentive of moisture and well drained. On sites where this is lacking, or where the ground is heavily compacted, cultivation of the whole area shall be undertaken. Topsoil shall be free from weeds; including couch grass; metal, concrete, hardcore large stones, lumps of clay and chalk and any other rubbish.

6. Specification for Grass Areas

- 6.1 Areas to be grassed shall be surface graded either by hand raking or by graders, stones in excess of 50mm picked and removed to tip, along with all



rubbish, dead roots, brambles and weeds.

6.2 Areas shall be cultivated to a minimum depth of 100 mm and to a fine tilth before seeding or turfing. In areas inaccessible or awkward for machinery, hand cultivation will be required.

6.3 Topsoil shall be evenly spread and supplemented where necessary with compatible topsoil from a source to be approved by the Council. Damage to soil structure by machine-induced compaction shall be avoided. A minimum depth of 100mm topsoil shall be provided after levelling unless otherwise agreed.

6.4 Where necessary the developer will be required to take surface water from damp patches or ponding hollows by means of land drains.

6.5 The final topsoil level after settlement shall be 25mm above adjacent paving or kerbs and 150mm below the damp-proof course of any building. It shall be free from ruts and hollows.

## 7. Pre-seeding and Turfing

7.1 In preparation for sowing the surface shall be lightly and uniformly firmed and reduced to a friable tilth up to 25mm deep by raking or harrowing with a spike or chain harrow. All surface stones larger than 50mm in diameter shall be removed.

7.2 An approved pre-seeding fertiliser shall be applied at the appropriate rate and evenly distributed on the prepared soil 3-5 days before seeding.

## 8. Grass Seeding

8.1 Operations for grass seeding shall be planned for sowing from the beginning of April to the end of May or from mid-August to the end of September, unless weather conditions dictate otherwise.

8.2 The seed shall be of an approved and appropriate mixture. The developer shall satisfy the Council regarding the origin and germination of the seed which will be to BS 4428 and obtain approval of any variation.

8.3 Sowing shall be carried out during suitable calm weather conditions at the rate of 45gms/m<sup>2</sup>. The operation shall be carried out in equal sowings in transverse directions. After sowing the ground shall be lightly raked or harrowed and then firmed with a lightweight roller.

## 9. Turfing

9.1 Turves should be in accordance with BS 3969, from an approved source.

9.2 The turves shall be laid when the weather is suitable and the soil conditions are moist. No turf shall be laid during periods of drought or in frosty weather.



9.3 Supplies of turves shall be delivered at appropriate intervals, to avoid stacking them for long periods. Daily checking is advisable to ensure there is no deterioration and they shall be laid within 7 days of lifting.

9.4 Turf shall be laid in accordance with BS 4428, on the prepared soil bed and firmed into position in consecutive rows with broken joints, (as in stretcher bond), closely butted and to correct levels. Turf edges shall be whole turves. Any inequalities in finished levels shall be adjusted by raking or packing fine soil under the turf. Fine soil shall be brushed into the joints and seeding where necessary.

9.5 **Watering will be necessary to ensure establishment.**

#### 10. Grass Cutting

10.1 Initial cut – immediately before cutting, all stones above 25mm in diameter shall be hand picked and the area to be rolled with a lightweight roller to firm and consolidate the surface.

10.2 When the grass is 75mm high it shall be topped using a rotary mower to avoid pulling, so as to leave 25-50mm of growth. Any arisings shall be raked off.

10.3 Subsequent cutting – the grass shall be cut again after a further 25mm of growth. It is to be maintained by cutting to a minimum height of 25mm and a maximum of 80mm throughout the period of maintenance.

10.4 Any shrinkage below the specified levels and areas showing insufficient covers of grass shall be rectified at the developer's expense.

#### 11. **Planting Specifications**

11.1 Planting shall be carried out in suitable weather, not in frost or drying conditions, and in accordance with the details and plans approved. Any planting scheme shall be approved by the Council before commencing works.

11.2 Topsoil for backfilling shall be well mixed with well rotted farmyard manure, (in a 5:1 ratio), or other approved fertilisation in accordance with the manufacturer's instructions

#### 12. Tree Planting

12.1 All plant material shall be to BS 3936: Parts 1 and 4; also BS 5236, BS 4043 and BS 52310 as appropriate.

12.2 All planting operations shall comply with BS 4043, BS 4428 and BS 5236.

12.3 Excavations for tree pits shall be at least twice the diameter of the root spread and 1.5 times the depth of the roots. The bottom and sides of the hole shall be forked to loosen the soil.



12.4 Trees shall be planted to the same depth at which they have previously been growing. Broken or damaged roots shall be cut back to sound growth; heavily coiled roots on container grown trees shall be loosened. Bare roots shall be spread evenly in the planting pit.

12.5 Fine soil shall be shaken between the roots and firmed to ensure close contact with the roots. Firming after back filling shall be such as to ensure that roots are held secure and that penetration of moisture is not restricted. After planting areas shall be raked over to remove footprints, etc.

### 13. Tree Stakes and Ties

13.1 Stakes shall be fully peeled, round (not split) chestnut, and of sufficient size (50 – 70mm top diameter) to withstand the weight of a crown, when subjected to the normal prevailing winds of the planting site.

13.2 The stakes shall be driven into the ground, on the windward side, before the tree is planted. It shall penetrate at least 600mm below the base of the planting pit and extend above ground level into the crown of standard trees. Two tree ties are to be used to secure the trees.

13.3 Angled stakes shall be used for conifers and feathered trees, driven 1.0m into the ground at an angle of 45 degrees on the leeward side and one metre above ground level. The tree tie is to be secured to the stake with a 40mm galvanised nail. On slopes greater than 10 degrees all angled stakes are to be driven in against the angle of the slope.

13.4 Advanced nursery stock and root balled trees may need an additional stake and two ties or cross bars.

13.5 The tree ties shall be purpose made and each tree shall be secured to the stake, so as to prevent excessive movement. Abrasions shall be avoided by using a buffer between the stake and the tree. The tree shall be secured to the top of the stake as high as possible to the leading shoot.

### 14. Pruning

14.1 Any necessary pruning including that to damaged roots and branches shall be carried out at the time of planting.

### 15. Shrubs, Hedging, Climbers, Transplants and Herbaceous Planting

15.1 All planting material shall comply with BS 3936.

15.2 Immediately prior to planting all bare root stock shall have their roots thoroughly immersed in a solution of root dip in accordance with the manufacturer's instructions.

15.3 Planting holes shall be dug to a minimum depth of 400mm and 150mm wider than root spread.



- 15.4 Shrubs shall be set in the holes so that the soil level, after settlement, will be at the same level that the plant had been growing at previously. The holes shall be backfilled with topsoil, to half their depth and firmed by treading. The remaining topsoil shall then be returned and again firmed by treading.
- 15.5 Shrubs shall be cut back or pruned to encourage bushy growth.
- 15.6 Plants for ground cover shall have stakes and ties removed and the stems shall be pegged out.
16. Climbers and Wall Shrubs
- 16.1 Climbers and wall shrubs shall have supports fixed before planting, using galvanised wire, galvanised screw type vine eyes and horticultural ties, to adjacent fencing posts, brickwork or walls, as required.
- 16.2 Trellis shall be fixed to timber battens or spacing pieces screwed into plugs set in the wall so that the trellis is not less than 12mm clear of the wall.
- 16.3 Planting pits adjacent to walls shall be at least 300mm wider than the root spread, 500mm deep and backfilled with good quality humus rich soil. Plants shall be at least 300mm from the wall with the roots spread away from the wall. Branches shall be secured firmly with flexible ties to the wire or trellis. The canes shall be retained when the plants are too young to reach the wire or trellis, or when the plants are of a self-clinging variety, when the cane should be angled to reach the required position.
17. Bulbs and Corms
- 17.1 Bulbs shall conform with BS 3936 Part 9.
- 17.2 These shall be treated with Carbendazim before storage and planted with the appropriate tool and at a depth approximately 3 x bulb diameter, unless otherwise specified. The base of the bulb or corm shall be in contact with the topsoil at the base of the hole. Usually they shall be planted randomly at a density of approximately 15 per sq.m. In fine turf, a plug of turf shall be neatly removed and replaced after planting.
18. Hedge Planting
- 18.1 Plants shall be notch or trench planted. Hedge trenches shall be a minimum of 400mm deep and a minimum of 400mm wide for single rows and 750mm wide for double rows.
- 18.2 Planting shall be at 500-600mm spacings, with double rows staggered with 500-600mm between rows.
19. Mulch  
All planting areas shall be thoroughly watered after planting before spreading a minimum depth of 50mm of approved mulch.



20.     Rabbit Guards
- 20.1    Where there is a rabbit problem on the site, plants should be protected with rabbit guards.
21.     Protection
- 21.1    To protect newly seeded, turfed and planted areas the developers shall provide and erect protective fences of cleft chestnut in accordance with BS 1722: Part 4. These fences shall be maintained by the developer, and when the area is established shall be removed and cleared away and the ground reinstated. Any damage caused to grass, turf or plants shall be made good before handover.
22.     Maintenance
- 22.1    Provision shall be made for watering at the time of planting and throughout the growing season, to ensure satisfactory establishment. Contingency arrangements need to be made for periods when water restrictions apply.
- 22.2    All planted areas and trees shall be refirmed after frost or wind if the soil has loosened, to include air pockets from around the roots.
- 22.3    All plant areas shall be kept free from weeds and grass until handover, the minimum number of hand cultivations shall be 6.
- 22.4    Care shall be taken not to damage, knock, cut or bruise the plants in any way.
- 22.5    Roots of all perennial and pernicious weeds and couch grass shall be removed from site so as to avoid reinfestation either by seed or vegetative means.
- 22.6    Grassed areas shall be cut regularly to ensure the establishment of a dense sward and to maintain it in a tidy condition.
- 22.7    All plants that have failed to show signs of growth are to be replaced at the developer's expense as soon as practical.