

Dated

8<sup>th</sup> December

2023

**(1) SOUTHAMPTON CITY COUNCIL**

**(2) ROKE MANOR LIMITED**

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**AGREEMENT**

Pursuant to Section 33 of the Local Government  
(Miscellaneous Provisions) Act 1982 and other powers relating  
to land at Awbridge Danes, Danes Road, Shootash, Romsey

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Toronto Square – 7<sup>th</sup> Floor Toronto Street Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House 2 Fleet Place Holborn Viaduct London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard 1 Queen Street Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place Edmund Street Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

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THIS AGREEMENT is made on 8<sup>th</sup> December 2023

**BETWEEN**

- (1)e **SOUTHAMPTON CITY COUNCIL** of Civic Centre, Civic Centre Road, Southampton SO14 7LY (the "Council"); and
- (2)e **ROKE MANOR LIMITED** (Company Number 09996790) whose registered office is at The Old Dairy, Ovington, Alresford, Hampshire SO24 0RB (the "Owner").e

**BACKGROUND**

- (A)e The Owner is the freehold proprietor of the Site with Title Absolute registered at HM Land Registry with title number HP868571.e
- (B)e The Site is located within the area for which Test Valley Borough Council is the local planning authority.e
- (C)e The Section 106 Agreement regulates the use of the Site and provides for the Owner to enter into Allocation Agreements with developers of Qualifying Developments whereby the Owner agrees to Allocate Capacity and maintain the Site in order to provide Nitrate Mitigation for the Qualifying Development.e
- (D)e The obligations on the part of the Owner contained in the Section 106 Agreement are not enforceable by the Council.e
- (E)e By this Agreement the Owner covenants with the Council to comply with the requirements of the Section 106 Agreement in relation to any Relevant Allocation Agreement.e

The parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context requires otherwise, the following definitions apply:

**1982 Act** means the Local Government (Miscellaneous Provisions) Act 1982

**1990 Act** means the Town and Country Planning Act 1990 (as amended)

**Allocation** means the dedication by the Owner of a portion of the Capacity to the developer of a Qualifying Development to mitigate the impact of that Qualifying Development on the nitrate levels of the Solent;

and "Allocate" and "Allocated" shall be construed accordingly;

**Allocation Agreement** means an agreement substantially in the form of the draft appended to this Agreement at Schedule 2 to be entered into by the Owner and a developer of a Qualifying Development to provide Nitrate Mitigation for such Qualifying Development

**Authority** means Test Valley Borough Council or its successor in title as local planning authority for the area in which the Site is located

**Capacity** means up to 1465.47 Kg/TN/yr to be removed from the Solent by the Scheme or such revised figure as shall from time to time be approved pursuant to the Section 106 Agreement

**Capacity Monitoring Report** means a report in substantially the form appended to this Agreement to be updated on completion of each Allocation Agreement and produced by the Owner with any accompanying plans which provides evidence of any remaining Capacity for Nitrate Mitigation of a Qualifying Development following the Owner entering into an Allocation Agreement;

**Management Plan** means the Management Plan appended to this Agreement subject to any reasonable amendment requested by the Authority and/or the Owner in accordance with the Section 106 Agreement, such amendment to be notified to the Council in accordance with the provisions of this Agreement

**Monitoring Report** means a written statement to be prepared by the Owner and submitted to the Authority pursuant to the Section 106 Agreement confirming (with reasonable and proportionate evidence which may include photographic evidence where appropriate) that the Site is being managed and maintained in accordance with the Management Plan

**Natural England** means the public body known as Natural England or any successor body which acts as the Government's adviser for the natural environment in England

**Nitrate Mitigation** means mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by Qualifying Developments in line with Natural England requirements at the date of the Section 106 Agreement

**Perpetuity** means 80 years following the date on which the final amount of Capacity has been allocated

**Plan** means the plan annexed hereto at Schedule 1 showing the Site edged red

**Qualifying Development** means any off-site development which requires Nitrate Mitigation and whose foul waters are treated either by a package treatment works or wastewater treatment works that outfall into the fluvial catchments of the River Test, River Itchen or Bartley Waters or other waste water treatment works as agreed in writing by Natural England

**Relevant Allocation Agreement** means an Allocation Agreement relating to a Relevant Qualifying Development

**Relevant Qualifying Development** means a Qualifying Development of land for which the Council is the local planning authority;

**Section 106 Agreement** means the agreement dated 10 June 2022 made pursuant to section 106 of the 1990 Act between (1) Test Valley Borough Council (2) Wyatt Luxury Homes Limited and (3) Roke Manor Limited and any variations thereto as shall from time to time be made by deed pursuant to and in accordance with s106A of the 1990 Act

**Site** means the land at Awbridge Danes, Danes Road, Shootash, Romsey shown edged red on the Plan

**Solent** means the strait that separates the Isle of Wight from the mainland of England

**Unallocated Capacity** means any Capacity that has not been Allocated

**Working Days** means any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 2 January (inclusive) in each year

- 1.2 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this Agreement unless stated otherwise.
- 1.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.

- 1.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 1.7 References to the Site include any part of it.
- 1.8 References to any party in this Agreement include the successors in title of that party and in the case of the Council include any successor local planning authority exercising planning powers under the 1990 Act
- 1.9 References to "including" means "including without limitation"
- 1.10 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

## **2 LEGAL EFFECT**

- 2.1 This Agreement is made pursuant to Section 33 of the 1982 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement are enforceable by the Council against the Owner and to the extent permitted by law against each of their successors in title and any persons deriving title in the Site from either of them.

## **3 COMMENCEMENT**

- 3.1 This Agreement shall take effect on the day and year first before written.

## **4 COVENANTS OF THE OWNER**

- 4.1 The Owner covenants with the Council as follows:
- 4.1.1 To observe and perform the obligations on its part contained in the Section 106 Agreement
- 4.1.2 At all times in Perpetuity
- (a) To comply with the Management Plan; and
- (b) Not to use the Site other than in accordance with the Management Plan
- 4.1.3 Not to enter into any Relevant Allocation Agreement unless it can evidence that there is sufficient Unallocated Capacity in the Site as a whole available for the required level of Allocation.
- 4.1.4 To notify the Council on the receipt of payment of any Allocation Fee made pursuant to a Relevant Allocation Agreement within 5 Working Days of receipt of such a payment
- 4.1.5 To notify the Council of the date on which any Capacity is Allocated to a developer pursuant to a Relevant Allocation Agreement within 5 Working Days of such Allocation being made
- 4.1.6 To provide the Council with a copy of each and every one of the following:

- (a) Any revision to or replacement of the Management Plan as shall be approved or deemed to be approved (as the case may be) by the Authority pursuant to the Section 106 Agreement within 20 Working Days of such approval or deemed approval;
- (b) Any default notice issued by the Authority pursuant to paragraph 6 of Schedule 1 of the Section 106 Agreement within 20 Working Days of receipt by the Owner;
- (c) Any Monitoring Report submitted to the Authority pursuant to the Section 106 Agreement within 20 Working Days of submission to the Authority;
- (d) Any Relevant Allocation Agreement within 20 Working Days of completion of such Relevant Allocation Agreement;
- (e) Any Capacity Monitoring Report relating to a Relevant Allocation Agreement within 20 Working Days of completion of such Relevant Allocation Agreement
- (f) Any default notice served on the Owner by the Authority pursuant to clause 6 of the Section 106 Agreement

4.1.7 To comply with the obligations on their part contained within every Relevant Allocation Agreement;

4.1.8 To allow the Council reasonable access to the Site upon reasonable and not less than 20 Working Days prior written notice in order for the Council to reasonably satisfy itself that the Owner is complying with their obligations in this Agreement

## **5 COVENANTS OF THE COUNCIL**

5.1 The Council covenants with the Owner as follows:

5.1.1 Not at any time to take account of any Unallocated Capacity in the determination of any application for planning permission without the prior approval from the Owner such approval to be in the form of an Allocation Agreement

5.1.2 To accept a duly executed Relevant Allocation Agreement as evidence of provision for Nitrate Mitigation for the Relevant Qualifying Development to which it relates and to have due regard to the existence of such Relevant Allocation Agreement in the determination of any application for planning permission for the Relevant Qualifying Development

## **6 PRIMACY OF THE SECTION 106 AGREEMENT**

6.1 Nothing in this Agreement shall require the Owner to do anything or refrain from doing anything:

6.1.1 that would constitute a breach of the Section 106 Agreement; or

6.1.2 that would require them to act other than in accordance with any direction, notice, order or request given by the Authority pursuant to the Section 106 Agreement; or

6.1.3 that would require them to act other than in accordance with any Enforcement Notice, Breach of Condition Notice, Stop Notice, Planning Contravention Notice or other exercise of planning enforcement powers by the Authority in relation to the Site

6.2 Except in the case of manifest error, in relation to anything to be done or action to be taken by the Owner in relation to the Site including in order to remedy any breach of the Section 106 Agreement the Council shall accept the written certificate, notice or expression of satisfaction given by the Authority pursuant to the Section 106 Agreement or pursuant to its statutory powers as local planning authority as valid and conclusive evidence that such thing has been done or action taken

## **7 ENFORCEABILITY**

- 7.1 The obligations contained in this Agreement shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 7.2 A party shall not be liable for any breach of the obligations or other covenants contained in this Agreement occurring after the relevant party has parted with the whole of its interest in the Site or the part of the Site in which such breach occurs (but without prejudice to the liability of the relevant party for any breach occurring prior to its parting with such interest).

## **8 LEGAL COSTS**

The Owner covenants with the Council to pay the Council's reasonable legal costs in connection with the preparation, negotiation and completion of this Agreement.

## **9 NOTICES**

- 9.1 Any notice, consent, demand or any other communication served under this Agreement will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 9.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.

## **10 WAIVER**

- 10.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Owner.

## **11 DETERMINATION OF DISPUTES**

- 11.1e Subject to clause 11.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 11. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 11.2 For the purposes of this clause 11 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 11.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 11.4.
- 11.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Authority and the Owner cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 11.5 The Specialist is to act as an independent expert and:

- 11.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
  - 11.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
  - 11.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - 11.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
  - 11.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
  - 11.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 11.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 11, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 11.7e This clause 11 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

## **12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

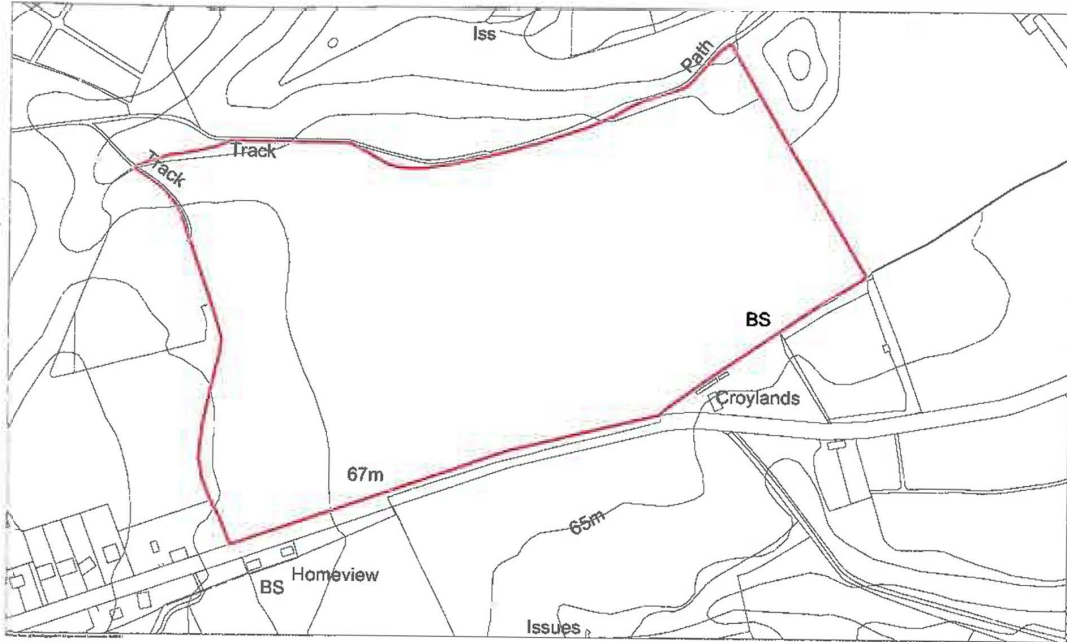
- 12.de The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or enforce any of the provisions of this Agreement.

## **13 JURISDICTION**

- 13.1 This Agreement shall be governed by the laws of England and the Courts of England shall have sole jurisdiction in respect of the construction of this Agreement and as to the respective rights and liabilities of the parties.



**SCHEDULE 1 - PLAN**



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**AUTHORISED  
SIGNATORY**

**SCHEDULE 2 - ALLOCATION AGREEMENT**

Dated \_\_\_\_\_

20[ ]

**ROKE MANOR LIMITED**

**[PARTY 2]**

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**NITRATE ALLOCATION AGREEMENT**

**Awbridge Danes, Danes Lane, Shootash, Romsey**

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Toronto Square – 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

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THIS DEED is made on

20[ ]

**BETWEEN**

- (1)e **ROKE MANOR LIMITED** (Company Number 09996790) whose registered office is at The Old Dairy,e Ovington, Alresford, Hampshire SO24 0RB (**Owner**); ande
- (2)e [ ] (Company Number [ ]) whose registered office is at [ ] (**Developer**);e
- together the **Partiese**

**WHEREAS**

- (A)e The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number HP524088 at the date of this Deed.e
- (B)e High levels of nitrogen from housing and agricultural sources in the Solent have caused excessive growth of green algae (a process called eutrophication) having a detrimental impact upon protected habitats in the Solent.e
- (C)e The Parties agree on the advice of Natural England that any net increase in residential dwellings within the catchment of the Solent is likely to have a significant adverse effect on protected habitats in the Solent unless nitrate neutrality is achieved for those new residential dwellings.e
- (D)e The Owner has entered into the Section 106 Agreement and the Section 33 Agreement which regulate the use of the Site to achieve Capacity equal to the net reduction in nitrates leaching to the environment from the Site that can be Allocated to offset the impact Qualifying Schemes.e
- (E)e The Owner agrees to Allocate a portion of the Capacity to the Developer in order to mitigate the impact of the Development on nitrate levels in return for the Allocation Fee.e

**IT IS AGREED as follows:**

**1 DEFINITIONS**

- 1.1e The following words and phrases shall have unless the context otherwise requires bear the following meanings:

"**Allocation**" means the dedication of the Required Capacity by the Owner to provide Nitrate Mitigation for the Development, and "Allocate" and "Allocated" shall be construed accordingly;

"**Allocation Fee**" means the sum less the Reserve Fee (exclusive of VAT) to be paid by the Developer to the Owner for the Allocation to be provided for the Development to be calculated at a rate of £[ ] per kg/TN/yr;

"**Appeal**" means all or any of the following:"

- (a)e an application under section 73 of the Town and Country Planning Act 1990 to vary or discharge a condition in a Planning Permission;e
- (b)e an application for judicial review, including any appeal to a higher court against a judgment given by a lower court;e
- (c)e an application under section 78 of the Town and Country Planning Act 1990;e
- (d)e an application under section 288 of the Town and Country Planning Act 1990 including any appeal to a higher court against a judgment given by a lower court; ande

(e) a Call-In;

**"Call-in"** means a direction by the Secretary of State that the Secretary of State will determine:

- (a) a planning application under section 77 of the Town and Country Planning Act 1990; or
- (b) an Appeal under section 78 of the Town and Country Planning Act 1990;

**"Capacity"** means up to 1465.47 Kg/TN/yr to be removed from the Solent by the Scheme or such revised figure as the Council shall from time to time approve pursuant to paragraph 8 of Schedule 1 to the Section 106 Agreement;

**"Capacity Monitoring Report"** has the same meaning as in the Section 106 Agreement

**"Challenge Free"** means either:

- (a) the Challenge Period has expired without any Challenge Proceedings having been commenced; or
- (b) all Challenge Proceedings have been finally determined leaving the Planning Permission in place

**"Challenge Period"** means the period of six weeks and ten Working Days commencing on the date on which Planning Permission is granted

**"Challenge Proceedings"** means either of the following:

- (a) an application for judicial review made by a third party following the grant of Planning Permission by the relevant planning authority, including any appeal to a higher court against a judgment given by a lower court and any referral back to and/or redetermination by the relevant planning authority; or
- (b) an application by a third party under section 288 of the Planning Act following the grant of Planning Permission by the Secretary of State, including any appeal to a higher court against a judgment given by a lower court and any referral back to and/or redetermination by the Secretary of State;

**"City Council"** means Southampton City Council or its successor (from time to time) as local planning authority

**"Council"** means Test Valley Borough Council or its successor (from time to time) as local planning authority

**"Development"** means [ ] on the Development Site pursuant to the Planning Permission;

**"Development Site"** means the land at [ ];

**"Expiry Date"** means the date that is 12 months from the date of this Deed (or such alternative date as may be agreed by the parties in writing);

**"Implementation"** means the date on which a Development commences by the carrying out of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Deed and no other);

- (a) site investigations or surveys;
- (b) archaeological works;
- (c) site decontamination;

- (d) the demolition of any existing buildings or structures;
- (e) excavation works;
- (f) clearance or regrading;
- (g) the erection of hoardings and fences;
- (h) works connected with infilling;
- (i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or
- (j) the construction of access and service roads;

**"Nitrate Mitigation"** has the same meaning as in the Section 106 Agreement

**"Management Plan"** has the same meaning as in the Section 106 Agreement

**"Occupation"** means occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and "Occupy" and "Occupied" shall be construed accordingly;

**"Perpetuity"** means the period of 80 (eighty) years from the date on which a dwelling or other building comprised in the Development is first occupied and "Perpetuity Period" shall be construed accordingly;

**"Plan"** means the plan attached to this Deed;

**"Planning Agreement"** means an agreement or undertaking with the relevant planning authority or any other competent authority made under:

- (a) section 106 of the Town and Country Planning Act 1990;
- (b) section 111 of the Local Government Act 1972;
- (c) sections 38,184 or 278 of the Highways Act 1980;
- (d) section 33 of the Local Government (Miscellaneous Provisions) Act 1982;
- (e) section 98, 104 or 106 of the Water Industry Act 1991; or
- (f) section 2 of the Local Government Act 2000;

**"Planning Application"** means the application for planning permission submitted to the City Council for the Development and allocated reference number [ ] received on [ ] and validated on [ ];

**"Planning Permission"** means the planning permission for the Development to be issued pursuant to the Planning Application (and for the avoidance of doubt includes a planning permission granted following an Appeal);

**"Qualifying Scheme"** has the same meaning as in the Section 106 Agreement;

**"Relevant Event"** means any of the following events:

- (a) a change in the law; or
- (b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or



- (c)n a change in Natural England's custom or practice; or n
- (d)n a change in scientific opinion based on evidence; or n
- (e)n a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation; n

that is accepted by or is otherwise binding upon Natural England and/or the relevant local planning authority and results in any of the following:

- (a)n nitrate neutrality not being required in relation to the Development; or n
- (b)n Nitrate Mitigation not being required; or n
- (c)n the Scheme not being considered to be an effective form of Nitrate Mitigation; or n
- (d)n the Scheme not being required for Nitrate Mitigation; and n
- (e)n is not in breach of the Section 106 Agreement, the Section 33 Agreement or condition of the Planning Permission. n

**"Reserve Fee"** means the non-refundable sum of [ ] pounds (£[ ]) (exclusive of VAT) to be paid by the Developer to the Owner;

**"Reserve Capacity"** means [ ] kg/TN/yr out of the total Capacity;

**"Required Capacity"** means so much of the Reserve Capacity (as notified in writing by the Developer to the Owner in accordance with clause 4.3) as being the amount necessary to provide Nitrate Mitigation to mitigate the impacts of the Development

**"Required Land"** means the land within the Phase or Phases of the Site that will provide the Required Capacity

**"Scheme"** means the scheme for the cessation of the use of the Site as a pig farm and the restoration of soils to the extent required for tree planting on the Site in accordance with the Management Plan

**"Section 106 Agreement"** means the agreement dated 10 June 2022 entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Test Valley Borough Council (2) Wyatt Luxury Homes Limited and (3) Roke Manor Limited;

**"Section 33 Agreement"** means the agreement dated [ ] entered into pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 between (1) Southampton City Council and (2) Roke Manor Limited

**"Secretary of State"** means the Secretary of State for Levelling Up Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given by sections 77, 78 and 79 of the Town and Country Planning Act 1990;

**"Site"** means the area shown edged red on the Plan being land at Awbridge Danes, Danes Road, Shootash, Romsey;

**"Solent"** means the strait that separates the Isle of Wight from the mainland of England; and

**"Working Days"** means any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year;

## 2 INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to "including" means "including, without limitation".
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

**3 COMMENCEMENT**

This Deed will take effect on the date of this Agreement.

**4 OBLIGATIONS OF THE DEVELOPER**

The Developer shall

- 4.1 pay the Reserve Fee to the Owner on the date of this Deed
- 4.2 notify the Owner within 10 Working Days of each of the following events:
  - 4.2.1 the grant of Planning Permission
  - 4.2.2 the commencement of any Challenge Proceedings
  - 4.2.3 the final determination of any Challenge Proceedings
  - 4.2.4 Implementation of the Development
  - 4.2.5 first Occupation of the Development
  - 4.2.6 expiry of the Planning Permission without the development having begun
- 4.3 notify the Owner of the Required Capacity and pay the Allocation Fee upon the earlier of:

4.3.1 the last Working Day immediately preceding the Expiry Date; and

4.3.2 the Planning Permission being Challenge Free;

4.4 not to Implement the Development unless and until it has paid the Allocation Fee to the Owner

## 5 OBLIGATIONS OF THE OWNER

5.1 The Owner shall:

5.1.1 Following receipt of the Reserve Fee, reserve the Reserve Capacity for the Developer until the earlier of:

(a) the Expiry Date; and

(b) the date on which the entirety of the Required Capacity has been Allocated to the Developer.

5.1.2 within 5 Working Days of receipt of the notice from the Developer pursuant to clause **Error! Reference source not found.** formally Allocate the Required Capacity to the Development

5.1.3 From the date on which the Required Capacity is Allocated to the Development pursuant to Clause **Error! Reference source not found.**, maintain the Required Land in accordance with the Management Plan in Perpetuity.

5.2 If a Planning Agreement is required by the relevant local planning authority for the district in which the Development is situated or any other competent authority as a pre-condition to the grant of the Planning Permission the Owner shall, if required, enter into the Planning Agreement provided that:

5.2.1 the terms of the Planning Agreement which relate to or seek to bind land which is within the Owner ownership and or occupation are acceptable to the Owner (acting reasonably and having regard to the Allocation pursuant to this Deed);

5.2.2 the terms of the Planning Agreement do not conflict with the Owner's obligations pursuant to the Section 106 Agreement;

5.2.3 the Developer pays the Owner's (reasonable and properly incurred) legal fees in connection with the Planning Agreement;

5.2.4 any liabilities on the Owner under the Planning Agreement are conditional upon the implementation of the Planning Permission; and

5.2.5 the Owner will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner has parted with all its interest in the Site 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.

## 6 NOTICES

6.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.

6.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

## 7 DETERMINATION OF DISPUTES

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 7 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.
- 7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 7.5 The Specialist is to act as an independent expert and:
- 7.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
  - 7.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
  - 7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - 7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
  - 7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
  - 7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 7.7e This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

## **8 ASSIGNMENT**

8.1 At any time prior to the earlier of

8.1.1 the Expiry Date; and

8.1.2 the date on which the Required Capacity has been Allocated

the Developer may with the Owner's approval assign the benefit of this Deed to a third party (such approval not to be unreasonably withheld or delayed) PROVIDED ONLY that the Nitrate Mitigation

secured by this Deed shall be used for the benefit of the Development only and for no other development.

- 8.2 Following the date on which the Required Capacity has been Allocated the Developer may with the Owner's prior written approval assign the benefit of the Allocation and/or this Deed to a third party (such approval not to be unreasonably withheld or delayed) PROVIDED ONLY that the Nitrate Mitigation secured by this Deed shall be used for the benefit of the Development only and for no other development and PROVIDED ALWAYS that the Developer shall pay the Owner's reasonably legal costs incurred in connection with the amendment of any updated or revised Capacity Monitoring Report required by the Council and the City Council.

## **9 TERMINATION OF THIS DEED**

- 9.1 This Deed will come to an end and the obligations in this deed will immediately terminate on the expiry of the Perpetuity Period;
- 9.2 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Relevant Event occurs prior to the date on which the Required Capacity has been Allocated.
- 9.3 Without affecting any other right or remedy available to it, the Owner may terminate this Deed with immediate effect by giving notice to the Developer if any of the following events occur:
- 9.3.1 the Developer is in fundamental breach of any of its obligations in this Deed; or
- 9.3.2 the Developer is in substantial breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Owner.
- 9.4 If this Deed is terminated in accordance with the provisions of this Clause:
- 9.4.1 the Owner may use the Site as they see fit in their absolute discretion;
- 9.4.2 Neither party shall have any further rights or obligations under this Deed save for:
- (a) the rights of either party in respect of any earlier breach of this Deed; and
- (b) the obligations in the clauses referred to in **Error! Reference source not found.**
- 9.4.3 any sums paid to the Owner by the Developer under the terms of this Deed shall not be refunded.

## **10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions of this Deed.

## **11 VAT**

- 11.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this deed is exclusive of VAT (if any).
- 11.2 If any VAT is at any time chargeable on any supply made by the Owner under or pursuant to this deed, the Developer making the payment shall pay the Owner an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

## **12 JURISDICTION**

Subject to the provisions of clause 7 this Deed shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

**13 FEES**

The Developer covenants with the Owner to pay to the Owner prior to the date hereof the Owner's reasonable legal fees for the preparation, negotiation and completion of this Agreement.

**EXECUTION PAGE**

**IN WITNESS WHEREOF** the Parties hereto have executed this deed the day and year first before written.

Signed by )  
**ROKE MANOR LIMITED** )  
acting by Oliver Mitchell, ) .....  
a director, in the presence of ) **Director**

Signature: .....

Name of witness: .....

Address: .....

.....

.....

Occupation of witness: .....

Signed by )  
[ ] )  
acting by ....., ) .....  
a director, in the presence of ) **Director**

Signature: .....

Name of witness: .....

Address: .....

.....

.....

Occupation of witness: .....

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as a deed the day and year first before written

