

DATED

2026

Agreement

pursuant to Section 106 of the
Town & Country Planning Act 1990
in respect of land west of Smithy
Bridge Road, Littleborough

- (1) The Rochdale Borough Council
- (2) Stephanie Mills, Adam Jason Mills, Jonathan Daniel Mills and Stephen Mahon
- (3) David Anthony Buckley, Gordon Arthur Buckley, Margaret Buckley and David Drake
- (4) MJF SSAS Trustees Limited, Christopher David Grieves and Joanne Tracie Grieves as Trustees of the Guardian Pension Scheme
- (5) Gail Wood
- (6) Taylor Wimpey UK Limited

BETWEEN

- 1 **THE ROCHDALE BOROUGH COUNCIL** of Town Hall, Rochdale, Greater Manchester OL16 1AB as **the Council**;
- 2 **STEPHANIE MILLS** of Annis Hill Farm, Milnrow, Rochdale, Lancashire OL16 3TR and **ADAM JASON MILLS** of Round House Farm, Rakewood, Littleborough, Lancashire OL15 0AT and **JONATHAN DANIEL MILLS** of Calliards Bungalow, Smithy Bridge Road, Littleborough, Lancashire OL15 8QF and **STEPHEN MAHON** of Chilbury, 81 Fairmile Lane, Cobham, Surrey KT11 2DB;
- 3 **DAVID ANTHONY BUCKLEY** of 10 Brighton Avenue Urmston, Manchester M41 8TQ, **GORDON ARTHUR BUCKLEY** and **MARGARET BUCKLEY** both of 21 Mission Road, Greenmeadows, Napier 4112, New Zealand and care of Hopswoods Farm, Broad Lane, Rochdale OL16 4QQ, **David Drake** of 8 Judson Place, Tradale, Napier 4112, New Zealand and care of Hopswoods Farm, Broad Lane, Rochdale OL16 4QQ;

together the parties listed at 2 and 3 shall hereinafter be referred to as **the Owners**; and
- 4 **MJF SSAS TRUSTEES LIMITED** incorporated and registered in England and Wales with company number 04089958 whose registered office is at Phoenix House, 1 Station Hill, reading RG1 1NB and **CHRISTOPHER DAVID GRIEVES** OF Hallmark court, 132 Manchester Road, Rochdale, Lancs, OL11 4JQ and **JOANNE TRACIE GRIEVES** of Hallmark Court, 132 Manchester Road, Rochdale, Lancs, OL11 4JQ as **Trustees of the Guardian Pension Scheme**;
- 5 **GAIL WOOD** of Lower Healey Farm, 18 Lower Healey, Rochdale, OL12 0TA;

together the parties listed at 4 and 5 shall hereinafter be referred to as the **BNG Owners**;
- 6 **TAYLOR WIMPEY UK LIMITED** incorporated and registered in England and Wales with company number 01392762 whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR hereinafter be referred to as the **Developer**).

Background

- (A) The Council is the Local Planning Authority for the purpose of the Act for the area in which the Site is situated and by whom the planning obligations contained in this Agreement are enforceable.
- (B) The Owners are the freehold owners of the Site with title absolute registered at HM Land Registry under title numbers MAN203625 and GM695321.
- (C) The BNG Owners are the freehold owners of the Biodiversity Gain Site with title absolute registered at HM Land Registry under title numbers [GM712084 and GM447864].
- (D) On 16 November 2017 the Developer obtained an option to purchase the Site by way of an option agreement between the Developer and the Owners for land under title MAN203625, and on 19th September 2014 obtained an option to purchase the Site by way of an option agreement between the Developer and the Owners for land under title GM695321.
- (E) The Application has been submitted to the Council for the Development and the Developer intends to carry out the Development in accordance with the Permission.
- (F) The parties agree that it is necessary in order to make the Development acceptable in planning terms that this Agreement be entered into and that the use of the Site and the Biodiversity Gain Site should be restricted as set out herein and that the obligations set out in this

Agreement are directly related to and fairly and reasonably related in scale and kind to the Development.

It is agreed as follows:

1 Definitions and construction of this Agreement

1.1 This Agreement uses the following defined terms:

Act: the Town and Country Planning Act 1990 as amended.

Affordable Housing: as defined in the National Planning Policy Framework dated December 2024

Affordable Housing Commuted Sum: the sum of £140,982 (one hundred and forty thousand nine hundred and eighty two pounds for each Affordable Housing Unit which is transferred as an Open Market Dwelling up to a maximum of £704,906 (seven hundred and four thousand and nine hundred and six pounds) if all 5 Affordable Housing Units are transferred as an Open Market Dwellings to be used for the provision of alternative Affordable Housing within the Councils administrative area

Affordable Housing Provider: a Registered Provider, registered social landlord or a housing association or similar organisation registered in accordance with section 80 of the Housing and Regeneration Act 2008 or if such bodies cease to exist or are superseded the equivalent body whose main objectives included the provision of Affordable Housing and to whom the Affordable Housing Units may be transferred

Affordable Housing SPD: means the Affordable Housing Supplementary Planning

Document adopted by the Council in March 2008
Affordable Housing Units: the 5 Dwellings to be used as Social Rented Units on the Site as shaded orange on Plan 2 (or such alternative form of Affordable Housing as shall be approved by the Council in writing)

Agreement Expiry Date: means a date which is the expiration of the period of 30 years following the Completion Date.

Allocation: means attributing any BNG Capacity, whether in respect of Biodiversity Units or Biodiversity Gain Land, by the Owner toward a development's requirement to deliver biodiversity (and Allocate and Allocated and Allocations shall be construed accordingly).

Application: the application for planning permission submitted to the Council for residential development consisting of the erection of up to one hundred and ninety-nine (199) dwellings including vehicular access on to Smithy Bridge Road, with internal highways, car parking, footpaths, cycle paths, boundaries, gardens, open space and other associated works on the Site with reference number 22/01364/FUL.

Approved Person: [INSERT DEFINITION]

Baseline Measurements: means 108.14 Habitat Units and 1.83 Hedgerow Units

Biodiversity Gain Site: the land at Dewhirst Road shown edged (red) on the Biodiversity Gain Site Plan and registered at HM Land Registry with absolute title under Title Numbers GM712084 and GM447864.

Biodiversity Gain Site Monitoring Contribution: £15,642 (fifteen thousand six hundred and forty two pounds)

Biodiversity Gain Site Plan: the plan numbered 1 showing the Biodiversity Gain Site and attached to this Agreement at Appendix 2.

Biodiversity Gain Site Register: the register of biodiversity gain sites established under section 100 of Part 6 of the Environment Act 2021.

Biodiversity Net Gain: a positive score when compared to the baseline measurements for the Site when assessed by reference to Metric 4.0.

Biodiversity Net Gain Requirement: for the purposes of the Development, the overarching commitment to deliver a 10% Biodiversity Net Gain.

BNG Capacity means the total Biodiversity Net Gain to be generated on the Biodiversity Gain Site in accordance with the Habitat Management and Monitoring Plan comprising of 57.02 Habitat Units

BNG Period: means a period of not less than 30 years from the Completion Date

Biodiversity Unit(s): means the quantum of biodiversity as measured by the Biodiversity Metric.

Breach Notice: means a notice which may be served by the Council on the BNG Owner under paragraph 5 and 6 of Schedule 3 (part 1) of this Deed

Certificate of Completion: means a written notice from the Council under paragraph 1.3 of Schedule 3 (part 1)

Commencement Date: means the date upon which the Habitat Creation and Enhancement Works have commenced;

Commencement of the Development: the commencement of the Development by the carrying out on the Site in accordance with the Permission of a material operation as specified in section 56(4) of the Act (but not including:

- (a) site investigations or surveys including exploratory boreholes or excavations;
- (b) site clearance or the removal of contamination;
- (c) the demolition of any buildings or structures on the Site;
- (d) the construction of temporary site access and service roads;
- (e) the erection of construction fencing or hoarding;
- (f) the erection of construction accommodation and facilities;
- (g) works for the provision of drainage or mains services to prepare the Site for development;
- (h) works associated with ecological mitigation;
- (i) the construction of off-site highways works and improvements and junction works;
- (j) any operations relating to site investigations, safety, security
- (k) treatment of the mineshaft including grouting, capping and remediation works

and the phrase "Commence the Development" shall be construed accordingly.

Completion Date: means the date specified in the Certificate of Completion as the date the Habitat Creation and Enhancement Works were completed

Completion Date Notice: means written notice from the BNG Owner to the Council of the proposed Completion Date of the Habitat Creation and Enhancement Works served in accordance with paragraph 2(d) of Schedule 3 (part 1);

Development: residential development of up to 199 dwellings including vehicular access on to Smithy Bridge Road, with internal highways, car parking, footpaths, cycle paths, boundaries, gardens, open space and other associated works. pursuant to the Planning Permission.

Discounted Purchase Price means a price subject to a discount from the Open Market Value of the Dwelling in accordance with the Affordable Housing SPD

Dwellings: any residential units to be constructed on the Site as authorised in accordance with the Planning Permission and "Dwellings" shall be construed accordingly and includes both Market Units and Affordable Housing Units

Expert: has the meaning given by Clause 11 of this Deed

Habitat Creation and Enhancement Works: the combined works set out in the Habitat Management and Monitoring Plan and the works to be undertaken on the Site;

Habitat Creation and Enhancement Works Completion Date: the date of completion of the Habitat Creation and Enhancement Works;

Habitat Management and Monitoring Plan: a scheme to deliver the Biodiversity Net Gain Requirement in respect of the Development by undertaking the Habitat Creation and Enhancement Works. The plan shall include details for the initial works on, and subsequent management of, the Biodiversity Gain Site which shall include details of its provision; any offsetting measures such as improvement works required in order to demonstrate how it will achieve the required Biodiversity Net Gain; the timetable for implementation of the Habitat Creation and Enhancement Works, its maintenance for not less than thirty (30) years from the date of implementation of the Biodiversity Offsetting Scheme; and the methodology format and frequency of written monitoring reports to be provided to the Council which plan shall have been submitted to and approved in writing by the Council (including any amendments, such material amendments to be agreed in writing with the Council acting reasonably);

Housing Need: people who are unable to rent or buy a Dwelling on the open market

Market Units: all of the Dwellings (other than Affordable Housing Units), each of which are to be sold on the open market and the expression "Market Unit" shall be construed accordingly;

Market Value Notice: the notice to the Council giving the sum of the Open Market Value of all of the Affordable Units;

Metric 4.0: the biodiversity metric published by Natural England in March 2023 being the relevant metric for measurement of biodiversity net gain in respect of the Development.

Occupation: the occupation for any purposes permitted by the Permission but not including occupation by personnel engaged in construction or fitting out or occupation for marketing or display or occupation in relation to security operations and Occupy and Occupied shall be construed accordingly;

Open Market Value means the price that might reasonably be expected to be achieved at which the sale of an interest in an Affordable Dwelling would have been completed unconditionally if it were a Market Dwelling assuming:

- a) a willing seller and buyer
- b) the property was freely exposed to the market and there had been a reasonable period within which to negotiate the sale (having regard to the nature of the property and the state of the market) and that values remained static throughout the period;
- c) that both parties to the transaction had acted, knowledgeably, prudently and without compulsion

Planning Permission: the planning permission to be granted pursuant to the Application and any planning permission granted pursuant to an application under section 73 (or equivalent) of the Act relating to said permission (a **Subsequent Permission**) and any planning permission granted pursuant to an application under section 73 relating to a Subsequent Permission;

Plan 1: the plan appended to this Agreement and marked "Plan 1"

Plan 2: the plan appended to this Agreement and marked "Plan 2"

Registered Provider: the Council or any registered provider of social housing as defined under the Housing and Regeneration Act 2008 with the Regulator of Social Housing and has not been removed from the Register

Site: the land in respect of which the Application has been made and which is described in Schedule 1 and shown edged red on Plan 1

Social Rent: housing which meets all of the following conditions:

- (a) the rent is set in accordance with the government's rent policy for Social Rent;
- (b) the landlord is a Registered Provider; and
- (c) it includes provisions to remain at an affordable price, or for the subsidy to be recycled for alternative Affordable Housing provision, and "Social Rented Unit" shall be construed accordingly.

Working Day: any day from Monday to Friday inclusive which is not a Bank or Public Holiday or the period between the Christmas Day/Boxing Day public holiday and the New Year public holiday.

- 1.2 Where in this Agreement reference is made to any clause, paragraph or Schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule or recital in this Agreement.
- 1.3 The clause, paragraph and Schedule headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 1.4 Words importing the singular meaning where the context so admits includes the plural meaning and vice versa.
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.6 Wherever there is more than one (1) 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 against each individually unless there is an express provision otherwise.
- 1.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act of Parliament for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act of Parliament or deriving validity from it.
- 1.8 Reference 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 the successors to its respective statutory functions.

- 1.9 This Agreement will not take effect and will not bind any interest in or be enforceable against any person unless and until the Permission is granted and save for where otherwise stated, the Development is Commenced.
- 1.10 Unless otherwise expressly stated, nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Permission or any part of the Biodiversity Gain Site in accordance with any planning permission granted after the date of this Agreement.
- 1.11 An obligation to do something includes an obligation to procure it to be done and an obligation not to do something includes an obligation not to allow it to be done.
- 1.12 The covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owners and BNG Owners with the intention that they bind the interests held by that person in the Property and the Biodiversity Gain Site and their respective successors and assigns.
- 1.13 The provisions in Schedule [BNG] shall only be binding on such BNG Owner in possession of the BNG Site and for the avoidance of doubt shall not be enforced against the owner of a superior interest that is not in possession of the BNG Site
- 1.14 Insofar as any of the covenants contained in the Agreement are not planning obligations within the meaning of section 106 of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and all other enabling powers.
- 1.15 This Agreement shall apply to any planning permission subsequently granted ("Subsequent Permission") under section 73 of the Act which varies or permits non-compliance with any of the conditions attached to the Planning Permission and this Agreement shall then be construed as including the development authorised by the Subsequent Permission in addition to the Development authorised by the Planning Permission PROVIDED ALWAYS THAT;
- 1.15.1 if any form of development authorised by the Subsequent Permission would by itself or in combination with any other planning permission result in the need for planning obligations additional to those set out in this Agreement then such additional planning obligations shall be secured either by way of a new deed pursuant to section 106 of the Act or by way of a deed of variation of this Agreement pursuant to Section 106A of the Act;
- 1.15.2 the definitions of Application, Development and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and
- 1.15.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:
- "The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission reference number () has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)".

2 The OWNERS' and BNG OWNERS' COVENANTS

- 2.1 The Owners hereby covenant with the Council as set out in Schedule 2 and where specified and applicable in Schedule 3 (part 1) to this Agreement.
- 2.2 The BNG Owners hereby covenant with the Council as set out in Schedule 3 (part 1) of this Agreement.

3 The COUNCIL'S COVENANTS

The Council hereby covenants with the Owners, the Developer and BNG Owners as set out in Schedule 4 to this Agreement.

4 INTEREST ON LATE PAYMENTS

Interest at the rate of 4% above the base rate of the Bank of England shall be payable on any sum due under this Agreement which remains unpaid for more than five (5) Working Days after the same has become due such interest to be paid from the date the sum becomes due.

5 CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999

The parties to this Agreement agree that this Agreement may be rescinded or varied without the consent of any third party whose consent would otherwise be required pursuant to the Contracts (Right of Third Parties) Act 1999 (the 1999 Act) and that nothing in this Agreement will create any rights in favour of any person pursuant to the 1999 Act.

7 MISCELLANEOUS

It is agreed between the parties to this Agreement as follows:

- 7.1 no person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement which affect land in which he has no interest or which occur after he has parted with his interest in the said land or that part of the said land in respect of which a breach occurs but they will remain liable for any breaches of this Agreement occurring before that date;
- 7.2 the provisions of the Interpretation Act 1978 shall apply to the terms hereof as if this Agreement was an Act of Parliament;
- 7.3 this Agreement shall be registered as a local land charge by the Council;
- 7.4 the obligations relating to the Biodiversity Gain Site (contained in Schedule 3) save for where it is specified otherwise in Schedule 3 (part 1) shall not be binding upon nor enforceable against the Owners;
- 7.5 save for the obligations contained in Schedule 3, the obligations contained within this Agreement shall not be binding upon nor enforceable against the BNG Owners.
- 7.6 the obligations and restrictions in this Agreement shall not be enforceable against:
 - 7.6.1 any freehold or leasehold owners or occupiers of individual Dwellings constructed pursuant to the Permission (or their respective mortgagees), nor shall they be binding on any Registered Provider.
 - 7.6.2 a statutory undertaker or other person who acquires any part of the Site or Biodiversity Gain Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services; and
 - 7.6.3 the obligations in this Agreement will not be enforceable against any person acquiring an interest in the Site or the Biodiversity Gain Site, or any part thereof, solely by way of registered legal charge or mortgage, unless that person takes possession of the Site or Biodiversity Gain Site, or any part thereof, in which case they will be bound by obligations of this Agreement as an Owner, in relation to any parts of the Site or Biodiversity Gain Site over which it has a legal charge but not further or otherwise;

- 7.7 this Agreement shall cease to have effect if the Permission is quashed; revoked; withdrawn; expires prior to the Commencement of Development or otherwise becomes incapable of implementation and in such event the Council shall remove the entry in the Local Land Charges Register relating to it;
- 7.8 any notice required to be served on any party to this Agreement shall be deemed to have been properly served if delivered or sent by the recorded delivery service to the address of the party given in this Agreement or to such other address as shall have been notified by that party in writing to all other parties, save that any notice to be served on the Developer must be served on both its head office Gate House, Turnpike Rd, High Wycombe HP12 3NR. FAO; Group General Counsel and its regional office at FAO The Regional Solicitor and Regional Land Director1 Lumsdale Rd, Trafford Park, Stretford, Manchester M32 0UT to be deemed to have been properly served.
- 7.9 if any clause of this Agreement shall be found to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement;
- 7.10 where any matter is required to be agreed by any party then such agreement shall not be unreasonably withheld or delayed;
- 7.11 following the performance and satisfaction of all obligations contained in this Agreement the Council shall forthwith effect the cancellation of the entry in the Local Land Charges Register relating to it;
- 7.12 no waiver whether express or implied by the Council in respect of any breach or default in performing any of the obligations in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the remaining obligations or from acting upon any subsequent breach or default;
- 7.13 nothing in this Agreement shall prohibit or limit the right to develop any part of the Site or the Biodiversity Gain Site in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Agreement;

8 COSTS

- 8.1 The Owners shall pay to the Council on completion of this Agreement the sum of one thousand and thirty-seven pounds (£2,500) in respect of the cost of the preparation and execution of this Agreement and duplicates thereof.

9 DEVELOPER'S CONSENT

The Developer acknowledges and declares that this Agreement has been entered into by the Owners with its consent and that the Site and the Biodiversity Gain Site shall be bound by the covenants and obligations contained in Schedule 2 of this Agreement and the Developer shall not be liable for any of the obligations in Schedule 2 or Schedule 3 unless and until it acquires an interest in the Site or the Biodiversity Gain Site as a successor in title.

10 MORTGAGEES

It is acknowledged and declared that this deed has been entered into by the Owners with the intent that the planning obligation shall be binding on the Site and the Biodiversity Gain Site and that the security of a mortgage/charge over the whole or part of the Site or the Biodiversity Gain Site shall take effect subject to this Agreement provided that any mortgagee shall only be liable for any breach if it has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

11 VAT

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

12 DETERMINATION OF DISPUTES

In the event of any dispute between the parties in respect of the terms of this Agreement and the parties hereto having been unable to resolve the same within four (4) weeks either party shall be entitled to refer the matter in dispute to expert determination by an expert of not less than ten (10) years' standing in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute another professional institution or body the identity of such person in default of agreement being an appointment made by the President of the Royal Institution of Chartered Surveyors who shall determine the matter in such manner as the President shall direct in giving notice of the expert's appointment the terms of appointment including that they make reasonable endeavours to determine the matter in dispute and issue their determination in writing giving full reasons therefor within ten (10) weeks of their appointment and that their costs shall be paid by the parties as directed and the parties shall comply with the expert's directions and determination save for matters of law and any manifest error.

13 JURISDICTION

This Agreement is governed by and interpreted in accordance with the laws of England and the Courts of England and Wales shall have exclusive jurisdiction in respect of any dispute arising in relation to this Agreement.

In witness whereof the parties hereto have duly executed this Agreement as a Deed on the day and year first before written.

Schedule 1
Description of the Site

Land to the west of Smithy Bridge Road, Littleborough registered at HM Land Registry under title number(s) MAN203625 and GM695321 and shown outlined in red on Plan 1.

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Schedule 2

Owners' Obligations —Affordable Housing

- 1.1 Subject to Paragraph 4 below the Affordable Housing Units shall be used solely for the purpose of providing Affordable Housing as Social Rented Units and the Affordable Housing Units must only be Occupied by:
 - 1.1.1 Approved Persons (as the sole residence of such Approved Persons and their households); and
 - 1.1.2 By a person (and their household) being in Housing Need.
- 1.2 The Owners shall not Occupy or allow more than 80% of the Market Units comprised within the Development to be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and until either:
 - 1.2.1 the Affordable Housing Units have been transferred pursuant to paragraph 2 below to a Registered Provider; or
 - 1.2.2 the Affordable Housing Units have been released from the Affordable Housing Provisions of this Agreement pursuant to paragraph 3 below.

2 Transfer of the Affordable Housing Units

- 2.1 The Owners will not Commence the Development until the Owner has submitted to the Council and the Council have approved in writing a scheme showing how the Affordable Housing Units will be marketed to Affordable Housing Providers ("the Marketing Scheme") provided that if the Council has not responded (approving the scheme or explaining why the scheme is not approved) within thirty (30) Working Days of the Owner submitted the draft Marketing Scheme to the Council, the Marketing Scheme shall be deemed to be approved and the Owner shall be permitted to Commence Development on the thirty first (31st) Working Day following such submission .
- 2.2 The Owners shall comply with the approved Marketing Scheme and will use reasonable endeavours to enter into a contract to dispose of a freehold interest in all the Affordable Housing Units to a Registered Provider at a Discounted Purchase Price. For the avoidance of doubt, the Owner shall not be required to transfer the Affordable Housing Units for a sum less than the Discounted Purchase Price.
- 2.3 The Owners shall provide confirmation to the Council within ten (10) Working Days of entering into an agreement for the transfer of the Affordable Housing Units to a Registered Provider.

3 Cascade Mechanism

- 3.1 In the event

that the Council is reasonably satisfied (expressed in writing) that the Owner has taken all reasonable endeavours to transfer the unsold Affordable Housing Units to an Affordable Housing Provider in accordance with the approved Marketing Scheme and have been provided with written evidence of the Owners endeavours to secure such transfer then it shall notify the Owner accordingly (acting reasonably and without undue delay) and the Owner may elect to pay to the Council the Affordable Housing Commuted Sum.

- 3.2 The approved Marketing Scheme may be amended with the Councils consent in writing.

- 3.3 Once the Owners have paid the Affordable Housing Commuted Sum to the Council pursuant to the above paragraphs, the provisions of this Schedule will no longer apply to the Affordable Housing Units.

4 Mortgagee Protection and Releases

- 4.1 The Affordable Housing provisions in Schedule 2 of this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 4.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 4.1.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in Schedule 2 of this Agreement which provisions shall determine absolutely
 - 4.1.3 such Affordable Housing Units are owned by a tenant who has exercised a statutory right to acquire by way of a purchase grant or like scheme or any mortgagee or chargee of such tenant or any receiver appointed by such mortgagee or chargee (including administrative receivers)
 - 4.1.4 such Affordable Housing Units are in the control of a chargee in accordance with the Shared Ownership Terms
 - 4.1.5 such Affordable Housing Units are owned by an occupier who has purchased 100% (one hundred per cent) of the equity of a Shared Ownership lease.

Schedule 3 (Part 1)
Owners and the BNG Owners' obligations Biodiversity Net Gain - Provision

BNG Monitoring Payment

1. The Owners hereby covenant to the Council to pay the Biodiversity Gain Site Monitoring Contribution prior to Commencement of Development
2. Not to Commence Development until the Biodiversity Gain Site Monitoring Contribution has been paid to the Council.

Off Site BNG

3. The Owner and/or the BNG Owner covenants with the Council so as to bind its interest in the Site and the Biodiversity Gain Site as follows to:
 - 3.1. Submit the Habitat Monitoring and Management Plan for the Biodiversity Gain Site to the Council for approval prior to the Commencement of Development.
 - 3.2. Not to Commence Development until the Habitat Monitoring and Management Plan has been submitted to and approved in writing by the Council
 - 3.3. Not to cause or permit the Occupation of any Dwelling until the Habitat Creation and Enhancement Works have been completed on the Biodiversity Gain Site and a Certificate of Completion has been issued by the Council.
4. The BNG Owners hereby covenant to the Council as follows, to:
 - 4.1. provide the Council with written notice when:
 - 4.1.1. the Habitat Creation and Enhancement Works as set out in the Habitat Monitoring and Management Plan have commenced and
 - 4.1.2. once all Habitat Creation and Enhancement Works have been completed.
 - 4.2. implement and comply with the provisions of the approved Habitat Monitoring and Management Plan for the BNG Period.
 - 4.3. notify the Council in writing of the Commencement Date within 10 Working Days of it occurring;
 - 4.4. begin the Habitat Creation and Enhancement Works no later than the date 12 months from Commencement of Development;
 - 4.5. complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan;
 - 4.6. issue the Completion Date Notice to the Council within 10 Working Days of the Completion Date of the Habitat Creation and Enhancement Works;
 - 4.7. promptly rectify any defects in the Habitat Creation and Enhancement Works identified by the Council and issue a subsequent Completion Date Notice and thereafter to continue to rectify any defects and issue Completion Date Notices until the Council issues a Certificate of Completion;
 - 4.8. upon receiving the Certificate of Completion from the Council, to maintain the Biodiversity Gain Site in accordance with the approved Habitat Management and Monitoring Plan and to and comply with all the provisions of the approved Habitat Monitoring and Management Plan for a period of not less than 30 years from the Completion Date; and

- 4.9. provide a Monitoring Report to the Council within 20 (twenty) Working Days of each Monitoring Report date specified in the Habitat Management and Monitoring Plan. Which shall be the following periods from the date of issue of the Certificate of Completion; the first third and fifth year and thereafter every five years (unless agreed otherwise).

5. Allocation

- 5.1. To notify the Council when:
 - 5.1.1. The BNG Capacity is first Allocated; and
 - 5.1.2. The BNG Capacity is fully Allocated
- 5.2. Not to Allocate any BNG Capacity whilst an application to amend the registration is pending unless the remaining BNG Capacity is sufficient to fulfil any such Allocation

6. Biodiversity Gain Site Register

- 6.1. Apply to Register the Biodiversity Gain Site on the Biodiversity Gain Site Register at any time but no later than when the first application for Allocation is made PROVIDED THAT the Council is hereby authorised to apply to revise the registration made here under in line with any determination by the expert pursuant to Clause 12;
- 6.2. Pay the Council's reasonable costs in respect of any application by it to applying to amend the registration;
- 6.3. Notify the Council in writing of the date of any registration within 10 Working Days of it occurring;
- 6.3. Do the following if an application to register the Biodiversity Gain Site is unsuccessful, as soon as reasonably practicable:
 - 6.3.1. notify the Council in writing;
 - 6.3.2. use all reasonable remedy the defects in the application;
 - 6.3.3. re-apply to register the Biodiversity Gain Site on the Biodiversity Gain Site Register; and
 - 6.3.4. continue to notify the Council and remedy defects in any application until the Biodiversity Gain Site is registered on the Biodiversity Gain Site Register.
- 6.4. Apply to amend the registration if directed by the expert pursuant to Clause 12
- 6.5. Not to amend the registration without the Council's prior written approval, other than to record additional Allocations or where necessary to comply with this Deed.
- 6.6. To do the following once a Modification Notice has been confirmed by the Council or determined by the expert to be valid:
- 6.7. submit the modified Habitat Management and Monitoring Plan to the Council in the approved form, to be attached to this Deed by way of memorandum; and
- 6.8. apply to amend the registration in the approved form.

6. Habitat Management and Monitoring Plan

- 6.1. To notify the Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:
 - 6.1.1. the proposed amended Habitat Management and Monitoring Plan;
 - 6.1.2. a statement of reasons for such amendment; and

6.1.3.confirmation (with reasons) that the amendment would not prejudice:

- a) the use or management of the Biodiversity Gain Site in a manner consistent with its function to deliver Biodiversity Net Gain; and
- b) the continued functioning of the Biodiversity Gain Site for Biodiversity Net Gain.

6.1.4.Where the Council agrees (or the expert determines pursuant to Clause 12) that an amended Habitat Management and Monitoring Plan is approved, to:

- a) apply to amend the registration as soon as reasonably practicable where necessary to reflect the BNG Capacity or remaining BNG Capacity under the amended or replacement Habitat Management and Monitoring Plan; and
- b) keep the Council informed of the progress of the application and take all reasonable steps to conclude it (including correcting and re-submitting it where necessary).

7. Access for Inspection

- 7.1. From the Commencement Date, to allow the Council, its agents, and contractors with or without workmen and equipment to:
- 7.2. enter onto the Biodiversity Gain Site at all reasonable times (following reasonable notice given in accordance with paragraph 4 of Schedule3 (part 2) to monitor compliance with
 - 7.2.1. the obligations in this Deed;
 - 7.2.2. Any Breach Notice;
- 7.3. pass and repass across any land in the Owner's or the BNG Owners control which is necessary to gain access to for the purpose of accessing the Biodiversity Gain Site .

8. Step-In Rights

- 8.1. Where a Breach Notice is served, to notify the Council within 20 Working Days of service of the Breach Notice whether the BNG Owner accepts or disputes the notice;
- 8.2. Where it notifies the Council that it disputes a Breach Notice (or it is unable to agree remedial steps), to:
 - a) to include a reasoned response in the notice (if disputing the Breach Notice); and
 - b) it may request, within 10 Working Days of any time limit in the Breach Notice (or other extended timeframe as agreed with the Council in writing), that the matter be referred for Expert Determination;
- 8.3. Where it has notified the Council that it accepts a Breach Notice (or the Expert Determination confirms that it is valid), to:
 - a) comply with the requirements of the Breach Notice within the time limits specified by the Breach Notice (or other extended time frame as agreed with the Council in writing);
 - b) use reasonable endeavours to agree the following with the Council within 20 Working Days of the notifying the Council that it accepts the Breach Notice:
 - i. the steps required to remedy the breach; and
 - ii. if applicable, any remedial works;

- c) commence and diligently proceed to remedy the breach within the time period specified in the Breach Notice (or such other period as may be agreed with the Council under sub-paragraph (a) in accordance with the details agreed under sub-paragraph a);
- 8.4. To comply with any requirements imposed on the BNG Owner in connection with a Breach Notice by the Expert Determination within the time limits specified in the Expert's Determination;
- 8.5. Where it has failed to comply with a time limit of the Breach Notice or Expert's Determination in respect of a Breach Notice, to allow the Council, its agents, and contractors with or without workmen and equipment to enter:
 - a) the Biodiversity Gain Site ; and
 - b) other land in the Owner's and BNG Owners control needed to access the Biodiversity Gain Site ,

at all reasonable times following reasonable notice given in accordance with paragraph 4 of Schedule 3 (part 2) to carry out works reasonably necessary to comply with the requirement of the Breach Notice or the Expert's determination, as applicable,.
- 8.6. To pay the Council a sum equivalent to its reasonably and properly incurred costs in respect of carrying out the relevant works under paragraph 6.5 within 20 Working Days of a notice requesting payment (such notice to include a breakdown and evidence of such costs incurred).

SCHEDULE 3 (part 2)

The Council covenants with BNG Owner as follows:

- 1. Inspection of the Habitat Management and Monitoring Plan
 - 1.1 Subject always to paragraph 5 of this Schedule 3 (Part 2) to:
 - a) inspect the Habitat Creation and Enhancement Works within 30 Working Days following receipt of the Completion Date Notice;
 - b) to do the following where Habitat Creation and Enhancement Works are inspected under sub-paragraph a):
 - i. promptly issue a Certificate of Completion if the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council; or
 - ii. promptly notify the Owner of any defects, if the Council acting reasonably and properly determines that the Habitat Creation and Enhancement Works have not been satisfactorily completed; and
 - c) where the BNG Owner issues a subsequent Completion Date Notice under paragraph 2(d) of Schedule 3 (Part 1), re-inspect the Habitat Creation and Enhancement Works under paragraph 1.1(a)) of this Schedule 3 (part 2) and to comply with paragraph 1.1(b) of this Schedule until it issues the Certificate of Completion.

2 Habitat Management and Monitoring Plan

2.1 Not to unreasonably withhold or delay giving its written approval to any revised or replacement Habitat Management and Monitoring Plan submitted by the BNG Owner to the Council under Schedule 3 of this Deed;

2.2 To monitor the implementation and operation of the Habitat Management and Monitoring Plan by a suitably qualified ecology and environmental management professional by way of periodic physical visits to the Biodiversity Gain Site and/ or remotely surveying the Biodiversity Gain Site and to provide, as soon as practicable afterwards, a written report to the BNG Owner of the findings any monitoring activities, at the following intervals:

- a) the first third and fifth year following the issue of the Certificate of Completion; and
- b) every five years thereafter until the Agreement Expiry Date.

3 Habitat Management and Monitoring Contribution

To use the Biodiversity Gain Site Monitoring Contribution for its intended purpose and not for any other purpose.

4 Right of Access

4.1 To give not less than 5 Working Days' notice to the BNG Owner of its intention to access the Biodiversity Gain Site for the purposes of inspection under of this Deed to ascertain the BNG Owner's compliance with its covenants under this Deed or a Breach Notice.

4.2 All rights of access exercised by the Council pursuant to the terms of this deed are subject always to the Council making good any damage caused and complying with the Owner's reasonable requirements.

5 Breach Notice and Step-in Rights

5.1 Where it reasonably and properly considers that the BNG Owner is not complying with its obligations under this Deed, and intends to take steps to remedy the breach, to first notify the BNG Owner:

- a) the reasons for alleging non-compliance;
- b) the steps it proposes the BNG Owner should take to remedy any breach or non-compliance, and
- c) the reasonable time limits for the BNG Owner to take these steps;

5.2 Where it serves a Breach Notice (or the Expert Determination confirms that the BNG Owner should take any steps within a specified time limit), it may notify the BNG Owner of any extension of time specified in the Breach Notice or Expert's Determination, as it considers appropriate (in its absolute discretion);

5.3 Where the BNG Owner does not comply with the time limits specified in the Breach Notice (or as otherwise agreed) or the Expert's Determination, undertake the requirements imposed on the BNG Owner as set out in the Breach Notice or Expert's Determination provided that the Council:

- a) provides reasonable notice that it, its agents, and contractors with or without workmen and equipment will enter the Biodiversity Gain Site and/or land in the Owner's or BNG owners control to access the Biodiversity Gain Site ;
- b) ensures minimal damage and inconvenience to the Owner;
- c) promptly repairs any damage caused by exercising the step-in rights under this paragraph; and

d) issues to the BNG Owner a full breakdown of the time spent and costs incurred in exercising its step-in rights under this paragraph.

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Schedule 4

Council's Obligations

The Council hereby covenants to the Owners, the BNG Owners and the Developer as follows:

- 1 that within five (12) Working Days of completion of this Agreement it will issue the Permission;
- 2 that it will use all sums paid under the provisions of this Agreement for the purposes set out in this Agreement and for no other purpose;
- 3 that following receipt of any payments or financial contributions from the Owners or BNG Owners pursuant to any obligations in this Agreement, the Council shall place the payments or financial contributions on deposit in the Council's bank accounts (as the Council in its sole discretion shall decide) and to attribute a rate of interest thereon;
- 4 that the Council shall comply with the obligations and timescales set out in Paragraph 3 of Schedule 3 of this Agreement;
- 5 that in the event that the works contained in the Habitat Management and Monitoring Plan in respect of the Biodiversity Gain Site result in a Biodiversity Net Gain in excess of the Biodiversity Net Gain Requirement (i.e. 10%) the Council will consider offsetting such excess against any biodiversity net gain requirements which may apply in respect of other development(s) (whether or not such development(s) are in the contemplation of the parties at the date of this Agreement) at the request of the Developer.

Executed as a deed by affixing the
Common Seal of **The Rochdale Borough
Council** in the presence of:

.....
Authorised Signatory

Signed as a deed by **Stephanie Mills** in
the presence of:

.....
Signature

.....
Witness Signature

.....
Witness Name

.....
Witness Address

.....
Witness Occupation

Signed as a deed by **Adam Jason Mills** in
the presence of:

.....
Signature

.....
Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **Jonathan Daniel Mills** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **Stephen Mahon** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **David Anthony Buckley** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **Gordon Arthur Buckley** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **Margaret Buckley** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **David Drake** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Signed as a deed by **GAIL WOOD** in the presence of:

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Signature

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Witness Signature

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Witness Name

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Witness Address

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Witness Occupation

Executed as a deed by **TAYLOR WIMPEY UK LIMITED** acting by a director in the presence of:

.....
Director Signature

.....
Witness Signature

.....
Witness Name

.....
Witness Address

.....
Witness Occupation

[INSERT EXECUTION BLOCKS FOR MJF SSAS TRUSTEES LIMITED, CHRISTOPHER DAVID GREAVES AND JOANNE TRACIE GRIEVES]

APPENDIX 1

Site Plan

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APPENDIX 2
Biodiversity Gain Site Plan

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