

DATED

2024

HIGH PEAK BOROUGH COUNCIL (1)

AND

WAIN HOMES (NORTH WEST) LIMITED (2)

AND

ANDREW BENNETT (3)

AND

SUSAN BENNETT (4)

AGREEMENT (AND UNILATERAL UNDERTAKING)

**Pursuant to Section 106 of the Town and Country Planning Act 1990 relating to
Land at Dinting Vale, Dinting, Glossop, Derbyshire**

Legal Services
High Peak Borough Council
The Town Hall
Market Street
Buxton
Derbyshire
SK17 6EL

Planning Appeal Ref: APP/H1033/W/24/3339815

THIS AGREEMENT is made on

2024

BETWEEN:

- (1) **HIGH PEAK BOROUGH COUNCIL** of The Town Hall, Market Street, Buxton, Derbyshire, SK17 6EL (hereinafter referred to as “**the Council**”);
- (2) **WAIN HOMES (NORTH WEST) LIMITED** whose registered company address is at Exchange House Kelburn Court, Birchwood, Warrington, WA3 6UT (Registered Company No: 04978580)(hereinafter referred to as “**the Developer**”);
- (3) **ANDREW BENNETT** of 1 Hawthorn Bank, Hadfield, Glossop SK13 2EY (hereinafter referred to as “**the Owner**”); and
- (4) **SUSAN BENNETT** of Flat 4, 68 Southcote Road, Bournemouth BH1 3SS (hereinafter referred to as “**Susan Bennett**”);

AND ALSO CONTAINS COVENANTS GIVEN TO:

- (5) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire DE4 3AG (hereinafter referred to as “**the County Council**”).

DEFINITIONS

In this Agreement the expressions listed in column 1 below shall have the meaning respectively assigned in relation thereto in column 2 unless the context otherwise requires it.

Column 1

Column 2

“1990 Act”	the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991;
“AQMA”	the High Peak Borough Council Air Quality Management Area No 2, an Order made by the Council on the 21st May 2020;
“Action Plan”	The High Peak Borough Council draft Air Quality Action Plan dated Feb 2024;

“Adjoining Land”	the part of the Allocation Site not owned by the Owner;
“Agreement”	this Agreement;
“Air Quality Contribution”	the sum of £13,800.00 (such sum being equivalent to £150.00 per Dwelling) CMP Indexed payable to the Council to support and implement actions associated with the Action Plan, namely the real time monitoring of NOx and PM10 data on the A57 Dinting Vale within the AQMA, and if any sums remain to support a further feasibility study into local sustainable travel in the area;
“Allocation Site”	the land allocated in the High Peak Local Plan 2016 in policy DS4 part of which includes the Site;
“Appeal”	the appeal to the Secretary of State following the refusal of the Application by the Council and which appeal has been given reference APP/H1033/W/24/3339815;
“Biodiversity Champion”	A person nominated by the Developer in accordance with the BNG Plan to ensure that the BNG Plan is adhered to and correctly implemented;
“BNG Plan”	the Biodiversity Net Gain (BNG) Strategy & 30 Year Management Plan appended to this Agreement at Appendix [B] prepared by Tetra Tech Group Limited, with reference number 784-B039096 Rev 4, dated February 2024;
“CMP Index”	the Construction Materials Price Index published by the Department for Business Innovation and Skills or during any period when no such index exists the index which replaces it or is the nearest equivalent to it;
“CMP Indexed”	such increases to any sum or sums payable to the Council or the County Council (under this Agreement) on an annual basis or pro rata

per diem from the date of the Planning Permission to the date of payment based upon and in direct proportion to changes to the figure of the CMP Index;

“Commencement”

the carrying out of material operations as defined by section 56 of the 1990 Act save that none of the following operations shall constitute a material operation for the purposes of this Agreement:

- works of demolition
- works of site clearance
- ground investigations and site survey works
- construction of boundary fencing or hoardings
- construction of temporary accesses and/or temporary highway works
- archaeological investigations
- landscaping works
- noise attenuation works
- the removal from the Site of the lowland dry acid grassland and purple moor grass and rush pasture forming part of the Off-Site Translocation Measures

and the terms “Commenced” and “Commence” shall be construed accordingly;

“Council Monitoring Sum”

The sum of £6,268.92 payable to the Council towards the costs of monitoring (including reporting under the Community Infrastructure Levy Regulations 2010) the obligations relating to the Council contained in this Agreement;

“County Monitoring Sum”

The sum of £308.00 payable to the County Council towards the costs of monitoring (including reporting under the Community Infrastructure

Levy Regulations 2010) the obligations relating to the County Council contained in this Agreement;

“Decision Letter”	the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed;
“Development”	the development of the Site by the construction of 92 Dwellings including areas of public open space, landscaping and associated works pursuant to the Planning Permission;
“Dwelling/s”	any dwelling to be constructed pursuant to the Planning Permission for the purpose of residential Occupation by an individual(s);
“Health Contribution”	the sum of £82,800.00 CMP Indexed payable to the Council to be used to provide additional capacity to any medical general practice in the vicinity of the Development and within Dinting Vale or Glossop, which may be through the extension of one or more existing sites, or as a contribution towards a new building in Dinting Vale or Glossop;
“Interest Rate”	the base lending rate of the Bank of England from time to time;
“Libraries Contribution”	the sum of £6,460.00 RP Indexed payable to the County Council to be used towards purchasing additional library stock at Glossop Library;
“Management Company”	<p>a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of any Unadopted Highways, the Open Space and Public Open Space and:</p> <ol style="list-style-type: none">1. which is incorporated in England and Wales;2. which has a registered office in England;3. whose primary objects permit it to maintain and renew any Unadopted Highways, the Open Space and Public Open Space;

4. be an organisation with an appropriate level of public liability insurance;

5. have or have the means to engage and/or employ an appropriate level of qualified personnel who have the ability capacity and necessary equipment to manage and maintain any Unadopted Highways, the Open Space and Public Open Space in accordance with the approved Open Space Scheme.

“Occupation” occupation pursuant to and for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

“Off-Site Enhancement Measures” the habitat retention and enhancement measures to be delivered on the Off-Site Mitigation Land for 30 years together with the addition of newly created other neutral grassland following completion of the Off-Site Translocation Measures in accordance with the BNG Plan;

“Off-Site Mitigation Land” the land located at Chinley High Peak comprised within registered title number DY347408 (part) and outlined in red on the plan at Appendix B to this Agreement, for identification purposes only;

“Off-Site Translocation Measures” the translocation of 0.51 hectares of lowland dry acid grassland and purple moor grass and rush pasture from the Site to the Off-Site Mitigation Land in accordance with the BNG Plan;

“Off-Site Translocation Timetable” a timetable for the delivery of the Off-Site Translocation Measures to be approved by the Council (such approval not to be unreasonably withheld or delayed) following the recommendations of the BNG Plan in terms of suitable temperature and weather conditions which timetable shall allow delivery of the measures in or around the Spring or Autumn periods unless circumstances at the time reasonably require otherwise;

“Off-Site Units”	18.94 units of Tier A1 Habitat (comprising 16.04 Tier A1 Habitat (grassland), and 2.9 Tier A1 Habitat (heathland and shrub) purchased from a habitat bank located within the High Peak Borough Council administrative area or a 15 mile radius of the Site in accordance with the BNG Plan or in the absence of any such habitat bank, purchase of equivalent Government biodiversity units;
“On-Site BNG Measures”	habitat retention and enhancement measures to be delivered for 30 years following completion of the construction and landscaping programme within the Site in accordance with the BNG Plan;
“Open Space”	that part of the Development consisting of any open spaces in the Site that are not to be transferred to any occupier of the Dwellings and which are not to be made available as publicly accessible open space;
“Open Space Scheme”	a scheme for the location, layout, planting details, and timing of delivery in relation to completion of the Dwellings and the future management and maintenance of the Open Space and the Public Open Space, including equipment forming part of the Trim Trail, as part of the Development to be submitted in accordance with this Agreement and to accord (where relevant) with the provisions of the BNG Plan;
“Planning Application”	the application for planning consent for the Site submitted to the Council and allocated reference number HPK/2022/0456;
“Planning Inspector”	the planning inspector appointed by or on behalf of the Secretary of State to determine the Appeal;
“Planning Permission”	any planning permission to be issued by the Secretary of State pursuant to the Appeal;
“Practical Completion”	construction and fitting out ready for first Occupation save only for normal snagging;

“Public Open Space”	that part of the Development consisting of any open spaces in the Site that are not to be transferred to any occupier of the Dwellings which is to be made available as publicly accessible open space including the Trim Trail and any Unadopted Highways;
“RP Index”	the Retail Price Index published by the published by the Office for National Statistics or during any period when no such index exists the index which replaces it or is the nearest equivalent to it;
“RP Indexed”	such increases to any sum or sums payable to the Council or the County Council (under this Agreement) on an annual basis or pro rata per diem from the date of the Planning Permission to the date of payment based upon and in direct proportion to changes to the figure of the RP Index;
“Secretary of State”	the Secretary of State for Levelling Up, Housing and Communities or any other minister or authority for the time being;
“Site”	land at Dinting Vale, Dinting, Glossop, Derbyshire comprised within Title Number DY311398 and shown for indicative purposes edged red on the plan at Appendix A to this Agreement with drawing reference number WH/DV/LP/01;
"Statutory Undertaker"	any company corporation board or authority authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;
“Sustainable Travel Contribution”	the sum of £61,920.00 CMP Indexed payable to the Council to be used towards the creation of a new pedestrian path between the Site and Gamesley Sidings or if such new pedestrian path is not considered deliverable by the Council to be used to upgrade and/or maintain footpaths in the immediate vicinity of the Site or towards other sustainable transport initiatives in the vicinity of the Site and in

circumstances where the Council considers the Sustainable Travel Contribution cannot be applied towards any of the purposes specified above (but not otherwise) the sum shall be applied by the Council towards the purposes of the Tree Planting Contribution (and/or Tree Maintenance Contribution);

“Tier A1 Habitat”	a habitat classed within tier A1 of the statutory biodiversity credit prices guidance first published by the Department for Environment, Food & Rural Affairs on 27 July 2023;
“Travel Plan”	the travel plan prepared by SCP dated March 2023;
“Travel Plan Monitoring Contribution”	the sum of £6,325.00 RP Indexed payable to the County Council as a contribution to the cost of monitoring the performance of the Travel Plan;
“Tree Maintenance Contribution”	the sum of £19,840 CMP Indexed payable to the Council to be used towards the maintenance of trees;
“Tree Planting Contribution”	the sum of £72,400 CMP Indexed payable to the Council to be used towards the planting of trees;
“Trim Trail”	play and fitness equipment located as shown in the Trim Trail Specification;
“Trim Trail Specification”	The specification to which the Trim Trail shall be constructed and maintained as shown at Appendix C;
“Unadopted Highways”	any path or road used by the public in general (and not contained within the boundary of a Dwelling) within the Site that are not adopted by the County Council.

WHEREAS:-

- (1) The Council is the local planning authority for the purposes of the 1990 Act in the area in which the Site is situated and by whom the obligations in this Agreement are enforceable.
- (2) The County Council is the highways and education authority for the area in which the Site is situated and is a local planning authority for the purposes of this Agreement.
- (3) The Owner and Christopher Bennett (of Flat 4, 68 Southcote Road, Bournemouth BH1 3SS) are recorded as being the registered owners of the freehold interest in the Site on the register for Title Number DY311398 as at the date of this Agreement.
- (4) Christopher Bennett died on 3 November 2022 and probate over his estate was granted on 16 August 2023. The Owner and Susan Bennett are the executors of the Last Will and Testament of Christopher Bennett and Susan Bennett is the sole beneficiary of Christopher Bennett's estate under that Last Will and Testament.
- (5) Susan Bennett has agreed to enter into this Agreement for the purposes of the consent and confirmation given at clause 11.5 only.
- (6) The Developer has the benefit of an option to purchase the Site (entry number C4 of registered Title Number DY311398) and is the freehold owner of the Off-Site Mitigation Land.
- (7) The Developer submitted the Planning Application to the Council for planning permission in order to carry out the Development in the manner set out in the plans specifications and particulars forming part of the Planning Application.
- (8) The Council refused the Planning Application on 27 October 2023. The Developer has submitted the Appeal to the Secretary of State.
- (9) The parties have agreed to enter into this Agreement to create planning obligations in favour of the Council and the County Council pursuant to Section 106 of the 1990 Act in the event that Planning Permission is granted pursuant to the Appeal and to be bound by and observe and perform the covenants hereinafter contained.

- (10) The covenants, restrictions and obligations contained in this Agreement are enforceable by the Council (and the County Council as relevant) in accordance with section 106 of the 1990 Act.

NOW THIS DEED WITNESSES as follows:

1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Sections 111 and 120 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

2 **Owner's Covenants**

2.1 The Owner hereby covenants with the Council (in respect of the obligations given in clauses 2.2 and clauses 2.4 – 2.10) and the County Council (in respect of the obligations given in clause 2.3) to bind the Site in accordance with this Agreement to observe and perform and cause to be observed and performed the undertakings, covenants and restrictions listed in this clause 2 below.

2.2 The Owner covenants to pay financial contributions to the Council in accordance with this Agreement as follows:

Air Quality Contribution

2.2.1 to pay the Air Quality Contribution to the Council prior Commencement of Development;

2.2.2 not Commence Development until the Air Quality Contribution has been paid to the Council;

Health Contribution

2.2.3 to pay the Health Contribution to the Council at Commencement of the Development;

2.2.4 not to Commence Development until the Health Contribution has been paid to the Council;

Tree Planting Contribution

2.2.5 to pay the Tree Planting Contribution to the Council prior to the Occupation of the 1st Dwelling;

- 2.2.6 not to allow Occupation of the 1st Dwelling until the Tree Planting Contribution has been paid to the Council;

Tree Maintenance Contribution

- 2.2.7 to pay the Tree Maintenance Contribution to the Council prior to occupation of the 1st Dwelling;
- 2.2.8 not to allow occupation of the 1st Dwelling until the Tree Maintenance Contribution has been paid to the Council;

Sustainable Travel Contribution

- 2.2.9 to pay the Sustainable Travel Contribution to the Council prior to Occupation of the 20th Dwelling; and
 - 2.2.10 not to allow Occupation of the 20th Dwelling until the Sustainable Travel Contribution has been paid to the Council.
- 2.3 The Owner covenants to pay financial contributions to the County Council in accordance with this Agreement as follows:

Libraries Contribution

- 2.3.1 to pay the Libraries Contribution to the County Council prior to Occupation of the 1st Dwelling;
- 2.3.2 not to allow Occupation of the 1st Dwelling until the Libraries Contribution has been paid to the County Council;

Travel Plan

- 2.3.3 to pay to the County Council the Travel Plan Monitoring Contribution prior to Occupation of the 1st Dwelling: and
- 2.3.4 not to allow Occupation of the 1st Dwelling until the Travel Plan Monitoring Contribution has been paid to the County Council.

Open Spaces and Public Open Spaces

- 2.4 The Owner covenants with the Council:
- 2.4.1 not to Commence Development unless the Open Space Scheme is submitted by the Owner and approved in writing by the Council;
- 2.4.2 that within 30 working days (or within such other time period that the Council may reasonably require and which may be agreed in writing between the Council and the Owner within the said initial 30 working day period) of the Council receiving the Open Space Scheme from the Owner the Council will notify the Owner in writing of its approval to the Open Space Scheme proposed by the Owner or will acting reasonably provide in writing its proposed amendments to the Open Space Scheme pursuant to which the Owner acting reasonably shall submit a revised Open Space Scheme incorporating those amendments as are reasonable and accepted PROVIDED THAT if the Council does not notify the Owner of its approval or proposed amendments to the Open Space Scheme within 30 working days (or such other period of time that may be agreed) it shall be deemed that the Council has approved the Open Space Scheme submitted by the Owner AND FURTHER PROVIDED THAT if agreement cannot be reached between the Council and the Owner within 45 days of the date of the submission to the Council (or such other period of time that may be agreed) then the provisions of clauses 12.1 and 12.2 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute;
- 2.4.3 that upon receipt of the Council's written approval or deemed approval to a Open Space Scheme pursuant to clause 2.4.2 (or upon receipt of expert determination in relation to the Open Space Scheme if applicable) the Owner shall implement and provide the Open Space and the Public Open Space in accordance with the approved Open Space

Scheme subject to any variation to implementation and provision contained in the implementation programme agreed as part of the Open Space Scheme and any variations that may be agreed in writing from time to time between the Owner and shall:

- (i) (subject to clause 2.6 and 2.7 below) allow the public access to the Public Open Space on foot and where applicable bicycle only at all times;
- (ii) construct those areas performing a pedestrian thoroughfare to the standards required by the relevant planning conditions attached to the Planning Permission; and
- (iii) ensure that the Open Space and the Public Open Space is kept in a clean and tidy state and properly maintained in accordance with the approved Open Space Scheme;

2.4.4 that upon the Open Space and the Public Open Space being completed the Owner will serve notice on the Council confirming completion and upon the Open Space and the Public Open Space being completed to the Council's reasonable satisfaction in accordance with the approved Open Space Scheme the Owner will either:

- (i) maintain and manage the Open Space and Public Open Space in accordance with the Open Space Scheme (or any variation that may be agreed in writing between the Owner and the Council from time to time) IN DEFAULT OF WHICH the Council shall be entitled (upon giving reasonable prior written notice to the Owner) to carry out any maintenance works reasonably required to the Open Space and the Public Open Space and recover the proper and reasonable costs and expense involved from the Owner; or
- (ii) transfer title for the Open Space and the Public Open Space to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the Council and all

further maintenance shall be thereafter carried out by the Management Company PROVIDED THAT it shall be a term of the transfer that the Management Company will:

- (A) maintain and manage the Open Space and the Public Open Space in accordance with this Agreement and the Open Space Scheme as the case may be or any variations that may be agreed in writing from time to time in respect of the Open Space Scheme;
- (B) only allow the use of the Public Open Space for public access and recreation and for no other purpose, and
- (C) maintain the Open Space as open land in accordance with the Open Space Scheme and for no other purpose

and the Owner shall give the Council written notice of which of clauses 2.4.4(i) or 2.4.4(ii) it has selected within 10 working days of Practical Completion of the Open Space and the Public Open Space.

2.5 The Open Space Scheme (including the location of the land to be provided as Open Space and Public Open Space) may be amended from time to time with the written agreement of the Owner and the Council.

2.6 The Owner covenants with the Council to allow public access to the Public Open Space subject to the following provisions:

2.6.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management PROVIDED THAT such requirements and regulations shall not be imposed without the Council's prior approval;

2.6.2 the Owner may erect notices on the Public Open Space and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being; and

- 2.6.3 access may be denied by the Owner for the maintenance, repair, cleansing or renewal of the Public Open Space or any building or land abutting it subject to the Council's prior approval.
- 2.7 The Owner may close the Public Open Space or any part thereof for reasonable periods by reason of:
 - 2.7.1 emergency;
 - 2.7.2 cleansing, maintenance and repair;
 - 2.7.3 direction of the emergency services or other lawful authority;
or
 - 2.7.4 construction activities whilst the Development is being built save that closure for this reason shall be subject to the Council's prior approval.

On-Site BNG

- 2.8 The Owner covenants with the Council to:
 - 2.8.1 deliver the On-Site BNG Measures in accordance with the BNG Plan;
 - 2.8.2 appoint a Biodiversity Champion in accordance with the BNG Plan and to inform the Council prior to Commencement of Development the name and contact details of that person;
 - 2.8.3 inform the Council of the name and contact details of any person appointed to replace the Biodiversity Champion from time to time;
 - 2.8.4 provide information to the Council to show compliance with the BNG Plan in regard to On-Site BNG Measures once a year for the first five years then five yearly thereafter; and
 - 2.8.5 manage and maintain the On-Site BNG Measures detailed pursuant to clause 2.8.1 for a period of 30 years from

completion of the On-Site BNG Measures in accordance with the BNG Plan.

Off-Site BNG

- 2.9 The Owner covenants with the Council not to:
- 2.9.1 Commence Development until the Off-Site Translocation Measures have been delivered on the Off-Site Mitigation Land in accordance with the Off-Site Translocation Timetable and in accordance with the BNG Plan; and
 - 2.9.2 allow Occupation of the 1st Dwelling until evidence of purchase of the Off-Site Units has been provided to the Council.

Site Access

- 2.10 Subject to the delivery and completion by or on behalf of the Council of the new pedestrian path between the Site and Gamesley Sidings specified in the definition of Sustainable Travel Contribution:
- 2.10.1 to provide access from the relevant part of the Site and to permit use by the public of that new pedestrian path; and
 - 2.10.2 not to block, gate or otherwise prevent access to or use of that new pedestrian path.

3 Other Obligations

- 3.1 The Developer hereby covenants with the Council to bind the Off-Site Mitigation Land in accordance with this Agreement to observe and perform and cause to be observed and performed the undertakings, covenants and restrictions listed in clause 3.2 below.

Off-Site Mitigation Land

- 3.2 The Developer covenants with the Council to:
- 3.2.1 prepare the Off-Site Mitigation Land in accordance with the BNG Plan and accept the Off-Site Translocation Measures

on the Off-Site Mitigation Land prior to the Commencement of Development on the Site;

- 3.2.2 deliver the Off-Site Enhancement Measures on the Off-Site Mitigation Land in accordance with the BNG Plan as soon as the Off-Site Translocation Measures are delivered on the Off-Site Mitigation Land;
- 3.2.3 manage and maintain the Off-Site Enhancement Measures delivered pursuant to clauses 3.2.1 and 3.2.2 for a period of 30 years from completion of the Off-Site Translocation Measures in accordance with the BNG Plan;
- 3.2.4 appoint a Biodiversity Champion in accordance with the BNG Plan and to inform the Council prior to Commencement of Development the name and contact details of that person;
- 3.2.5 inform the Council of the name and contact details of any person appointed to replace the Biodiversity Champion from time to time;
- 3.2.6 provide information to the Council to show compliance with the BNG Plan in regard to Off-Site Enhancement Measures once a year for the first five years then five yearly thereafter; and
- 3.2.7 not to utilise the Off-Site Mitigation Land for any purpose other than accepting the Off-Site Translocation Measures and delivering the Off-Site Enhancement Measures in accordance with the BNG Plan

Access to Adjoining Land

- 3.3 The Owner and the Developer covenant with the Council to work collaboratively and in good faith with the owner of the Adjoining Land with a view to facilitating an access from the Adjoining Land to and through the Site for the purposes of delivering access and services in connection with the development of the Adjoining Land for housing and associated infrastructure (the location of such access and the nature of such required works being the subject of a future planning application

to be submitted by or on behalf of the owner of the Adjoining Land) but subject always to:

- 3.3.1 the Owner and the Developer and the owner of the Adjoining Land first agreeing (and committing contractually to) commercial terms in relation to the delivery of such an access and services and all associated rights;
- 3.3.2 the delivery of any works pursuant to such an agreement or otherwise pursuant to any future planning permission relating to the development of the Adjoining Land not prejudicing the delivery of the Development on the Site pursuant to the Planning Permission (or any variation thereto); and
- 3.3.3 such arrangements not being contrary to any of the obligations in this Agreement;

4 **Indexation of Financial Contributions**

- 4.1 Where any financial contribution in this Agreement is to be “CMP Indexed” or “RP Indexed” then the amount of the contribution after application of the CMP Index or RP Index shall be calculated according to the formula:

Amount after indexation = $A \times B/C$

Where:-

A = the amount to be varied;

B = the CMP Index or RP Index at the date at which the amount is due to be paid; and

C = the CMP Index or RP Index at the date of this Agreement.

5 **Late Payment**

- 5.1 If any payment due under any of the provisions of this Agreement is not made on or before the date upon which it is due the party from whom it was due shall at the same time as making the payment to the other

party pay interest at 3% above the Interest Rate as at the date the payment was due and for the period starting with the date the payment was due and ending with the date on which payment of the sum on which interest is payable is received.

6 **Section 73 Variation**

6.1 In the event that the Council or Planning Inspector appointed by the Secretary of State shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the 1990 Act in respect of conditions attached to the Planning Permission or following an appeal, save and in so far as this Agreement has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Agreement to the Application and the Planning Permission shall be deemed to include any such subsequent planning applications and planning permissions as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly.

7 **Confirmation of Interest and Indemnity**

7.1 The Owner hereby warrants and confirms that to the best of his knowledge (and save as disclosed) apart from the parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or proceeds of sale of the Site or any part thereof.

7.2 The Developer hereby warrants and confirms that to the best of its knowledge (and save as disclosed) apart from the parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or proceeds of sale of the Off-Site Mitigation Land or any part thereof.

7.3 The Owner shall indemnify the Council and the County Council for any expenses or liability arising to them in respect of breach by the Owner of any obligations contained in this Agreement given on the part of the Owner.

- 7.4 The Developer shall indemnify the Council for any expenses or liability arising to them in respect of breach by the Developer of any obligations contained in this Agreement given on the part of the Developer.

8 **Costs**

- 8.1 The Developer shall pay to the Council and the County Council on completion of this Agreement the reasonable costs of the Council and the County Council incurred in the negotiation, preparation and execution of this Agreement
- 8.2 The Developer shall pay to the Council the Council Monitoring Fee and shall pay to the County Council the County Council Monitoring Fee on following the grant of Planning Permission.

9 **Commencement**

- 9.1 IT IS HEREBY AGREED AND DECLARED as follows:
- 9.2 Subject to clauses 6.1, 7.1, 7.2 and 8.1, this Agreement is conditional and shall only have effect upon:
- 9.2.1 the grant of Planning Permission pursuant to the Appeal;
and
- 9.2.2 the Commencement of Development.
- 9.3 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation in whole or in part:
- 9.3.1 is not a material planning consideration;
- 9.3.2 can be given no weight in determining the Appeal; or
- 9.3.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended),

then such planning obligation shall cease to have effect within this Agreement save as set out in the Decision Letter.

10 **Interpretation**

- 10.1 In this Agreement the expressions “the Council”, “the County Council”, “the Owner”, and “the Developer” shall where the context so admits be deemed to include their respective successors in title.
- 10.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 10.3 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of that restriction.
- 10.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment thereof for the time being in force and shall include all instruments, orders, plans, regulations, permission and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 10.5 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council and the County Council, this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development) granted (whether or not on appeal) after the date of this Agreement.
- 10.7 Nothing in this Agreement shall fetter, prejudice or affect the Council’s powers to enforce any specific obligation or term or condition nor shall anything contained in this Agreement fetter, prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as the local planning authority for the purposes of the 1990 Act or otherwise as a local authority.

- 10.8 Nothing in this Agreement shall fetter, prejudice or affect the County Council's powers to enforce any specific obligation or term or condition nor shall anything contained in this Agreement fetter, prejudice or affect any provisions, rights, powers, duties and obligations of the County Council in the exercise of its functions for the purposes of the 1990 Act or otherwise as a local authority.
- 10.9 No waiver (whether express or implied) by the Council or County Council, or any breach or default of the Owner or Developer or their agents, servants, successors in title or assigns in performing or observing any of the covenants or obligations contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or County Council from enforcing any such covenant or obligation or from acting upon any subsequent breach thereof.
- 10.10 If any provision in this Agreement shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 10.11 The planning obligation hereby created shall be registered as a Local Land Charge.
- 10.12 If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the 1990 Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the 1990 Act without the consent of the Owner or the Developer, this Agreement shall cease to have effect (but without prejudice to the rights of any party against the other in respect of any antecedent breach) PROVIDED THAT in the case of such a modification of the Planning Permission the Planning Permission shall be deemed to be incapable of implementation unless and until a further agreement pursuant to Section 106 of the 1990 Act is entered into by the parties or the Council determines that no such agreement is required.

11 **Enforceability**

- 11.1 No person shall be liable for a breach of any covenant or obligation contained in this Agreement after parting with all interest in the Site or the part of the Site (or in the case of clause 3 the Off-Site Mitigation Land or part of the Off-Site Mitigation Land) in respect of which such breach occurs but without prejudice to any liability in respect of any antecedent breach.
- 11.2 This Agreement shall not be binding upon or enforceable against any mortgagee or chargee of the Site or part thereof (or the Off-Site Mitigation Land or part thereof) from time to time unless and until it becomes a mortgagee or chargee in possession in which case they shall be liable as if they were a successor in title to the Owner (subject to the releases and exceptions set out in this Agreement).
- 11.3 This Agreement shall not be binding upon or enforceable against any Statutory Undertaker holding an estate or interest in the Site or part of the Site (or the Off-Site Mitigation Land or part of the Off-Site Mitigation Land) nor against plant equipment conduits or structures located there for its operational purposes.
- 11.4 This Agreement shall not be binding upon or enforceable against individual owners or occupiers of any Dwellings (or their mortgagees or chargees).
- 11.5 Susan Bennett hereby consents to the Owner entering into this Agreement (in her capacity as executor of and sole beneficiary under the Last Will and Testament of Christopher Bennett as referred to in Recital (4)) and acknowledges that the Site will be bound by the terms of this Agreement and confirms that the terms of this Agreement shall be enforceable against her in circumstances where she derives legal title to the Site (or part of the Site) after the date of this Agreement, but not otherwise.

12 **Resolution of Disputes**

- 12.1 Any dispute arising between any of the parties as to their respective rights, duties or obligations or as to the failure of the Council to give or

confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with the provisions of Clause 12.2 to the determination of an independent Chartered Surveyor.

- 12.2 Any reference to an independent Chartered Surveyor in accordance with Clause 12.1 shall be to a reputable Chartered Surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President for the time being of the Royal Institute of Chartered Surveyors or his duly appointed deputy and the decision of such independent Chartered Surveyor shall be final and binding upon the parties to the dispute (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Chartered Surveyor shall act as an expert pursuant to the terms of this Clause then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expeditiously as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Chartered Surveyor himself) shall be paid.

13 **Notices**

- 13.1 The Owner shall give written notice to the Chief Executive Officer of the Council at least 14 days prior to Commencement of the Development.
- 13.2 All notices requests demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom if dispatched by first class or

recorded delivery letter to the party to which such notice request demand or other written communication is to be given or made under this Agreement and addressed as follows:-

- 13.2.1 To the Council: Chief Executive Officer at Buxton Town Hall, Market Place, Buxton, Derbyshire, SK17 6EL
- 13.2.2 To the Owner: 1 Hawthorn Bank, Hadfield, Glossop SK13 2EY
- 13.2.3 To Susan Bennett: Flat 4, 68 Southcote Road, Bournemouth BH1 3SS
- 13.2.4 To the Developer: at Exchange House Kelburn Court, Birchwood, Warrington, WA3 6UT
- 13.2.5 To the County Council addressed to the Executive Director of Place at County Hall, Matlock, Derbyshire DE4 3AG

14 **Council Covenants**

- 14.1 The Council hereby covenants with the Owner:
 - 14.1.1 to deposit all monies received pursuant to this Agreement into an interest bearing account PROVIDED THAT the Council shall be entitled to use all interest accrued on any monies in like manner as the said monies from the date the actual payment is made until the date the actual monies are spent;
 - 14.1.2 to expend all monies received pursuant to this Agreement solely for the purpose for which the monies have been paid as set out in this Agreement;
 - 14.1.3 not to use any monies received pursuant to this Agreement other than for the relevant purpose set out in this Agreement or to set against expenditure (by way of reimbursement) already incurred by the Council for such purposes at the date of such receipt;

- 14.1.4 as soon as reasonably practicable following the written request of the Owner to issue to the Owner a letter confirming the discharge of one or more of the obligations;
- 14.1.5 if at the end of the period of 10 years from the date of receipt of any sum of money received by the Council pursuant to this Agreement has not been expended or committed for the purpose for which it was paid to reimburse the unexpended sum together with any interest accrued to the Owner or such other person as the Owner shall direct. For the avoidance of doubt, any sum (or part thereof) shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfilment of which will require it to expend funds in the future; and
- 14.1.6 to observe and perform its covenants and restrictions in this Agreement.

EXECUTED AS A DEED by the Council, the Owner, the Developer and Susan Bennett on the day and year first hereinbefore appearing.

APPENDIX A

Plan

APPENDIX B

Off-Site Mitigation Land

APPENDIX C

Trim Trail Specification

APPENDIX D

BNG Plan

EXECUTED AS A DEED

(but not delivered until the date hereof)

by **HIGH PEAK BOROUGH COUNCIL**

by the affixing of its Common Seal

in the presence of:-

Authorised Signatory

SIGNED AS A DEED

(but not delivered until the date hereof)

by **ANDREW BENNETT**

in the presence of:

Witness Signature

Name (print)

Address

.....

Occupation

SIGNED AS A DEED

(but not delivered until the date hereof)

by **SUSAN BENNETT**

in the presence of:

Witness Signature

Name (print)

Address

.....

Occupation

Signed as a Deed by)

WAIN HOMES (NORTH WEST) LIMITED)

in the presence of:)

.....

Signature of Director

.....

Name of Director (print)

Witness Signature

Name (print)

Address

.....

Occupation