

DATED

5th August

2021

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

(ENGLAND)

AVANT HOMES ~~(YORKSHIRE)~~ LIMITED

knights

DEED

Under Section 106 of the Town & Country Planning
Act 1990 relating to land former St Luke's Hospital
Huddersfield West Yorkshire

Julie Muscroft
Director: Legal, Governance & Commissioning
Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND

THIS AGREEMENT is made the 5th day of August Two Thousand and Twenty One

BETWEEN

- (1) **AVANT HOMES (ENGLAND) LIMITED** co no 01043597; of Avant House 6 and 9 Tallys End, Barlborough, Chesterfield S43 4WP (hereinafter called "**the Owner**"); and
- (2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Huddersfield, West Yorkshire (hereinafter called "**the Council**").

WHEREAS

- (A) The Council is the local planning authority pursuant to the Act and the local highway authority for the purposes of the Highways Act 1980 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable.
- (B) The Owner is the freehold owner of the Site registered under title number YY132203.
- (C) The Original Planning application was submitted in 2014 and the Original Planning Permission was granted on 1 December 2015 and a section 106 agreement was completed on 10 November 2015 ("**the Principal Agreement**")
- (D) By way of background explanation of the progress of the planning history of the Site, the following chronology is recited:
 - (i) the 2017 Variation Application was submitted under section 73 of the Act for the variation of the conditions of the Original Planning Permission and was granted planning permission on 5 October 2017 prior to which the Principal Agreement was amended by the 2017 Variation Agreement; and
 - (ii) the 2018 Variation Application was submitted under section 73 of the Act for variation of the conditions of the 2017 Variation Permission and after completion of the 2019 Agreement the 2019 Variation Permission was granted; and
 - (iii) it was expressly declared in the 2019 Agreement that:
 - a. the Principal Agreement binds the Original Planning Permission and the 2017 Variation Agreement has the effect of varying the Principal Agreement so that it binds the Original Planning Permission and the 2017 Variation Planning Permission only; and
 - b. neither the Principal Agreement nor the 2017 Variation Agreement shall bind or have any effect over the Site or over any part of the Site over which development is carried out in accordance with the 2019 Variation Permission; and
 - c. development carried out at the Site in accordance with the 2019 Variation Permission only shall be bound by the 2019 Agreement
- (E) The Council granted the 2019 Variation Permission via the 2019 Agreement because of the separate planning obligations it created and the 2019 Agreement reflected the parties' intention that a separate set of planning obligations should bind the 2019 Variation Permission than those which bind the Original Planning Permission and the 2017 Variation Permission.

- (F) The Owner now seeks by this Deed to vary the 2019 Agreement in the following way:
- (i) by application reference 2019/93902 - reserved matters application for residential development pursuant to the 2019 Variation Permission; and
 - (ii) by application reference 2019/93950 - full application for 21 dwellings on the Site; and
 - (iii) the insertion of a new affordable dwellings plan reference drawing number 4166/201 Rev. M.
- (G) This Deed now sets out to further vary the 2019 Agreement in three ways namely:
- (i) to add to the definition of the 2019 Variation Permission in the 2019 Agreement the new application for 21 dwellings on part of the Site (the overall number remaining constant); and
 - (ii) by a reserved matters application to vary the currently approved reserved matters on planning permission 2016/91337; and
 - (iii) to annexe a new plan showing the revised plot numbers and location of the affordable units

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

- 1.1. In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this clause:-

"the 2017 Variation Agreement"	means the agreement between (1) Pennine Property Partnership LLP, (2) Calderdale and Huddersfield NHS Foundation Trust and (3) The Council of the Borough of Kirklees relating to land at former St Luke's Hospital Huddersfield West Yorkshire and dated 4 October 2017
"the 2017 Variation Application"	means an application under section 73 of the Act for the variation of the conditions of the Original Planning Permission under reference 2016/70/91337/W dated 25 April 2016
"the 2017 Variation Permission"	means the planning permission granted by the Council under application reference 2016/70/91337/W
"the 2018 Variation Application"	means an application under section 73 of the Act for the variation of the conditions of the Original Planning Permission under reference 2018/93098/W dated 21 September 2018
"the 2019 Variation Permission"	means the planning permission granted under the 2018 Variation Application which was granted by the Council under application reference 2018/93098/W

"the 2019 Agreement"	means the agreement between (1) Pennine Property Partnership LLP, (2) Calderdale and Huddersfield NHS Foundation Trust and (3) The Council of the Borough of Kirklees relating to land at former St Luke's Hospital Huddersfield West Yorkshire and dated 8 August 2019
"the Act"	the Town and County Planning Act 1990 (as amended)
"the Original Planning Permission"	means the planning permission granted by the Council under application reference 2014/60/93099/W
"the Original Planning Application"	means application reference 2014/60/93099/W for outline planning permission for development comprising 200 dwellings with associated infrastructure and open spaces; retail units (open use A1 class); accommodation for potential neighbourhood uses (use class A2/D1/D2/sui generis); restaurant/public house (use class A3/A4); and petrol filling station (sui generis)
"the Principal Agreement"	means the agreement between (1) Pennine Property Partnership LLP, (2) Calderdale and Huddersfield NHS Foundation Trust and (3) The Council of the Borough of Kirklees relating to land at former St Luke's Hospital Huddersfield West Yorkshire and dated 10 November 2015
"Site"	means the land at former St Luke's Hospital Blackmoorfoot Road Crosland Moor Huddersfield HD4 5RQ shown more particularly delineated and edged red on the plan marked "Plan 1" annexed ~~hereto~~ to the 2019 Agreement HB

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed 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 Deed.
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. 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 interchangeable in that manner.
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 or deriving validity from it.

2.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

2.7. For the purpose of such parts of this Deed as may be subject to the rule against perpetuities the perpetuity period applicable to this Deed shall be eighty years from the date hereof.

3. LEGAL BASIS

3.1. The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed.

3.2. The provisions of this Deed are planning obligations made pursuant to Section 106 and Section 106A of the Act Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site.

3.3. No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

3.4. The obligations contained within this Deed shall not be binding upon or enforceable against:

- (i) any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of supply of electricity has water drainage telecommunication services or public transport services; or
- (ii) the owners or occupiers of any Dwellings or any mortgagee of any Dwelling or any successor in title of such person or mortgagee.

3.5. This Deed shall not become effective until the later of:

- (i) the date the planning permission is granted pursuant to 2019 Reserved Matters Application; or
- (ii) the date of the Commencement of Development save with regard to this clause and clause 3.14 which shall take effect on the date hereof.

3.6. If the 2019 Variation Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date.

- 3.7. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 3.8. This Deed is a Local Land Charge and shall be registered as such by the Council.
- 3.9. All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested of and/or given by the Council or their officers in accordance with this Deed shall be in addition to any other approvals consents agreements or confirmations that may be required by the Act or by any other statute or regulations, and all such approvals consents agreements satisfactions confirmations or calculations (together with all determinations as to whether for the purposes of this Deed Dwellings have been occupied and/or completed) shall not be unreasonably withheld or delayed.
- 3.10. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon the Owner's written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 3.11. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 3.12. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.
- 3.13. This Deed may be varied only by deed between the parties hereto or their respective successors in title and assigns.
- 3.14. The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed.

4. AGREEMENT AND DECLARATION

- 4.1. It is hereby agreed and declared between the parties that:-
- (i) the Principal Agreement binds the Original Planning Permission; and
 - (ii) the 2017 Variation Agreement has the effect of varying the Principal Agreement so that it binds the Original Planning Permission and the 2017 Variation Permission only; and
 - (iii) the 2019 Agreement was entered into as a separate agreement that binds the 2019 Variation Permission
- 4.2. The parties hereto desire to amend the 2019 Agreement as set out below and the 2019 Agreement shall as and from the date of this Deed be read and construed and observed and performed on the basis of the following amendments:
- 4.2.1. the definition of the 2019 Variation Permission set out in clause 1 - Interpretation of the 2019 Agreement shall be deleted and substituted with the following:-

"The 2019 Variation Permission means the outline planning permission granted under the 2018 Variation Application which was granted by the Council under application reference 2018/93098/W which is subject to the 2019 Reserved Matters Approval."

4.2.2. the following definitions shall be inserted into the 2019 Agreement:-

"**the 2019 Reserved Matters Application**" means the reserved matters application with reference 2019/61/93902/W for residential development pursuant to the 2019 Variation Permission"

"**the 2019 Reserved Matters Approval**" means the approval or reserved matters pursuant to the 2019 Reserved Matters Application"

"**Plan 2**" means the plan annexed at Appendix 3 hereto marked Plan 2"

"**SuDS**" means the sustainable drainage measures to be provided by the Owner as part of the Development;"

4.2.3. the following definitions set out in clause 1 – Interpretation of the 2019 Agreement shall be deleted:

"Affordable Housing"

"Chargee"

"Disposal"

"First Time Buyer"

"Market Dwellings"

"Open Market Value"

"Price Cap"

"Qualifying Person"

"Starter Home Unit Price"

"Starter Home Units"

"Starter Homes Commuted Sum"

"Starter Homes" (both definitions)

"Transfer"

"Transferee"

- 4.2.4. the definition of "Management Company" set out in clause 1 - Interpretation of the 2019 Agreement shall be deleted and substituted with the following:

"**Management Company**" means a limited company 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 the Open Space Area and the SuDS; and

(a) which is incorporated in England and Wales or Scotland; and

(b) which has its registered office in England, Wales or Scotland; and

(c) whose primary objects permit it to maintain and renew the Open Space Area and the SuDS;

and which is responsible for the management and ongoing maintenance of the Open Space Area and the SuDS"

- 4.2.5. Clause 9 - Starter Homes of the 2019 Agreement shall be deleted in its entirety and substituted with the following:

"The Owner covenants with the Council as set out in Schedule 1 to this Deed"

- 4.2.6. Clause 11.4 of the 2019 Agreement shall be deleted and substituted with the following:

"The Discounted Market Sale Unit Commuted Sum shall, if payable, be applied by the Council for the provision of, or improvements to, existing Affordable Housing elsewhere in the Council's area.

- 4.2.7. A new clause 14 - SuDS will be inserted into the 2019 Agreement as follows:

"The Owner covenants with the Council as set out in Schedule 2 to this Deed"

- 4.2.8. Schedule 1 to this Agreement shall be inserted as Schedule 1 to the 2019 Agreement.

- 4.2.9. Schedule 2 to this Agreement shall be inserted as Schedule 2 to the 2019 Agreement.

- 4.2.10. Plan 2 of Appendix 3 of the 2019 Agreement shall be deleted and substituted with drawing 4166/201 Rev. M entitled "Site Layout" appended to this Agreement showing the revised plot numbers and location of the affordable units.

- 4.3. The 2019 Agreement is in all other respects hereby confirmed and shall remain in full force and effect

5. JURISDICTION

5.1. This Deed is governed by and interpreted in accordance with the law of England.

6. DELIVERY

6.1. This Deed shall take effect from the date hereof.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed.

THE CORPORATE COMMON SEAL of)

THE COUNCIL OF THE BOROUGH)

OF KIRKLEES was hereunto affixed)

but not delivered until the date hereof)

In the presence of:-)



Director ~~Legal, Governance~~

& ~~Commissioning~~ /Authorised Signatory

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by
AVANT HOMES (ENGLAND) LIMITED acting by)
In the presence of

.....M. Birks.....

Orney (MICHAELA BIRKS)

SCHEDULE 1
DISCOUNTED MARKET SALE UNITS

1. DEFINITIONS

"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing);
"Affordable Housing Units"	means the 11 Dwellings to be provided on the Site and to be constructed in accordance with the Planning Permission and to be delivered as Discounted Market Sale Units as identified shaded pink on Plan 2
"Chargee"	Any 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 Affordable Housing Units or any part thereof or any persons or bodies deriving title through such mortgagee or chargee or Receiver;
"Close Family"	means a spouse, civil partner, partner, son, daughter, sibling, grandparent;
"Discounted Market Sale Price"	means in respect of the following plots a sum not to exceed the following, agreed at the date of this Deed and increased in accordance with the Index as appropriate until the date of purchase

21: £130,472.80;

22: £130,472.80;

97: £130,472.80;

98: £130,472.80;

100: £130,472.80;

101: £130,472.80;

132: £130,472.80;

133: £130,472.80;

206: £130,472.80;

207: £130,472.80; and

211: £130,472.80

but in case of an alternative plot being agreed between the Owner and the Council or in the subsequent sales as Discounted Market Sale Units on the open market the price of each Discounted Market Sale Unit shall not exceed 80% of the agreed Open Market Value for an equivalent Open Market Dwelling

"Discounted Market Sale Units"	means the eleven Affordable Housing Units forming part of the Development that are to be provided on plots 21, 22, 97, 98, 100, 101, 132, 133, 206, 207 and 211 which will be sold by the Owner as Discounted Market Sale Units and "Discounted Market Sale Unit" shall be construed accordingly or such other plots as may be agreed in writing between the Council and the Owner
"Discounted Market Sale Unit Commuted Sum"	means in the event that clause 2.7 of this Agreement is applicable, a sum to be paid by the Owner to the Council in lieu of the provision of the Discounted Market Sale Units on the Site and which shall be calculated at 20% of the Open Market Value of the relevant Discounted Market Sale Units as at the date that this Discounted Market Sale Unit Commuted Sum may be due under clause 2.8 of this agreement and it is expressly acknowledged that in respect of those plots referenced in the definition of Open Market Value the sum shall be calculated at 20% of the stated values
"Disposal"	means the sale of the freehold of a Discounted Market Sale Unit and reference to "Dispose" and "Disposed" shall be construed accordingly SAVE THAT for the sake of clarity the term "Disposal", "Dispose" and "Disposed" shall not include the creation of mortgages or charges
"Financial Criteria"	Means a household whose income does not exceed the Income Cap and whom it is determined is unable to buy a property on the open market;
"Income Cap"	Means a gross household income of: (a) £80,000 per annum; or (b) Such other income level as may be determined by the Council from time to time as being appropriate in all circumstances having regard to local income levels;
"Local Connection Criteria"	means a person or a member of their household having a connection to the Locality by reason of the following: (a) currently lives in the Locality as their primary residence and has done so for the past 3 years; (b) previously lived in the Locality as the primary

residence for at least 5 years cumulatively in the past 10 years;

- (c) has Close Family ordinarily resident in the Locality and that Close Family has been ordinarily resident in the Locality for the past 3 years;
- (d) needs to move to the Locality to receive or provide care or support;
- (e) is employed on a permanent basis for more than 16 hours per week in the Locality or is about to take up an offer of permanent employment in the Locality;
- (f) needs to move to the Locality to be close to local facilities because of a specific identified need;
- (g) has some other connection to the Locality as approved by the Council in writing;

"Open Market Dwellings"

means the Dwellings that may be built on the Site as part of the Development and which are not Affordable Housing Units.

"Open Market Value"

means in respect of the following plots the following sum agreed at today's date and increased in accordance with the Index as appropriate:

21: £163,091;

22: £163,091;

97: £163,091;

98: £163,091;

100: £163,091;

101: £163,091;

132: £163,091;

133: £163,091;

206: £163,091;

207: £163,091; and

211: £163,091

but in the case of an alternative plot being substituted by agreement between the Owner and the Council or in the case of subsequent sales as Discounted Market Sale Units the Open Market Value of a Discounted Market Sale Unit being the price at which the sale of an interest in the Discounted Market Sale Unit would have been completed unconditionally for cash consideration on the date of valuation assuming:

- a) a willing seller;
- b) that any restrictions imposed on the Discounted Market Sale Unit by reason of this Deed are disregarded;
- c) that there are no restrictions as to the persons who may Occupy the Discounted Market Sale Unit or to whom a Disposal may be made; and
- d) that both parties to the transaction had acted knowledgeably prudently and without compulsion;

"Qualifying Criteria"

means

- (a) the Local Connection Criteria; and
- (b) the Financial Criteria;

or

- (c) such other criteria as the Council (acting reasonably at all times) may determine from time to time having regard to local housing needs;

"Qualifying Person"

means a person who is unable to meet their needs in the existing local housing market without assistance through discounted sale price and who also satisfies the Qualifying Criteria;

"Transfer"

means the transfer effecting a Disposal; and

"Transferee"

means the person or persons to whom the Discounted Market Sale Unit is disposed in accordance with the provisions of clause 2 of this Schedule 1 of this Deed.

2. DISCOUNTED MARKET SALE UNITS

The Owner covenants with the Council:

- 2.1. Subject to clause 2.7 and clause 2.8 below, not to Dispose of a Discounted Market Sale Unit other than in accordance with the terms of clauses 2.1 to 2.5 of this Schedule.
- 2.2. That the first Disposal of a Discounted Market Sale Unit shall be to a Qualifying Person at a price which is less than or equal to the Discounted Market Sale Price SAVE THAT if the Owner can satisfy the Council that the Discounted Market Sale Unit has been offered for Disposal to a Qualifying Person(s) at the Discounted Market Sale Price for not less than 9 months (or such other period as may be agreed in writing between the Owner and the Council) and that no Qualifying Person has completed a contract to purchase the Discounted Market Sale Unit the Owner shall be entitled to Dispose of the Discounted Market Sale Unit to

any person on the open market as an Open Market Dwelling subject to the agreement to pay the Discounted Market Sale Unit Commuted Sum at clause 2.8 below.

- 2.3. Prior to the first Disposal of each Discounted Market Sale Unit, if the specified plot, is changed by agreement between both the Owner and the Council from the plot specified in this Deed, to submit to the Council for approval details of the Open Market Value and Discounted Market Sale Price of the alternative plots and not to Dispose of a Discounted Market Sale Unit unless the Open Market Value and Discounted Market Sale Price of the applicable alternative plots have been approved by the Council (such approval not to be unreasonably withheld or delayed).

2.3.1. **PROVIDED THAT** if the Owner and the Council cannot agree the Open Market Value of the Discounted Market Sale Unit for the purpose of calculating the Discounted Market Sale Unit Price within 20 Working Days of the date on which the Council receives written notification of the proposed Disposal in accordance with clause 2.6.1 the Open Market Value shall be determined by an independent chartered surveyor acting as an Expert who is a member of the Royal Institute of Chartered Surveyors and whose appointment shall be agreed by the parties with the costs of such appointment borne equally unless the Expert awards otherwise;

- 2.4. That the first Disposal of a Discounted Market Sale Unit shall contain a restriction that subject to clauses 2.6.4 and 2.7 below, no further Disposal to a third party shall take place other than to a Qualifying Person at a price not exceeding the Discounted Market Sale Price and further that no such Transfer shall be registered at the Land Registry without the inclusion of a restriction in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of clauses 4.23 and 4.24 of a Transfer dated [] 202[] and made between (1) AVANT HOMES (ENGLAND) LIMITED and (2) [] have been complied with or that they do not apply to the disposition"

At the expiry of 5 years from the date of the Transfer of the Discounted Market Sale Unit the Council and the Owner consent by this clause 2.4 to the removal of the restriction registered at the Land Registry and it is expressly acknowledged that the Discounted Market Sale Units can be then sold on the open market free from the obligations within this clause 2.

- 2.5. That the Transfer in respect of the first Disposal of each Discounted Market Sale Unit will include a provision that the Discounted Market Sale Unit should form the Transferee's sole or main residence at the point of purchase.

- 2.6. Prior to completion of the transfer in respect of the Disposal of each Discounted Market Sale Unit:

2.6.1. the Owner will give written notification to the Council's Affordable Housing Officer (or other officer duly authorised by the Council) of an intention to Dispose of the Discounted Market Sale Unit together with such evidence as the Council shall reasonably require to

prove that the proposed sale is to a Qualifying Person at the Discounted Market Sale Price;

2.6.2. upon receipt of the notification under clause 2.6.1 the Council shall confirm or refuse its approval in writing within 5 Working Days and if the Council fails to give a decision in response to a properly completed application for approval within this period then such application shall be deemed to be approved;

2.6.3. that if the Owner can satisfy the Council that the Discounted Market Sale Unit has been offered for sale to a Qualifying Person(s) at the Discounted Market Sale Price for not less than 90 Working Days from the date on which the Council receives notice of the proposed sale in accordance with clause 2.6.1 or such other period as may be approved in writing by the Council and that no Qualifying Person has completed a contract to purchase the Discounted Market Sale Unit the Transferee shall be entitled to Dispose of the Discounted Market Sale Unit to any person at the Discounted Market Sale Price;

2.6.4. that any subsequent Disposal of a Discounted Market Sale Unit within 5 years of the first Disposal by the Owner shall contain a restriction requiring that the subsequent Transferee not Dispose of or cause or allow the Disposal of a Discounted Market Sale Unit without observing and performing the covenants and restrictions discussed in clauses 2.4, 2.5 and 2.6 of this Schedule.

2.7. A Chargee shall prior to seeking to Dispose of a Discounted Market Sale Unit pursuant to any default under the terms of its mortgage or charge give not less than 20 Working Days' notice to the Council of its intention to Dispose and:

2.7.1. In the event that the Council responds within 20 Working Days from receipt of the notice indicating that arrangements for the Disposal of the Discounted Market Sale Unit can be made in such a way as to safeguard them as Discounted Market Sale Units then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such a Disposal;

2.7.2. If the Council does not serve its response to the notice served under this clause within 20 Working Days then the Chargee shall be entitled to Dispose of the Discounted Market Sale Unit free of the restrictions set out in this Schedule;

2.7.3. If the Council or any other person cannot within 40 Working Days of the date of service of its response under this clause secure such Disposal then provided that the Chargee shall have complied with its obligations under this clause and the Chargee shall be entitled to Dispose free of the restrictions set out in this Schedule.

2.8. If any of the Discounted Market Sale Units have not been contracted for sale to Qualifying Persons nine calendar months from the date the Discounted Market Sale Units have been offered for Disposal to Qualifying Persons at the Discounted Market Sale Price ("the Qualifying Date"), the Owner shall agree the Discounted Market Sale Unit Commuted Sum with the Council and shall pay the Discounted Market Sale Unit Commuted Sum to the

Council within 10 Working Days from the date of the agreement thereof PROVIDED THAT such sum shall only be payable in respect of those Discounted Market Sale Units not already transferred to Qualifying Persons and that from the Qualifying Date the Owner will be free to offer such Discounted Market Sale Units for sale on the open market as Open Market Dwellings free from the restrictions within this clause 2.

SCHEDULE 2
SUDS DRAINAGE

1. DEFINITIONS

"SuDS Maintenance and Management Plan"

means a sustainable urban drainage system maintenance and management scheme for the Development which is to be submitted to and approved in writing by the Council prior to the Commencement of the Development;

"Water Company"

means the public utility company which undertakes to adopt the SuDS.

2. SuDS DRAINAGE

- 2.1. Prior to the Commencement of Development the Owner shall submit to the Council for approval the SuDS Maintenance and Management Plan (it being acknowledged by the parties that the intention of the Owner is that the SuDS is to be offered for adoption by the Water Company).
- 2.2. The Owner covenants that Development shall not be Commenced unless and until the SuDS Maintenance and Management Plan has been approved by the Council (such approval not to be unreasonably withheld or delayed). In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of SuDS Maintenance and Management Plan it shall, as soon as reasonably practicable, give written reasons to the Owner why it is unable to approve it and then the Owner shall submit a revised version to the Council, taking into account any comments that the Council has provided, for their approval. Such procedure shall be repeated as often as is necessary until the Council approve the SuDS Maintenance and Management Plan.
- 2.3. The Owner covenants with the Council to fully comply with the approved SuDS Maintenance and Management Plan from the Commencement of Development and at all times thereafter to manage and maintain the SuDS in accordance with the details set out in the approved SuDS Maintenance and Management Plan until the earlier of the date that the SuDS is transferred to the Management Company and the date when the SuDS has been adopted by the Water Company.
- 2.4. Until such time as the SuDS is adopted by the Water Company the Council may upon reasonable notice (being not less than 5 days) enter the Site in order to check and monitor compliance with the approved SuDS Maintenance and Management Plan.

- 2.5. In the event that the Council considers (acting reasonably) that the requirements of the approved SuDS Maintenance and Management Plan are not being complied with and unless the SuDS has been adopted by the Water Company then the Council may serve a notice on the Owner or the Management Company as the case may be requiring the Owner or the Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.
- 2.6. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 2.5 above within 28 days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.
- 2.7. The approved SuDS Maintenance and Management Plan shall only be varied or amended with the written approval of the Council.
- 2.8. No part of the Site upon which the SuDS are located shall be transferred or leased to any Management Company (as apart from the Water Company in which case any transfer or lease may proceed without the approval of the Council) unless the identity of that Management Company has been approved by the Council (acting reasonably). In seeking approval of any Management Company the Owner shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, structure, voting rights and such other information as the Council (acting reasonably) shall require.
- 2.9. The Owner shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and e-mail address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the SuDS SAVE ALWAYS THAT the provisions of this paragraph 2.9 shall not apply in the event that the SuDS are adopted by the Water Company.

