

Date 7th March 2011

**(1) CALA HOMES (SOUTH) LIMITED**

and

**(2) CALA MANAGEMENT LIMITED**

and

**(3) THE WARDEN AND FELLOWS OF WINCHESTER COLLEGE**

and

**(4) BANK OF SCOTLAND PLC**

and

**(5) HAMPSHIRE COUNTY COUNCIL**

**PLANNING OBLIGATION BY AGREEMENT**

**pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to land known as BARTON FARM, WINCHESTER**

**MACFARLANES**

Macfarlanes LLP  
20 Cursitor Street  
London EC4A 1LT

DATE

*7th March*

2011

1 **CALA HOMES (SOUTH) LIMITED** (Company Registration Number 02522271) whose registered office is Burgan House The Causeway Staines Middlesex TW18 3PR

AND

2 **CALA MANAGEMENT LIMITED** (Scottish Company Registration Number SC13655) whose registered office is Adam House 5 New Mid Cutlins Edinburgh EH11 4DW

AND

3 **THE WARDEN AND FELLOWS OF WINCHESTER COLLEGE** of The Bursary Winchester College College Street Winchester Hampshire SO23 9NA

AND

4 **BANK OF SCOTLAND PLC** (Scottish Company Registration Number SC327000) of The Mound Edinburgh EH1 1YZ

AND

5 **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ

#### RECITALS

- (A) The Owner is the freehold owner of the Site (save that shown hatched red on the Plan) which is registered under title number HP 560942 subject to the charges set out in the charges register of the said title registers at 13 May 2010
- (B) The Second Owner is the freehold owner of that part of the Site which is shown hatched in red on the Plan and which is registered under title number HP666574 subject to the charges set out in the charges register of the said register
- (C) The College is the leasehold owner of the Site pursuant to a 999 year lease dated 25 September 1998 which is registered under title number HP560943
- (D) The Mortgagee has the benefit of a legal charge dated 21 December 2009 in respect of the Site which is registered against title numbers HP560942 and HP666574
- (E) The County Council is a local planning authority for the administrative area of Winchester District within which the Site lies for the purposes of the Act and is also a local authority for the purposes of Section 111 of the Local Government Act 1972
- (F) The County Council is also the local education authority and the highway authority for non-trunk roads in Hampshire

- (G) The Owner submitted the Planning Application to the Council for the development of the Site and subsequently lodged an appeal against the Council's failure to determine it
- (H) The Owner the Second Owner and the County Council have agreed terms for the provision of transport and education related mitigation in the event of the grant of Planning Permission as is more particularly set out in this Agreement

## 1 DEFINITIONS

1.1 In this Agreement unless the context otherwise appears the following words and expressions shall have the following meanings:

"Academies" means publicly funded independent local schools providing education to children aged four (4) to fifteen (15);

"Andover Road/Berweeke Road Junction Improvement Works" means the local widening of the Andover Road/Berweeke Road junction to provide a ghost island right turn lane as shown indicatively on drawing number 0710-64/ Figure 4.9 annexed hereto;

" Andover Road/Harestock Road Junction Improvement Works" means the signalisation of the Andover Road/Harestock Road junction and the removal of Well House Lane as shown indicatively on drawing number 0710-64/ Figure 4.2 Rev I and SK 51 both drawings being annexed hereto;

"Andover Road/Stoney Lane Junction Improvement Works" means the signalisation of the Stoney Lane junction with the New Andover Road as show indicatively on drawing number 0710-64/ Figure 4.4 Rev I and SK52 both drawings being annexed hereto;

"Andover Road/Well House Lane Junction Improvement Works" means the provision of a new signal controlled junction at the New Andover Road and its junction with Well House Lane as shown indicatively on drawing number 0710-64/ Figure 4.3 Rev K annexed hereto;

“the Act”	means the Town and Country Planning Act 1990;
“the Additional Primary Education Contribution”	means the sum Index Linked representing the difference between (1) the Primary Education Contribution and (2) the revised Primary Pupil Product as agreed or determined in accordance with the terms of this Agreement multiplied by sixteen thousand one hundred and ninety pounds (£16,190);
“the Additional Primary School Land”	means the provision of not less than one (1) hectare of net useable land within the Site (immediately contiguous with the Primary School Land) to be used solely for the provision of the Primary School and any extension to it as shown indicatively hatched in blue on drawing number PL07 as attached to this Agreement;
“Additional Primary School Land Transfer Plan”	means a plan to be to a scale and format required by HM Land Registry to be used within the transfer of the Additional Primary School Land which identifies the boundaries of the land to be transferred;
“Barton Farm to Worthy Road Footway/Cycleway Works”	means the provision of a combined footway/cycleway to the east of the railway line along the route of the existing permissive footpath to provide connection between the Site and the existing established cycle route on Worthy Lane as shown indicatively on drawing number 0710-64/ Figure 10.1 Rev C annexed hereto;
“Bus Specification”	means a bus service to be provided by the County Council pursuant to Clause 5.20 of this Agreement to operate a circular service between the hours of 06:30 and 23:00 Monday to Saturday (inclusive) and between 09:00 and 18:00 on Sunday at a frequency of at least:  (i) one (1) bus every ten (10) minutes in the peak hours of between 07:00 and 09:00 and between 16:00 and 18:00 on Monday to Friday (inclusive);

(ii) one (1) bus every twenty (20) minutes between the hours of 06:30 and 07:00 and between 09:00 and 16:00 and between 18:00 and 20:00 on Monday to Friday (inclusive);

(iii) an hourly service between 20:00 and 23:00 on Monday to Saturday (inclusive);

(iv) one bus (1) every twenty (20) minutes between the hours of 06:30 and 20:00 on Saturday;

(iv) one (1) bus every hour between the hours of 09:00 and 18:00 on Sunday

between the Development the park and ride light site Winchester railway station and Winchester city centre or (having regard to the cost of operation) such other frequency as shall be agreed between the Owner and the County Council;

**"Bus Subsidy Contribution"**

means a total sum of one million two hundred and seventy one thousand two hundred and eighty eight pounds (£1,271,288) Index Linked as a subsidy towards the provision of a bus service to serve the Development in accordance with Clause 5.21 of this Agreement;

**"Cash Deposit"**

means the sum of one hundred thousand pounds (£100,000) to be deposited with the County Council in the event that a Travel Plan Bond cannot be secured by the Owner and such monies to be held by the County Council in an interest bearing account;

**"Car Club Scheme"**

means a car club scheme to provide two (2) cars for hire by its members together with two (2) marked 'car club' parking spaces within the Site;

**"City Access Contribution"**

means the sum of two hundred thousand pounds (£200,000) to be paid in two equal instalments and (subject to Clause 5.15) to be used by the County Council towards the following transportation improvements:

- i. an inbound bus/cycle lane on Andover Road between the railway bridge and Worthy Lane; and/or

- ii. upgrading passenger waiting facilities at Winchester railway station and/or Worthy Road and/or Winchester bus station (including the installation of real time information); and/or
- iii. gateway features on Worthy Road; and/or
- iv. such other measures as are set out in the emerging Winchester Town Access Plan;

“the College” means The Warden and Fellows of Winchester College as above;

“Commencement” means the carrying out of a material operation within the meaning of Section 56 (4) of the Act in respect of the Development (or any part of it) and the expression “Commence” shall be construed accordingly and the expression shall not include any works of demolition nor Site clearance nor any archaeological investigation ground investigation, diversion of services nor any erection of means of enclosure for the purposes of Site security and/or the display of advertisements nor any works permitted by the Town and Country Planning General Permitted Development Order 1995;

“Construction Route Management Plan” means a plan detailing the routes that lorries should take on entering and existing the Site together with details as to how the Owner will require each and every contractor to adhere to the approved plan;

“Contributions” means each of the Bus Subsidy Contribution the First Primary Education Contribution the Second Primary Education Contribution the Secondary Education Contribution the Transport Contributions (and any part of them);

“the Council” means Winchester City Council of City Offices, Colebrook Street, Winchester, Hampshire SO23 9LH;

“the County Council”	means Hampshire County Council as above;
“Downgrading of Andover Road Works”	means the downgrading of Andover Road to a pedestrian/cycle route with vehicular access for local frontages only to include the extinguishment of highway rights over a section of Andover Road (subject to the provisions of Schedule 2) as identified in the Design and Access Statement;
“the Design and Access Statement”	means the design and access statement dated November 2009 (and incorporating supplementary information dated April 2010) as prepared by John Thompson & Partners;
“the Development”	means the development of the Site in accordance with the Planning Permission;
“Eastern Access Contribution”	means the sum of two hundred thousand pounds (£200,000) to be paid in two equal instalments and to be used by the County Council towards the following: <ul style="list-style-type: none"> <li>(a) works on Park Road Well House Lane and/or Springvale Road; and/or</li> <li>(b) works on Bedfield Lane and/or at the Well House Lane/Bedfield Lane junction; and/or</li> <li>(c) works on B3047 and/or at the Bedfield Lane/B3047 junction; and/or</li> <li>(d) works at the B3037/A33 junction; and/or</li> <li>(e) such other works or transport schemes in the City to the east of the Site as shall be agreed in writing between the Owner and the County Council in order to mitigate traffic impact arising out of the Development;</li> </ul>
“the Education Contributions”	means the First Primary Education Contribution the Second Primary Education Contribution the Additional Primary Education Contribution and the Secondary Education Contribution collectively or

individually as the context requires (and any part of them);

“Education Index” means the ‘BERR PUBSEC Tender Price Index of Public Sector Building Non-Housing Smoothed All-In Index’ multiplied by the Regional Factor for Hampshire;

“Final Housing Unit” means the last Housing Unit to be Substantially Completed on the Site pursuant to the Planning Permission;

“the First Primary Education Contribution” means the sum of three million four hundred thousand pounds (£3,400,000) Index Linked which (together with the Second Primary Education Contribution) is based on a projected Primary Pupil Product of four hundred and twenty (420);

“the First City Access Contribution” means the sum of one hundred thousand pounds (£100,000) Index Linked;

“the First Eastern Access Contribution” means the sum of one hundred thousand pounds (£100,000) Index Linked;

“the First Non Motorised User Contribution” means the sum of one hundred and seventy thousand five hundred pounds (£170,500) Index Linked;

“the First Western Access Contribution” means the sum of one hundred and twenty thousand pounds (£120,000) Index Linked;

“the Framework Travel Plan” means the framework travel plan dated December 2010 as prepared by Transport Planning Associates and attached hereto;

“Highway Agreement” means an agreement entered into between the Owner and the County Council pursuant to (amongst



other things) Section 38 and/or Section 278 of the Highways Act 1980;

**"Highway Works"**

means the highway works specified in Schedule 2 to this Agreement;

**"Housing Unit"**

means a dwelling house or flat which forms part of the Development;

**"Index Linked"**

means:-

- i) in respect of the Transport Contributions that the Transport Contributions shall be adjusted in accordance with any change in the Transport Index between the date of the Planning Permission and the date the Transport Contribution becomes due and for the avoidance of doubt the value of the Transport Index shall be the last figure published before the date of the Planning Permission and the due date for payment (as the case may be); and
- ii) in respect of the Education Contributions that the Education Contributions shall be adjusted in accordance with any change in the Education Index between the date of the Planning Permission and the date the Education Contribution becomes due and for the avoidance of doubt the value of the Education Index shall be the last figure published before the date of the Planning Permission and the due date for payment (as the case may be);

**"Monitoring Period"**

means the period of ten (10) years commencing on the date when one hundred and fifty (150) Housing Units are Occupied;

**"the Mortgagee"**

means Bank of Scotland plc as above;

**"New Andover Road"**

means the realigned Andover Road pursuant to the New Andover Road Works;

"New Andover Road Works"	means the realignment of Andover Road through the Site with a 30mph speed limit (20mph through the local centre) as shown indicatively on drawing number 0710-64/ Figure 4.1 Rev L (as appended to this Agreement) and in accordance with the initial Design Code and the Design code Addendum Letter exchanged between the County Council and the Owner as set out in correspondence in Appendix SCG/A of the Highways Statement of Common Ground;
"Non Motorised User Contribution"	means the sum of three hundred and forty one thousand pounds (£341,000) to be paid in two equal instalments and (subject to Clause 5.14) to be used by the County Council towards measures to enhance local non-motorised user access including improvements to pedestrian cycle and passenger transport infrastructure that would benefit residents of the Site and improvements to those parts of the highway network that may be affected by the Development including (without limitation) Andover Road, Halls Farm Close, Stoney Lane, St Matthews Road, Lynford Avenue, Priors Dean Road, Berewecke Avenue and Park Road;
"Occupation"	means to occupy the Development (or any part of it) and excludes occupation for the purposes of construction fitting out and marketing or site security purposes (and "Occupy" "Occupier" and "Occupied" shall be construed accordingly);
"the Occupation Date"	means the date when the Development is first Occupied for a beneficial use pursuant to the Planning Permission;
"the Owner"	means CALA Homes (South) Limited as above;
"the Owners"	means the Owner the Second Owner and the College;
"Parties"	means the parties to this Agreement;

“Permanent Access”	means the permanent vehicular and pedestrian access complete with binder course level surfaced footways signing lining landscaping lighting and kerbing constructed pursuant to a Highway Agreement or otherwise to adoptable standards and which is connected to an adopted highway to serve the Primary School;
“the Plan”	means the plan entitled ‘Ownership Boundary Plan’ as annexed to this Agreement;
“the Planning Application”	means the outline planning application which was submitted on behalf of the Owner to the Council for the development of the Site for the erection of a maximum of 2,000 dwellings together with a local centre containing up to 13,000 m <sup>2</sup> of supporting/ancillary floor space comprising A1 (food and non-food retail) A2 (financial and professional services) A3 (food and drink) B1 (business) and community facilities, classes D1 (non-residential institutions) and D2 (assembly and leisure), provision of a primary school, informal and formal recreational and open space, hard and soft landscaping, storm water attenuation ponds and other ancillary works. Provision of a road access infrastructure to include a signalised vehicle access from Well House Lane and a signalised vehicle access to Andover Road. Formation of ‘bus only’ access from Andover Road. Formation of temporary construction only areas and haul route from Well House Lane. Provision of internal access road, cycleways, pedestrian footways and other on and off-Site infrastructure works, and given reference numbers 04/00289/OUT and W18760;
“the Planning Permission”	means a planning permission granted pursuant to the Planning Application;
“Primary Education Contribution”	means the sum of six million eight hundred thousand pounds (£6,800,000) Index Linked which comprises the First Primary Education Contribution and the Second Primary Education Contribution;

“Primary Monitoring Information”	means the information to be provided to the Owner by the County Council pursuant to Clause 5.4 of this Agreement;
“the Primary School”	means the primary school (and related facilities) that has a capacity of no less than four hundred and twenty (420) places and which forms part of the Development;
“the Primary School Land”	means the provision of not less than 1.8 hectares of net useable land within the Site to be used solely for the provision of the Primary School as shown indicatively and in the general location on drawing number PL07 as attached to this Agreement;
“the Primary School Opening Date”	means the date when the Primary School is first open for use by pupils;
“Primary School Land Transfer Plan”	means a plan to a scale and format required by HM Land Registry to be used in the transfer of the Primary School Land;
“Primary School Travel Plan”	means a travel plan in respect of the Primary School;
“Primary Pupil Product”	means the net demand for primary school places (i.e. for children aged between four (4) and ten (10) years old) arising out of the Development less the number of unfilled places at Harestock and Weeke Primary Schools;
“the Residential Travel Plan”	means a travel plan in respect of the Housing Units;
“Retail Development”	means the food retail use that forms part of the Development;
“Retail Travel Plan”	means a travel plan in respect of the Retail Development;
“the School Date”	means the commencement of construction of the Primary School;

“the Second City Access Contribution” means the sum of one hundred thousand pounds (£100,000) Index Linked;

“the Second Eastern Access Contribution” means the sum of one hundred thousand pounds (£100,000) Index Linked;

“the Second Non Motorised User Contribution” means the sum of one hundred and seventy thousand five hundred pounds (£170,500) Index Linked;

“the Second Owner” means CALA Management Limited as above;

“the Second Primary Education Contribution” means the sum of three million four hundred thousand pounds (£3,400,000) Index Linked which (together with the First Primary Education Contribution) is based on a projected Primary Pupil Product of four hundred and twenty (420);

“the Second Western Access Contribution” means the sum of one hundred and twenty thousand pounds (£120,000) Index Linked;

“the Secondary Education Contribution” means the sum of three million pounds (£3,000,000) Index Linked which is based on projected demand of one hundred and fifty (150) secondary school places arising out of the Development to be accommodated in an extension to Henry Beaufort School;

“Secondary Monitoring Information” means the information to be provided to the Owner by the County Council pursuant to Clause 5.11 of this Agreement;

“Secondary Pupil Product” means the net demand for secondary school places (i.e. for children aged between eleven (11) and fifteen (15) years old) arising out of the Development less the number of unfilled places at Henry Beaufort and Westgate Schools;

“Secretary of State”	means the Secretary of State for Communities and Local Government (or such other person or organisation who has the jurisdiction from time to time to determine the Planning Application);
“Services”	means: <p>(a) foul and surface water drainage ready for use and which are connected to adopted sewers or a completed and functional sustainable urban drainage system in respect of which there is in force an agreement with a drainage undertaker for its maintenance and upkeep;</p> <p>(b) pipes and cables which are connected to mains services and suitable and of adequate capacity for the supply of gas water electricity telephone and data transfer facilities;</p>
“Serviced Land”	means land at the boundary of which all Services and the Permanent Access are available;
“the Site”	means all that land known as Barton Farm as is shown edged in red on the Plan;
“Substantially Complete”	means complete in all material respects such that it is fit and ready for use for its intended purpose and “Substantially Completed” and “Substantial Completion” shall be construed accordingly;
“Temporary Access Route”	means a vehicular access for construction purposes to serve the Primary School Land to be provided by the Owner to permit access from the public highway to the Primary School Land in a location to be agreed with the County Council to include a “turning head” to facilitate access and egress in forward gear to the Primary School Land;
“Temporary Services”	means the provision of an electricity supply and water supply of sufficient capacity to permit the construction of the Primary School which for the avoidance of doubt will be provided by the Owner to

a point within the boundary of the Primary School Land but for which the County Council will pay for the electricity and water it uses in the construction of the Primary School;

"Transport Contributions"	means the First City Access Contribution the Second City Access Contribution the First Eastern Access Contribution the Second Eastern Access Contribution First Western Access Contribution the Second Western Access Contribution the First Non Motorised User Contribution the Second Non Motorised User Contribution and the Bus Subsidy Contribution collectively or individually as the context requires (and any part of them);
"Transport Index"	means the "Consumer Prices Index (CPI)" published by the Office for National Statistics;
"Travel Plans"	means each of the Residential Travel Plan the Retail Travel Plan and the Primary School Travel Plan;
"Travel Plan Approval Fee"	means the sum of one thousand five hundred pounds (£1,500) towards the costs incurred by the County Council in approving the Travel Plan;
"Travel Plan Co-Ordinator"	means the travel plan co-ordinator to be appointed pursuant to Clause 4.29 of this Agreement;
"Travel Plan Bond"	means a bond executed by a surety approved by the County Council for the Travel Plan Bond Figure;
"Travel Plan Bond Figure"	means the sum of one hundred thousand pounds (£100,000) (or such other sum as may be approved by the County Council pursuant to this Agreement);
"Travel Plan Monitoring Fee"	means the sum of fifteen thousand pounds (£15,000) towards the costs incurred by the County Council in monitoring the Travel Plans;
"Travel Voucher"	means a voucher in the sum of one hundred and fifty pounds (£150) to be provided on application to each and every Housing Unit in accordance with the terms

of Clause 4.30 of this Agreement which shall only be used towards local 'mega rider' (or successor scheme) bus tickets and/or membership of the Car Club Scheme and/or purchase of cycles from local cycle shops selected by the Owner;

“Well House Lane Rail Arch Improvements”

means the improvements for pedestrians at the Well House Lane railway bridge as shown indicatively on drawing reference Figure 4.5 Rev B (Option3) annexed hereto;

“Western Access Contribution”

means the sum of two hundred and forty thousand pounds (£240,000) to be paid in two equal instalments and to be used by the County Council towards the following:

(a) works on Stockbridge Road and/or Harestock Road and/or at the Stockbridge Road/Harestock Road junction; and/or

(b) works on Stoney Lane and/or at the Stockbridge Road/Stoney Lane junction; and/or

(c) works on Bereweeke Road and/or at the Stockbridge Road/Bereweeke junction; and/or

(d) works on Chilbolton Avenue and/or at the Stockbridge Road/Chilbolton Avenue junction; and/or

(e) such other works or transport schemes in the City to the west of the Site as shall be agreed in writing between the Owner and the County Council in order to mitigate traffic impact arising out of the Development;

1.2 Words in this Agreement importing the singular meaning shall where the context so admits include plural meaning and vice versa

1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and where denoting natural persons shall include corporations and vice versa



- 1.4 Any reference to any enactment regulation order or guidance includes any statutory modification or re-enactment thereof or any replacement guidance (as the case may be) for the time being in force
- 1.5 References to any Recital Clause Schedule or Paragraph (or any part of them) shall unless the context otherwise requires be references to a recital clause schedule or paragraph (or any part of them) of this Agreement
- 1.6 Headings are for ease of reference only and are not intended to be construed as part of this Agreement
- 1.7 References in this Agreement to the Owner or the Second Owner or the College or the Mortgagee shall include or constitute a reference to any successor in title to their respective interests in the Site or any person deriving title under them
- 1.8 References in this Agreement to the County Council shall include any successor to its functions as a local planning authority and the local highway authority and the local education authority (as the case may be) respectively for the area within which the Site is situate and any body to which all or part of the functions of the County Council has lawfully been transferred
- 1.9 It is agreed by the Parties that notwithstanding the reference to 'the Owner' the covenants given in Clause 4 and Schedules 1 and 2 of this Agreement are entered into by the Owners jointly and severally

## **2 STATUTORY PROVISIONS**

- 2.1 This Agreement is entered into pursuant to Section 106 of the Act and all other enabling powers and is a planning obligation for the purposes of that Section with intend to bind the Site (and each and every part of it) and the County Council and the College and the Owner and the Second Owner subject to the provisions of Clause 3 (as to conditionality) Clause 6.2 (circumstances in which this Agreement shall fall away) and Clause 6.3 (release upon parting with interest)

- 2.2 This Agreement shall be enforceable by (and against) the County Council

## **3 CONDITIONALITY**

- 3.1 It is agreed between the Parties that other than the provision of Clauses 2.1 3.1 and 6.5 of this Agreement which shall come into effect on the date of this Agreement the remaining provisions of this Agreement shall not come into effect until the grant of Planning Permission

## **4 THE OWNER'S OBLIGATIONS**

The Owner covenants with the County Council as follows:-

### ***Triggers***

- 4.1 Not to Commence the Development unless and until it has given to the County Council ten (10) days' written notice of its intention to Commence the Development PROVIDED THAT any failure on the Owner's part to comply with this Clause shall not render ineffective the County Council's ability to enforce the provisions of this Agreement
- 4.2 To notify the County Council in writing or procure that it is so notified of the proposed Occupation of the quantum of Housing Units set out in each of Clause 4 and Clause 5 and Schedule 2 of this Agreement to the extent that such Occupation triggers the payment of a financial contribution or the carrying out of any further act (whether by the Owners or any other party)

### ***Education***

- 4.3 Upon Commencement on the Site to permit the County Council and its contractors and consultants servants and agents access to the Primary School Land and the Additional Primary School Land at all reasonable times for the purpose of undertaking surveys site investigations and soil tests
- 4.4 To keep the County Council advised and informed of any reserved matter applications or applications for planning permission which shall relate to any part of the Site that is in the immediate vicinity of the Primary School Land and the Additional Primary School Land and shall (upon request) provide a copy of any application layout plans to the County Council
- 4.5 Within three (3) months of Commencement and in any event prior to Occupation of the first Housing Unit to provide (at its own cost) the County Council with:
- 4.5.1 copies of all environmental contamination ecological geotechnical archaeological and other surveys undertaken by or on behalf of the Owner in respect of the Site together with details of the implications of such surveys and (if appropriate or necessary) the Owner's proposals for dealing with them;
  - 4.5.2 details of the overall design for the infrastructure serving the Primary School Land including but not limited to:
    - 4.5.2.1 the Temporary Access Route and details of its construction
    - 4.5.2.2 the Permanent Access and any adjoining highways (roads cycletracks and footways) to include their alignments levels and lighting;
    - 4.5.2.3 drainage (levels, capacity, connections, invert levels, flood/storm water strategy); and
    - 4.5.2.4 main supplies (gas, water, electricity, communications)

- 4.6 Within three (3) months of Commencement and in any event prior to Occupation of the first Housing Unit at its own cost to procure that the Primary School Land shall be free from features that would prevent or restrict its development or use for the Primary School
- 4.7 No later than three (3) months after Commencement on the Site to submit a draft Primary School Land Transfer Plan to the County Council for its approval PROVIDED THAT this plan shall include details of the point on the boundary of the Primary School Land to which the Temporary Access Route will be constructed by the Owner
- 4.8 Not to Occupy any Housing Unit unless and until:-
- 4.8.1 the freehold interest in the Primary School Land has been transferred (at nil cost) to the County Council on the terms and conditions contained in Schedule 1 to this Agreement together with such Temporary Access Road and Temporary Services as are required to allow the County Council to Commence construction of the Primary School; and
- 4.8.2 the First Primary Education Contribution has been paid to the County Council
- 4.9 Not to Occupy more than one hundred and fifty (150) Housing Units unless and until permanent Services have been provided to the Primary School Land so as for the avoidance of doubt to permit the Primary School to be fully commissioned to enable it to open to pupils
- 4.10 Not to Occupy more than two hundred and fifty (250) Housing Units unless and until:-
- 4.10.1 the Permanent Access to the Primary School Land has been constructed and completed to the satisfaction of the County Council; and
- 4.10.2 the Second Primary Education Contribution has been paid to the County Council
- 4.11 No later than one (1) month after receipt of the Primary Monitoring Information following Occupation of one thousand two hundred (1,200) Housing Units the Owner shall recalculate the Primary Pupil Product having regard to the Primary Monitoring Information and shall submit the revised Primary Pupil Product for approval by the County Council PROVIDED THAT for the avoidance of any doubt if the Owner and the County Council cannot agree the revised Primary Pupil Product (as submitted pursuant to this Clause) then a dispute shall be deemed to have arisen pursuant to Clause 6 of this Agreement
- 4.12 If the revised Primary Pupil Product (as agreed between the Owner and the County Council or as determined by the expert pursuant to Clause 6) exceeds four hundred and twenty (420) then not to Occupy more than a further one hundred (100) Housing Units following such agreement or determination (as the case may be) unless and until:-
- 4.12.1 the Additional Primary School Land has been transferred to the County Council for one (1) pound if and to the extent that it is deemed necessary by the

- County Council (acting reasonably) to facilitate an extension to the Primary School; and
- 4.12.2 the Additional Primary Education Contribution has been paid to the County Council
- 4.13 Any transfer of the Primary School Land and the Additional Primary School Land to the County Council shall be on the following terms:
- 4.13.1 the transfer of the Primary School Land shall be in the form of the model transfer set out in Schedule 1 of this Agreement;
- 4.13.2 the transfer of the Additional Primary School Land shall be in substantially the same form to the model transfer set out in Schedule 1 of this Agreement;
- 4.13.3 the transfer of the Primary School Land shall be in accordance with the Primary School Land Transfer Plan as agreed pursuant to this Agreement;
- 4.13.4 the transfer of the Additional Primary School Land shall be in accordance with the Additional Primary School Land Transfer Plan as agreed pursuant to this Agreement;
- 4.13.5 with vacant possession on completion;
- 4.13.6 free from any charge or mortgage notice or restriction which for the avoidance of doubt includes the Bank of Scotland charge dated 21 December 2009;
- 4.13.7 free from any lease licence or tenancy including for the avoidance of doubt the College's lease registered under title number HP560943; and
- 4.13.8 the Owner will take all reasonably necessary steps within its power to enable the County Council to be registered with an absolute freehold title at the Land Registry free from any encumbrance other than as detailed in the model form of transfer attached at Schedule 1 to this Agreement relating to the Primary School Land and the Additional Primary School Land
- 4.14 The land to be transferred as the Primary School Land or the Additional Primary School Land shall be:
- 4.14.1 in respect of the Primary School Land of a size (being no less than 1.8 hectares of useable land) sufficient to accommodate the Primary School;
- 4.14.2 in respect of the Additional Primary School Land of a size (being no less than 1.0 hectares) sufficient to accommodate any extension to the Primary School;

- 4.14.3 a cleared site without any topographical or other feature in on or over the land which would prevent inhibit or limit its development and/or its suitability and fitness for purpose in accordance with the requirements of this Agreement;
  - 4.14.4 free from any public or third party rights or other encumbrances that would materially adversely inhibit the use or construction of the Primary School;
  - 4.14.5 free from any pipes wires sewers or cables or easement strip in respect thereof which would prevent inhibit or limit its development or its suitability and fitness for purpose or materially increase the cost of its development by the County Council;
  - 4.14.6 a site on which the Primary School can be built or laid out without any material adverse effect from any ecological feature or archaeological features or other material planning consideration which would materially adversely affect the use or construction of the Primary School
- 4.15 Not to Occupy more than seven hundred and fifty (750) Housing Units unless and until the Secondary Education Contribution has been paid to the County Council
- 4.16 No later than one (1) month after receipt of the Secondary Monitoring Information following Occupation of one thousand two hundred (1200) Housing Units the Owner shall calculate the Secondary Pupil Product having regard to the Secondary Monitoring Information and shall submit the Secondary Pupil Product for approval by the County Council PROVIDED THAT for the avoidance of any doubt if the Owner and the County Council cannot agree the Secondary Pupil Product (as submitted pursuant to this Clause) then a dispute shall be deemed to have arisen pursuant to Clause 6 of this Agreement

***Transport Contributions***

- 4.17 Not to Occupy any Housing Unit unless and until the First City Access Contribution the First Eastern Access Contribution the First Western Access Contribution and the First Non Motorised User Contribution have been paid to the County Council
- 4.18 No later than the Occupation of six hundred and fifty (650) Housing Units or four (4) years after Occupation of the first Housing Unit (whichever is the earlier) to pay the Second City Access Contribution the Second Eastern Access Contribution the Second Western Access Contribution and the Second Non Motorised User Contribution to the County Council
- 4.19 Not to Occupy more than six hundred and fifty (650) Housing Units unless and until the Second City Access Contribution the Second Eastern Access Contribution the Second Western Access Contribution and the Second Non Motorised User Contribution have been paid to the County Council

**Highway Works**

- 4.20 Not to carry out the Highway Works and/or Occupy the Development (or the relevant parts of it) otherwise than in accordance with Schedule 2 to this Agreement

**Bus Subsidy Contribution**

- 4.21 To pay the Bus Subsidy Contribution to the County Council in the following instalments:-
- 4.21.1 Eighty two thousand and eighteen pounds (£82,018) Index Linked prior to Occupation of any Housing Unit;
  - 4.21.2 three hundred thousand pounds (£300,000) Index Linked prior to Occupation of one hundred and fifty (150) Housing Units;
  - 4.21.3 three hundred and one thousand six hundred and eighty nine pounds (£301,689) Index Linked prior to Occupation of three hundred and fifty (350) Housing Units;
  - 4.21.4 two hundred and thirteen thousand eight hundred and fifty six pounds (£213,856) Index Linked prior to Occupation of six hundred and fifty (650) Housing Units;
  - 4.21.5 one hundred and seventy one thousand and nineteen pounds (£171,019) Index Linked prior to Occupation of nine hundred and fifty (950) Housing Units;
  - 4.21.6 two hundred and two thousand seven hundred and six pounds (£202,706) Index Linked prior to Occupation of one thousand two hundred and fifty (1250) Housing Units
- 4.22 Not to Occupy the quantum of Housing Units specified in Clause 4.21 unless and until it has paid the corresponding instalment of the Bus Subsidy Contribution to the County Council in accordance with Clause 4.21

**Travel Plans**

- 4.23 Prior to Commencement of any part of the Development to pay to the County Council the Travel Plan Approval Fee
- 4.24 Prior to Commencement:-
- 4.24.1 of the Primary School to submit a draft of the Primary School Travel Plan to the County Council (as highway authority) for approval;
  - 4.24.2 of the Retail Development to submit a draft of the Retail Travel Plan to the County Council for approval; and

4.24.3 of the Residential Development to submit a draft of the Residential Travel Plan to the County Council for approval

PROVIDED THAT the Travel Plans shall be in general accordance with the Framework Travel Plan unless otherwise approved in writing by the County Council

4.25 Not to Occupy any part of the Development until the Travel Plan Monitoring Fee has been paid to the County Council

4.26 Not to Occupy:-

4.26.1 the Retail Development unless and until the Retail Travel Plan has been approved in writing by the County Council and

4.26.2 the Residential Development unless and until the Residential Travel Plan has been approved in writing by the County Council

4.27 Not to amend the Travel Plans without the prior written approval of the County Council

4.28 Not to use the Development otherwise than in accordance with the approved Travel Plans (including any approved amendments to them)

4.29 No later than three (3) months prior to the Occupation Date to appoint a Travel Plan Co-Ordinator PROVIDED THAT:-

4.29.1 the post of the Travel Plan Co-Ordinator shall be retained for a period of no less than ten (10) years from the date of his first appointment;

4.29.2 the Travel Plan Co-Ordinator shall be responsible for (amongst other things) monitoring the performance of the Travel Plans issuing Travel Vouchers and overseeing and managing the Car Club Scheme;

4.29.3 the Travel Plan Co-Ordinator shall determine the membership fee and the periodic subscription of the Car Club Scheme in consultation with the Owner and the County Council;

4.29.4 the Travel Plan Co-Ordinator shall provide a progress report (as to the performance of the Travel Plans) to the County Council no less than once every two (2) years throughout the Monitoring Period

4.30 Upon application to the Travel Plan Co-Ordinator to provide the first Occupier of each Housing Unit with:-

4.30.1 a Travel Voucher PROVIDED THAT:-

- 4.30.1.1 subject to sub-Clause 4.30.1.2 subsequent Occupiers of a Housing Unit within the Monitoring Period shall also be entitled to apply for a Travel Voucher; and
- 4.30.1.2 in any event the Owner shall not be obliged to spend more than three hundred thousand pounds (£300,000) in providing Travel Vouchers pursuant to this Agreement;
- 4.30.2 a travel information pack to include:-
  - 4.30.2.1 contact details for the Travel Plan Co-Ordinator;
  - 4.30.2.2 timetable information for local bus and rail services;
  - 4.30.2.3 locations of bus stops within the vicinity of the Site;
  - 4.30.2.4 web-site details for the Owner and relevant highway authorities and organisations;
  - 4.30.2.5 details as to how and where the Travel Voucher can be used; and
  - 4.30.2.6 details of the Car Club Scheme (if operational)
- 4.31 Not to Commence the Development unless and until a Travel Plan Bond (or Cash Deposit if a Travel Plan Bond cannot be obtained) has been submitted to the County Council PROVIDED THAT:-
  - 4.31.1 if monitoring of the Travel Plans (in accordance with the terms of this Agreement) reveals that the terms and provisions of the approved Travel Plans are not being complied with the County Council shall by written notice require the Owner to take such steps as are reasonable and necessary to remedy such breach and shall provide the Owner with a reasonable period within which to do so;
  - 4.31.2 if the Owner fails to remedy the breach within the period set out in the notice received pursuant to sub-Clause 4.31.1 the County Council shall be entitled to call upon the surety to provide such funds pursuant to the Travel Plan Bond up to the Travel Plan Bond Figure (or use the Cash Deposit as the case may be) as may be required for the County Council to remedy the said breach and (if required to do so by the County Council) the Owner shall provide the County Council with such further Travel Bond (or top up the Cash Deposit) as may be necessary to ensure that the Travel Plan Bond Figure is commensurate with the Owner's residual liability pursuant to Clause 4.28;



- 4.31.3 at no time shall the Owner be required to deposit a Travel Bond or Travel Bonds (or Cash Deposit) with the County Council that individually or cumulatively exceed one hundred thousand pounds (£100,000);
- 4.31.4 if the Owner implements and performs any of the terms and provisions of the approved Travel Plans and provides written evidence of the same to the County Council the Travel Plan Bond Figure (or the Cash Deposit as the case may be) shall be reduced by such percentage as may be agreed between the Owner and the County Council;
- 4.31.5 on receipt of written evidence from the Owner to the County Council that it has implemented and performed all of the terms provisions measures and/or targets as set out in the approved Travel Plans the Travel Plan Bond Figure shall be reduced in its entirety (or if applicable the Cash Deposit shall be returned to the payee with any interest accrued thereon)

***Other Travel - Related Matters***

- 4.32 To establish and maintain (at its own cost) a community travel web-site for a period of no less than ten (10) years commencing on the Occupation Date PROVIDED THAT this web-site shall contain information on sustainable modes of travel to and from the Development
- 4.33 No later than the Occupation of:-
  - 4.33.1 the first Housing Unit;
  - 4.33.2 three hundred and fifty (350) Housing Units;
  - 4.33.3 six hundred and fifty (650) Housing Units; and
  - 4.33.4 one thousand two hundred and fifty (1,250) Housing Unitsto provide travel notice boards at appropriate places throughout the Development.
- 4.34 To ensure that the notice boards provided pursuant to Clause 4.33 include the following information:-
  - 4.34.1 contact details for the Travel Plan Co-Ordinator;
  - 4.34.2 timetable information for local bus and rail services;
  - 4.34.3 locations of bus stops within the vicinity of the Site;
  - 4.34.4 web-site details for the Owner and relevant highway authorities and organisations;
  - 4.34.5 details as to how and where the Travel Voucher can be used; and

- 4.34.6 details of the Car Club Scheme (if operational)]
- 4.35 To establish and maintain the Car Club Scheme in accordance with the following details:-
- 4.35.1 no less than one (1) car shall be provided (and subsequently maintained) at all times following Occupation of one hundred and fifty (150) Housing Units; and
- 4.35.2 no less than two (2) cars shall be provided (and subsequently maintained) at all times following Occupation of six hundred and fifty (650) Housing Units; and
- 4.35.3 membership of the Car Club Scheme shall be open (but not exclusively) to residents of the Development and other Occupiers of the Development subject to payment of a membership fee and a periodic subscription
- 4.36 Not to Commence the Development unless and until a scheme to provide secure covered cycle parking (at a ratio of one (1) cycle space per Housing Unit) has been submitted to and approved by the County Council
- 4.37 Not to Occupy any Housing Unit unless the cycle parking to serve that Housing Unit has been completed and is ready for use in accordance with the scheme approved pursuant to Clause 4.36

***Construction Route Management Plan***

- 4.38 Not to Commence the Development unless and until a draft Construction Route Management Plan has been submitted to the County Council for its approval PROVIDED THAT the draft Construction Route Management Plan shall include provisions for monitoring and review
- 4.39 Not to Occupy the Development unless and until the Construction Route Management Plan has been approved by the County Council
- 4.40 Not to construct the Development otherwise than in accordance with the approved Construction Route Management Plan PROVIDED THAT the Owner shall erect notice boards and/or signs at all entrances and exits to the Site for construction traffic containing details of the routes which all lorries entering or leaving the Site shall be directed to follow

**5 THE COUNTY COUNCIL'S OBLIGATIONS**

The County Council covenants with the Owner as follows:-

***Education***

- 5.1 Not to spend (or commit to spend) the First Primary Education Contribution the Second Primary Education Contribution and the Additional Primary Education Contribution (as the

case may be) (and the interest accruing upon them) otherwise than towards the provision of the Primary School

- 5.2 To accept a transfer of the freehold interest in the Primary School Land and the Additional Primary School Land (as the case may be) pursuant to Clauses 4.8 and 4.12 of this Agreement
- 5.3 To Substantially Complete the Primary School either prior to the Occupation of two hundred and fifty (250) Housing Units or within twenty four (24) months of completion of the transfer of the Primary School Land to the County Council whichever is the later
- 5.4 Upon notification by the Owner of the Occupation of each of:-
  - 5.4.1 four hundred (400) Housing Units;
  - 5.4.2 eight hundred (800) Housing Units; and
  - 5.4.3 one thousand two hundred (1,200) Housing Units

to provide the Owner within twenty eight (28) days with details of the total number (by age group) of all children between the ages of four (4) and ten (10) years old who:-

  - 5.4.4 have home addresses within the Development; and
  - 5.4.5 attend schools maintained by the County Council or an Academy
- 5.5 No later than twenty eight (28) days after receipt of the revised Primary Pupil Product pursuant to Clause 4.11 to inform the Owner whether the revised Primary Pupil Product is agreed PROVIDED THAT if it is not agreed the County Council shall provide the Owner with reasons for its non-acceptance and a dispute shall be deemed to have arisen pursuant to Clause 6 of this Agreement
- 5.6 If the revised Primary Pupil Product (as agreed between the Owner and the County Council or as determined by the expert pursuant to Clause 6) is less than four hundred and twenty (420) then no later than two (2) months after such agreement or determination the County Council shall repay to the Owner (or payee if not the Owner) such sum (together with the interest accrued thereon) as represents the difference between (1) the First Primary Education Contribution together with the Second Primary Education Contribution (including indexation actually paid) and (2) the sum which would have been payable on the basis of the revised Primary Pupil Product (including indexation that would have been due) assuming two (2) equal payment instalments and for the avoidance of doubt the dates used to calculate the indexation being the same as those used when the First Primary Education Contribution and the Second Primary Education Contribution were paid
- 5.7 To forthwith repay to the Owner (or payee if not the Owner) any part of the First Primary Education Contribution the Second Primary Education Contribution and the Additional

- Primary Education Contribution (as the case may be) which remains unspent on the date which is five (5) years after it was paid to the County Council
- 5.8 To transfer to the Owner (or such other person or organisation as may be nominated by the Owner) (for one (1) pound) the Additional Primary School Land if the Additional Primary Education Contribution has not been spent on the date which is five (5) years after it was paid to the County Council
- 5.9 To transfer to the Owner (or such other person or organisation as may be nominated by the Owner) (for one (1) pound) any part (or all) of the Additional Primary School Land that has not been used to provide additional facilities to serve the Primary School on the date which is five (5) years after the Additional Primary Education Contribution was paid to the County Council
- 5.10 Not to spend (or commit to spend) the Secondary Education Contribution (and the interest accruing upon it) otherwise than towards the provision of an extension to Henry Beaufort School (such extension to accommodate no less than one hundred and fifty (150) additional school places)
- 5.11 Upon notification by the Owner of the Occupation of each of:-
- 5.11.1 seven hundred and fifty (750) Housing Units; and
  - 5.11.2 one thousand two hundred (1200) Housing Units;
- to provide the Owner within twenty eight (28) working days with details of the total number (by age group) of all children between the ages of eleven (11) and fifteen (15) years old who:-
- 5.11.3 have home addresses within the Development; and
  - 5.11.4 attend schools that are maintained by the County Council or are Academies
- 5.12 If the Secondary Pupil Product (as agreed between the Owner and the County Council or as determined by the expert pursuant to Clause 6) is less than one hundred and fifty (150) then no later than two (2) months after such agreement or determination, the County Council shall repay to the Owner such sum (together with interest) as represents the difference between the Secondary Education Contribution and the sum which would have been payable on the basis of the Secondary Pupil Product
- 5.13 No later than twenty eight (28) days after receipt of the Secondary Pupil Product pursuant to Clause 4.16 the County Council shall inform the Owner whether the Secondary Pupil Product is agreed PROVIDED THAT if it is not agreed the County Council shall provide the owner with reasons for its non-acceptance and a dispute shall be deemed to have arisen pursuant to Clause 6 of this Agreement

- 5.14 To forthwith repay to the Owner (or the payee if not the Owner) any part of the Secondary Education Contribution which remains unspent on the date with is five (5) years after it was paid to the County Council

***Transport Contributions***

- 5.15 Not to spend (or commit to spend) the City Access Contribution and/or the Western Access Contribution and/or the Eastern Access Contribution and/or the Non Motorised User Contribution (and the interest accruing on them) otherwise than towards the transport improvements as defined in this Agreement PROVIDED THAT:-
- 5.15.1 the County Council shall use all reasonable endeavours to provide an inbound bus/cycle lane on Andover Road between the railway bridge and Worthy Lane; and
- 5.15.2 the County Council shall use all reasonable endeavours to provide pedestrian and cycle crossings as necessary on the New Andover Road and on Andover Road (pending the realignment of Andover Road) pursuant to the Non Motorised User Contributions
- 5.16 To forthwith repay to the Owner (or payee if not the Owner) any part of the First City Access Contribution and/or the First Western Access Contribution and/or the First Eastern Access Contribution that remains unspent on the date which is five (5) years after it was paid to the County Council together with accrued interest
- 5.17 To forthwith repay to the Owner (or payee if not the Owner ) any part of the Second City Access Contribution and/or the Second Western Access Contribution and/or the Second Eastern Access Contribution that remains unspent on the date which is six (6) years after it was paid to the County Council together with accrued interest
- 5.18 Subject to Clause 5.19:
- 5.18.1 to forthwith repay to the Owner (or payee if not the Owner) any part of the First Non Motorised User Contribution that remains unspent on the date which is five (5) years after it was paid to the County Council together with accrued interest; and
- 5.18.2 to forthwith repay to the Owner (or payee if not the Owner ) any part of the Second Non Motorised User Contribution that remains unspent on the date which is six (6) years after it was paid to the County Council together with accrued interest
- 5.19 If the works referred to in Clause 5.15.2 have not been provided by the County Council prior to Substantial Completion of the Final Housing Unit to repay to the Owner (or payee if

not the Owner) the sum of two hundred thousand pounds (£200,000) together with accrued interest

***Bus Subsidy Contribution***

- 5.20 Not to spend (or commit to spend) the Bus Subsidy Contribution (and the interest accruing upon it) otherwise than towards the provision of a high quality bus service operating in accordance with the Bus Specification
- 5.21 To provide a bus service (pursuant to Clause 5.20 of this Agreement) in accordance with the Bus Specification prior to the Occupation of two hundred and fifty (250) Housing Units if it is agreed between the Owner and the County Council that there is sufficient demand for the bus service at that time and in any event the County Council shall provide the bus service prior to Occupation of three hundred and fifty (350) Housing Units and shall retain the service (or any variation to the service as shall be agreed between the Owner and the County Council such variation to have regard to the efficient expenditure of the Bus Subsidy Contribution) until the Development is capable of sustaining such a bus service without the need for a subsidy or the Bus Subsidy Contribution has been spent whichever is the earlier.
- 5.22 To forthwith repay to the Owner (or payee if not the Owner) any part of the Bus Subsidy Contribution that remains unspent on the date which is either three (3) months after Substantial Completion of the Final Housing Unit or ten (10) years after payment of the first instalment of the Bus Subsidy Contribution to the County Council (whichever is the later) together with accrued interest

***Travel Plans***

- 5.23 Not to spend (or commit to spend) any sum received pursuant to the Travel Plan Bond (and the interest accruing upon it) otherwise than towards remedying any breach of the Travel Plan for which funds were drawn from the surety pursuant to the Travel Plan Bond

***Contributions***

- 5.24 Within twenty eight (28) days of a written request by the Owner to provide the Owner with a detailed and itemised account specifying the amount of the Contributions which has been spent (or committed to be spent) towards the purpose for which they were (respectively) paid pursuant to this Agreement and a summary of how any such Contribution has been spent (or committed to be spent)
- 5.25 Immediately upon receipt to deposit the Contributions (or any part of them) into an interest bearing account under a unique project code for 'Barton Farm' and each relevant Contribution shall be identified by a reference number and in an individual spreadsheet and/or ledger account

## 6 AGREEMENTS AND DECLARATIONS

### ***Registration as Local Land Charge***

- 6.1 This Agreement shall be registered in the register of local land charges for the purposes of the Local Land Charges Act 1975

### ***Lapse***

- 6.2 This Agreement shall lapse and its obligations shall cease to have effect in any of the following circumstances:-

- 6.2.1 if the Planning Permission shall be revoked or modified other than at the request of the Owner;
- 6.2.2 if the Planning Permission shall be quashed; or
- 6.2.3 if the Planning Permission shall lapse before the Commencement of the Development

in which case the County Council shall issue written confirmation of such an event and cancel any entry made in the register of local land charges in respect of this Agreement

### ***Release***

- 6.3 The Owner shall subject to Clause 6.4 upon parting:-
- 6.3.1 with its interest in any part of the Site be released from all obligations and duties under the terms of this Agreement in so far as they relate to or are binding on that part of the Site; and
- 6.3.2 with the entirety of its interest in the Site be released from all liabilities whatsoever under the terms of this Agreement

- 6.4 The releases provided for in Clause 6.3 of this Agreement shall not apply to any prior or existing breach of this Agreement as at the date of disposal

### ***Legal Costs***

- 6.5 On the date of this Agreement the Owner shall pay to the County Council the County Council's legal and technical costs to the sum of £15,900 in connection with the negotiation and completion of this Agreement

### ***Dispute Resolution***

- 6.6 Where any dispute arises under this Agreement either the Owner or the County Council may at any time require by notice in writing to the other party an independent expert to be appointed to resolve the dispute

- 6.7 The expert (who shall be an appropriately qualified person to resolve the dispute in question) may be agreed upon by the County Council and the Owner and in default of such Agreement within one (1) month of a requirement being made pursuant to this Clause 6 the expert shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors upon the application of either the County Council or the Owner made at any time after the said period of one (1) month
- 6.8 Notice in writing of the appointment of the expert shall be given by the expert to the County Council and the Owner and he shall invite each to submit within a specified period (which period will not exceed four (4) weeks) any written representations that each party wishes to make to him
- 6.9 The expert shall act as an expert not as an arbitrator and he shall consider any written representations submitted to him within the period referred to in clause 6.8 and the expert shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement including any input received from third parties deemed necessary by such expert
- 6.10 Each party shall act reasonably in providing information requested by the expert
- 6.11 In reaching a decision the expert will have regard to information provided by the parties
- 6.12 The expert shall give notice in writing of his decision to the County Council and the Owner within two (2) months of his appointment or within such extended period as the Parties may together allow
- 6.13 The decision of the expert shall be final and binding on the Parties (except in the case of material and manifest error)
- 6.14 If for any reason the expert shall fail to make a decision or fail to give notice thereof within the time and in the manner here provided in this Clause either party may apply to the President of the Royal Institution of Chartered Surveyors for a substitute expert to be appointed in his place which procedure may be repeated as many times as agreed is necessary
- 6.15 Each party shall bear its own costs and the fees and costs of the expert and of the Royal Institution of Chartered Surveyors and any third parties referred to in Clause 6.9 above shall be shared equally between the Parties

**Notices**

- 6.16 Any notice or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be validly served or given if transmitted by facsimile (if confirmed by transmission confirmation slip) delivered by hand or sent by



registered or recorded delivery post to the party upon whom it is to be served or to whom it is to be given

6.17 The address for any notice or other written communication is:

6.17.1 for the Owner marked for the attention of the Managing Director of Cala Homes (South) Limited of Burgan House The Causeway Staines Middlesex TW18 3PR (facsimile number 01784 225301) or such other details as shall be notified in writing to the Council; and

6.17.2 for the County Council marked for the attention of the Head of Legal Services of Hampshire County Council The Castle Winchester Hampshire SO23 8UJ (facsimile number 01962 844024) or such other details as may be notified in writing to the Owner; and

6.17.3 for the College at The Bursary Winchester College College Street Winchester Hampshire SO23 9NA

6.17.4 for the Mortgagee at The Mound Edinburgh EH1 1YZ

***Third Parties***

6.18 Unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

6.19 This Agreement may be rescinded or varied without the consent of a third party to whom an express right to enforce any of its terms has been provided

***Land Ownership***

6.20 Nothing in this Agreement shall require the performance by the Owner or the Second Owner of any obligation on over or under land which is not within the ownership or control of the Owner or the Second Owner unless the said land shall comprise public highway

***Individual Occupiers***

6.21 None of the obligations contained in this Agreement shall be enforceable against any individual occupier of a Housing Unit or his successors in title or assigns

***Late Payment***

6.22 If any payment due under the terms of this Agreement shall be unpaid on the date that it is due then interest shall apply at the rate of two per cent (2%) above the base lending rate of the National Westminster bank plc from time to time in force in respect of the period from the date when the payment was due until final payment

***Consents and Approvals***

- 6.23 Where any consent approval or expression of satisfaction is required to be given under the terms of this Agreement then it shall not be unreasonably withheld or delayed

***The College's Interest***

- 6.24 The College covenants with the County Council to execute a deed of surrender to the Owner in respect of its leasehold interest in the Primary School Land and the Additional Primary School Land (as the case may be) prior to the transfer of the Primary School Land and the Additional Primary School Land respectively to the County Council

***Mortgagee's Interest***

- 6.25 The Mortgagee agrees to its interest in the Site being subject to the terms of this Agreement PROVIDED THAT the Mortgagee shall not incur any liability under this Agreement unless and until it enters into possession of the Site

***CIL Regulations***

- 6.26 If the Secretary of State determines (free of legal challenge and/or appeal) that any obligation contained within this Agreement is not:-

6.26.1 necessary to make the Development acceptable in planning terms;

6.26.2 directly related to the Development; and

6.26.3 fairly and reasonably related in scale and kind to the Development

then such obligation shall immediately cease and determine (without any further act by the Parties)

- 6.27 The release set out in Clause 6.26 shall not affect the remaining obligations within this Agreement which shall continue to have full force and effect

***Indemnity***

- 6.28 The Owner and the Second Owner shall indemnify the College against all actions proceedings losses damages costs claims and expenses which are suffered by the College and are attributable to any failure by the Owner and/or the Second Owner (as the case may be) to comply with the obligations in this Agreement

**IN WITNESS WHEREOF** these presents have been executed by the Parties as a deed and delivered on the day and year first above written

**SCHEDULE 1**  
**TERMS AND CONDITIONS OF THE SALE AND PURCHASE OF**  
**PRIMARY SCHOOL LAND**

**Date [ \_\_\_\_\_ ] 2011**

**[LAND OWNER ]**  
**HAMPSHIRE COUNTY COUNCIL**

**TRANSFER**  
**of the Primary School Land,**  
**Barton Farm, Winchester**

# Land Registry

## Transfer of part of registered title(s)

# TP1

If you need more room than is provided in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

1	Title number(s) out of which the property is transferred: HP 560942
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any: None.
3	Property: Property on the north east side of Andover Road, Winchester edged [ ] on the Plan annexed hereto
4	Date:

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

5 Transferor:  
Cala Homes (South) Limited (Company Registration Number 02522271)

For UK incorporated companies/LLPs

Registered number of company or limited liability partnership including any prefix:

For overseas companies

(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

6 Transferee for entry in the register:

Hampshire County Council

For UK incorporated companies/LLPs

Registered number of company or limited liability partnership including any prefix:

For overseas companies

(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

7 Transferee's intended address(es) for service for entry in the register:

The Castle, Winchester, Hampshire SO23 8UJ

8 The transferor transfers the property to the transferee

9 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

One pound (£1)

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

10 The transferor transfers with

full title guarantee

limited title guarantee

*[Title guarantee provisions to be confirmed once the identity of the Transferor is known.]*

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

11 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants
- they are to hold the property on trust for themselves as tenants in common in equal shares
- they are to hold the property on trust:

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

## 12 Additional provisions

### Definitions and interpretation

- 12.1 "Development" has the same meaning as the Section 106 Agreement
- 12.2 "the Estate Roads" means all roads access ways and footpaths (other than the Permanent Access Route) road or roads within the Retained Land constructed and allocated as such by the transferor.
- 12.3 "Housing Unit" has the same meaning as the Section 106 Agreement
- 12.4 "the Permanent Access Route" means all means of access to and egress from the Property to and from an adopted highway in such positions and along such boundaries of the Property as are shown [ ] on Plan [ ] or as may otherwise be agreed by the transferor and the transferee to be constructed pursuant to the Section 106 Agreement.
- 12.5 "Plan" means the plan annexed hereto and if numbered plans are annexed any reference to a numbered plan is to the annexed plan so numbered
- 12.6 "Primary School" means the primary school to be constructed on the Property by the transferee
- 12.7 "Property" means the property shown edged red on the Plan being part of the land comprised in the title above mentioned
- 12.8 "the Retained Land" means the land (and buildings) retained by the Transferor being the remainder of the land comprised within title number HP560942 other than such part as is comprised within the Property.
- 12.9 "Section 106 Agreement" means an agreement entered into pursuant to Section 106 of the Town and Country Planning Act 1990 dated the [ ] day of February 2011 made between Cala Homes (South) Limited (1) Cala Management Limited (2) The Warden and Fellows of Winchester College (3) Bank of Scotland plc (4) and Hampshire County Council (5)
- 12.10 "Services" means water soil effluent gas fuel oil telephone data



transfer and electricity .

12.11 "Service Conduits" means all pipes mains drains sewers wires cables ducts gullies flues gutters channels watercourses underground chambers and junction boxes and any other conduit for carrying gas electricity and electrical signals and data in any form water air fuel soil and any other services which abut or upon being constructed pursuant to the provisions of this Transfer and the Section 106 Agreement will abut the Property and which shall connect the Property to existing Service Conduits .

12.12 "Temporary Access Route" has the same meaning as in the Section 106 Agreement

12.13 "Temporary Services" has the same meaning as in the Section 106 Agreement

12.3 References to a clause or schedule are references respectively to a clause of or a schedule to this transfer.

12.4 It is agreed and declared that the rights granted by this transfer shall be exercisable only if and to the extent that they and their subject matter come into existence on or before the 80<sup>th</sup> anniversary of the date of this transfer

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

#### Rights granted for the benefit of the property

12.5 The following rights are granted to the transferee for the benefit of the property and every part of it:-

12.5.1 A right of way (in common with the transferor and other persons entitled the like or similar right):

12.5.1.1 Until the Permanent Access Route and the Estate Roads shall be adopted as public highways maintainable at the public expense over and along the Permanent Access Route and the Estate Roads (except where such Estate Roads are intended for pedestrian use only when the right of way granted shall be by foot only) with or without vehicles (but excluding

construction vehicles) for the purpose of access to and egress from the Property Provided that in exercising the aforesaid rights the transferee and its successors in title shall not cause any obstruction on or cause any damage to such Permanent Access Routes or Estate Roads or any part thereof which are for general use by occupiers of the Retained Land and/o public transport; and

12.5.1.2 Until the completion of the construction works on the Property an equivalent right as granted by clause 12.5.1.1 above to include the Temporary Access Route except that such right will be with or without vehicles (including construction vehicles) and shall be subject to any reasonable regulations imposed by the transferor in relation to such use, over and along the Temporary Access Route

12.5.2 Until the Property is Serviced Land (as defined in the Section 106 Agreement) the right to connect to and use such Temporary Services provided by the transferor for the construction work and use of the Property.

12.5.3 Until the same shall be adopted by the relevant statutory undertaker the right to connect to and use the Service Conduits laid in on or through under the Permanent Access Route and Estate Roads serving the Property together with the all necessary rights to enter the Permanent Access Route and such of the Estate Roads as is necessary to connect and inspect clean maintain repair renew and execute repairs or other works to any Service Conduits causing as little damage or inconvenience to any such Service Conduits as reasonably possible in the exercise of this right and forthwith making good all damage occasioned to the Permanent Access Route and such Estate Roads;

12.5.4 The right in common with the transferor and other persons entitled to the full and uninterrupted passage of Services through the Service Conduits laid in the Permanent Access and the Estate Roads as shall be reasonably necessary for the purpose of servicing the Property together with the right (in common and save as aforesaid) to enter the Retained Land as shall be reasonably necessary in order to repair maintain renew and replace any of them the person exercising such right causing as little damage and inconvenience as possible and making good all damage done in the exercise of such right.

12.5.5 All rights of support shelter and protection from the Retained Land as are enjoyed by the Property and the development thereon once completed to be enjoyed by the transferee.

12.5.6 Until such time as the Development of the part of the Retained Land adjacent to the Property commences the transferee shall have the right to enter onto such adjacent land with or without workmen for the purpose of carrying out any construction works on the Property where such work cannot reasonably be carried out without such entry being made the person exercising such right causing as little damage or inconvenience as reasonably possible in the exercise of this right and forthwith making good any damage done thereon.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

#### Rights reserved for the benefit of other land

12.6 The following rights are excepted and reserved to the transferor for the benefit of the Retained Land and every part of it:-

12.6.1 To the transferor its successors in title and assigns and its or their servants agents and visitors (in common with all other persons entitled to a like or similar right) all rights of support shelter and protection from the Property as are enjoyed by the Retained Land and the Development thereon once completed by the transferee.

#### Covenants by the Transferor

The transferor covenants with the transferee and the transferee's successors in title that:

12.7.1 At its own expense construct or procure the construction of the Permanent Access Route and Service Conduits which are required to serve the Property up to the entrance of the Property at points specified by the transferee and approved by the transferor (such approval not to be unreasonably withheld or delayed) and to an agreed standard and specification in accordance with the Section 106 Agreement and in the case of the Service Conduits the transferor further covenants with the transferee that the Service Conduits will be of sufficient capacity for electricity and gas and a sufficient depth and of sufficient capacity as to allow and to accommodate the agreed flow of surface water and sewage by means of gravity from the land and intended buildings on the Property for the use of the Property as a minimum as a two form of entry Primary School.

12.7.2 The transferor will at its own expense maintain the Permanent Access Routes the Estate Roads and the Service Conduits serving the Property (but not located on the Property) at all times in good and substantial repair and condition pending the Permanent Access Route the Estate Roads and the Service Conduits becoming adopted and maintainable at the public expense.

12.7.3 The transferor shall use all reasonable endeavours to ensure the minimum of disruption inconvenience and disturbance is caused to the Property and its use as a Primary School and to the Permanent Access Route and the Service Conduits during the development of the Retained Land and that all health and safety legislation and good

practice current at the time of development of the Retained Land are observed during the building work being undertaken by the transferor on the Retained Land and will make good all damage caused to the Property or the Estate Roads Permanent Access Route and the Service Conduits as a result of building work on the Retained Land and will indemnify and keep the transferee indemnified in respect of all reasonable costs claims and demands in respect of any breach thereof.

Include words of covenant.

#### Restrictive covenants by the transferee

12.7 The transferee covenants with the transferor, to the intent that the burden of the covenant will run with and bind the Property and every part of it and that the benefit of the covenant will be annexed to and run with the Retained Land and every part of it, to observe and perform the following stipulations:

12.7.1 not to use or cause or permit the Property to be used other than as a taxpayer funded primary school together with ancillary uses;

12.7.2 not to use or cause or permit the Property to be used for residential purposes except in cases of national or local emergency brought about by natural disasters such as storm flood or fire and then on a short term basis only;

12.7.3. to use reasonable endeavours not to obstruct the Estate Roads or permit them to be obstructed;

#### Incumbrances and indemnity covenants

##### No implied rights

[12.8 The Property is transferred subject to and where appropriate with the benefit of the matters contained or referred to in the documents listed in the schedule to the extent that they relate to the Property or any part of it, provided that for the avoidance of doubt the transferor retains the benefit of any such matters to the extent that they benefit the Retained Land or any part of it.

12.9 With the object of giving the transferor a complete indemnity but

not for any other purpose, the transferee covenants with the transferor that from the date of this deed of transfer the transferee will, to the extent that they relate to the Property or any part of it, at all times observe and perform the covenants and conditions contained or referred to in the property and charges registers of the title referred to in clause 1 [(save for the entries numbered 1 to 5 ] in the charges register as of at 13 May 2010)] [and in the documents specified in the schedule], and will indemnify the transferor and its successors in title against all actions, proceedings, losses, damages, costs, claims and expenses which may be suffered or incurred by the transferor or its successors in title in respect of any breach of or failure to observe those covenants and conditions.] Note: Clause 12.8 and 12.9 unnecessary

12.10 Save as expressly provided in this transfer, there shall not be conferred on the transferee by implication of law or otherwise any easement, right or privilege of any kind in respect of the retained land or any part of it, and neither section 62 of the Law of Property Act 1925 nor the rule of implied grant known as the rule in Wheeldon v. Burrows nor any other rule of similar effect shall apply so as to create or transfer to the transferee any such easement, right or privilege.

#### Rights of light

12.11 The transferor, for itself and its successors in title, consents to the access and use of light and air to and for the property and any structure from time to time on it from and over the retained land, but this consent may be revoked at any time, either expressly or by implication, and without notice.

#### Diversion

12.12 The transferor may, at its discretion and at its own cost and expense, replace or change the route of the Permanent Access Route, Temporary Access Route and Estate Roads and/or any Service Conduits located on the Retained Land and serving the Property, in which case the relevant rights shall then apply to the Permanent Access Route, Temporary Access Route and Estate

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

Roads and/or Services Conduits as replaced or re-routed. Such replacement or re-routed road and/or services media shall not (a) be materially less satisfactory or (b) provide materially less capacity than the facilities they are replacing and any interruption to the transferee's use of the Property must be kept to a minimum as far as reasonably practicable.

**SCHEDULE  
Incumbrances**

*.]None affecting the Property as at date of S106 Agreement*

Date	Document	Parties
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The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

**13 Execution**

**By a company:**

**EXECUTED as a DEED by** )  
 [NAME OF COMPANY] )  
 LIMITED/PLC acting by ) .....  
 [ ] )  
 (director) in the presence of: )  
 )  
 )  
 )

Witness:                   Signature: .....

                                  Name: .....

                                  Address: .....

Occupation: .....

EXECUTED AS A DEED by )

affixing )

THE COMMON SEAL of )

HAMPSHIRE COUNTY )

COUNCIL )

in the presence of )

City Secretary and Solicitor

Witness: Signature: .....

Name: .....

Address: .....

Occupation: .....

**WARNING**

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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**SCHEDULE 2**  
**HIGHWAY WORKS**

- 1 Not to Commence the Development unless and until details of the highway works at the Andover Road / Temporary Site Access junction as identified on drawing SK40 Rev B have been submitted to and approved in writing by the Council in consultation with the County Council.
- 2 Not to Commence the Development unless and until the highway works at Andover Road / Temporary Site Access junction as identified on drawing SK40 Rev B have been constructed to the satisfaction of the County Council.
- 3 Not to Occupy any Housing Unit unless and until a Highway Agreement has been entered into in order to secure the completion of the Andover Road/Bereweeke Road Junction Improvement Works.
- 4 Not to Occupy more than one hundred (100) Housing Units unless and until the Andover Road/Bereweeke Road Junction Improvement Works have been completed to the satisfaction of the County Council and are open for use by traffic/pedestrians.
- 5 Not to Occupy more than two hundred (200) Housing Units unless and until Highway Agreements have been entered into in order to secure the completion of the following highway improvement works:-
  - (a) the New Andover Road Works;
  - (b) the Andover Road/Harestock Road Junction Improvement Works;
  - (c) the Andover Road/Stoney Lane Junction Improvement Works;
  - (d) the Well House Lane Rail Arch Improvements ;
  - (e) the Andover Road/Well House Lane Junction Improvement Works; and
  - (f) the Barton Farm to Worthy Road Footway/Cycleway Works.
- 6 The Owner shall complete the Well House Lane Rail Arch Improvement Works and the Barton Farm to Worthy Road Footway/Cycleway Works prior to the Primary School Opening Date.
- 7 Not to Occupy more than six hundred and fifty (650) Housing Units unless and until the New Andover Road Works, the Andover Road/Harestock Road Junction Improvement Works, the Andover Road/Stoney Lane Junction Improvement Works and the Andover Road/Well House Lane Junction Improvement Works have been completed to the satisfaction of the County Council and are open for use by traffic/pedestrians.

- 8 Prior to the Occupation of any Housing Unit the Owner shall at its own expense submit a valid application for an order under section 247 of the Act authorising the stopping up of those parts of Andover Road that are proposed to cease to be public highway as part of the Downgrading of Andover Road Works. The Owner shall use its reasonable endeavours to thereafter obtain the order.
- 9 No Housing Unit upon the Site shall be Occupied unless and until an application as required by paragraph 8 above has been submitted and a copy thereof supplied to the County Council and the Council.
- 10 If the order referred to in paragraph 8 above is obtained (free of legal challenge), the Owner shall implement it in accordance with a programme previously approved with the County Council.
- 11 If the order referred to in paragraph 8 above has not been obtained by the date of Occupation of six hundred and fifty (650) Housing Units then the Owner shall instead promote a road traffic regulation order at its expense restricting the use of that part of Andover Road to pedestrian and cyclists.
- 12 Without prejudice to paragraph 11 above, the Owner shall at its own expense promote such necessary road traffic regulation orders as may be necessary (in consultation with the County Council) in order to facilitate implementation of the Downgrading of Andover Road Works.
- 13 If the order referred to in paragraph 12 above is obtained (free of legal challenge), the Owner shall implement it in accordance with a programme previously approved with the County Council.
- 14 Where a stopping up order or road traffic regulation order is obtained prohibiting the use of that part of Andover Road before the date of Occupation of nine hundred and fifty (950) Housing Units the Owner shall submit to the County Council for their approval details of landscaping thereof together with a programme for implementation and subject to the grant of all necessary licences by the County Council as highway authority shall carry out such landscaping to the reasonable satisfaction of the County Council in accordance with the approved details.