

DATED

2023

(1) THE GRANGE HAMPSHIRE LLP

and

(2) SHOREWOOD HOMES LTD

ALLOCATION AGREEMENT FOR NITRATE MITIGATION

Relating to

Development of land at 31 Chilbolton Avenue, Winchester, Hampshire

SHOOSMITHS

100 Avebury Boulevard
Milton Keynes
Buckinghamshire
MK9 1FH
Ref. M-01029788

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THIS DEED is made on

2023

BETWEEN

1. **THE GRANGE HAMPSHIRE LLP** (a limited liability partnership registered in England and Wales under registration number OC439434) whose registered office is at Estate Office, Folly Hill, Itchen Stoke, Alresford, Hampshire SO24 9TF (the “**Owner**”); and
2. **SHOREWOOD HOMES LTD**, a company incorporated in England and Wales (company number 10670389) whose registered office is at First Floor, New Frith House, 21 Hyde Street, Winchester, Hampshire SO23 7DR (the “**Developer**”);

together the Parties

WHEREAS:

- (A) The Owner is the registered freehold owner of the Mitigation Land which forms part of the land that is registered at the Land Registry under Title Number HP660227 subject to the entries disclosed in the registered title
- (B) The Owner agrees to mitigate the impact of the Development by providing Nitrate Mitigation and Phosphate Mitigation by carrying out the Woodland Scheme on that part of the Mitigation Land required to offset the impact of the Development.

NOW THIS DEED WITNESSETH:

The parties agree as follows:

1 DEFINITIONS

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

“Allocation” has the same meaning as in the Section 106 Agreement and “Allocate” and “Allocated” shall be construed accordingly

“Allocation Fee” the sum of £96,680 (exclusive of VAT) to be paid by the Developer to the Owner for the Allocation (agreed pursuant to Clause 4.2) to be provided for the Development to be calculated at a rate of £3,000 per kg/TN/yr for the Nitrate Mitigation and at a rate of £91,000 per kg/TP/yr for the Phosphate Mitigation

“Challenge Proceedings” either of the following:
(a) an application for judicial review made by a third party following the grant of Planning Permission by the relevant planning authority, including any appeal to a higher court against a judgment given by a lower court and any referral back to and/or redetermination by the relevant planning authority; or

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

“Challenge Free”

either:

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

“Challenge Period”

the period of six weeks and ten Working Days commencing on the date on which Planning Permission is granted

“Council”

Winchester City Council or its successor (from time to time) as local planning authority

“Deposit”

10% of the Allocation Fee calculated in relation to the Reserve Capacity

“Development”

the development comprising the removal of the existing dwelling (and associated outbuildings) and the construction of 9 new dwellings, associated garages and landscaping at 31 Chilbolton Avenue, Winchester, Hampshire or any other residential development on the Property which does not increase the level of Nitrate Mitigation or Phosphate Mitigation required;

“Expiry Date”

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

“Implementation”

the date on which the Development is begun by the carrying out of a material operation as specified in section 56(4) of the 1990 Act;

“Mitigation Land”

has the same meaning as in the Section 106 Agreement

“Nitrate Capacity”

has the same meaning as in the Section 106 Agreement

“Nitrate Mitigation”

has the same meaning as in the Section 106 Agreement

“Perpetuity”

the period of 125 (one hundred and twenty-five) years from the date on which a dwelling or other building comprised in the Qualifying Scheme is first occupied and “Perpetuity Period” shall be construed accordingly;

“Phosphate Capacity”

has the same meaning as in the Section 106 Agreement

“Phosphate Mitigation”	has the same meaning as in the Section 106 Agreement
“Planning Agreement”	<p>an agreement or undertaking with the relevant planning authority or any other competent authority made under:</p> <ul style="list-style-type: none"> (a) section 106 of the Town and Country Planning Act 1990; (b) section 111 of the Local Government Act 1972; (c) sections 38,184 or 278 of the Highways Act 1980; (d) section 33 of the Local Government (Miscellaneous Provisions) Act 1982; (e) section 98, 104 or 106 of the Water Industry Act 1991; or (f) section 2 of the Localism Act 2011;
“Planning Application”	means the application for planning permission submitted to Winchester City Council for the Development and allocated reference number 23/00239/FUL received and validated on 31 January 2023 or any other application for residential development on the Property which does not increase the level of Nitrate Mitigation or Phosphate Mitigation required;
“Planning Permission”	the planning permission for the Development to be issued pursuant to the Planning Application (and for the avoidance of doubt includes a planning permission granted following an Appeal);
“Property”	the land at 31 Chilbolton Avenue, Winchester, Hampshire SO22 5HE;
“Qualifying Scheme”	has the same meaning as set out in the Section 106 Agreement;
“Reserve Capacity”	25.25 kg/TN/yr of the total Nitrate Capacity and 0.23 kg/TP/yr of the total Phosphate Capacity
“Required Capacity”	the amount of the Reserve Capacity required to provide Nitrate Mitigation and/or Phosphate Mitigation for the Development as shall be notified in writing by the Developer to the Owner in accordance with clause 4.1.3
“Section 106 Agreement”	the agreement dated 31 August 2022 entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Winchester City Council and (2) the Owner in connection with the Woodland Scheme;
“Secretary of State”	the Secretary of State for the Ministry of Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers

given by sections 77, 78 and 79 of the Town and Country Planning Act 1990;

“Terminating Event”

means any of the following events:

a change in the law; or

- a) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- b) a change in Natural England’s custom or practice;
- c) a change in scientific opinion based on evidence; or
- d) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

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

- a) nitrate neutrality not being required in relation to the Development; or
- b) Nitrate Mitigation not being required; or
- c) the Woodland Scheme not being considered to be an effective form of Nitrate Mitigation; or
- d) the Woodland Scheme not being required for Nitrate Mitigation;

“Woodland Management Plan”

has the same meaning as set out in the Section 106 Agreement;

“Woodland Scheme”

has the same meaning as in the Section 106 Agreement;

“Working Days”

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

2 INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.

- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to “including” means “including, without limitation”.
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

3 COMMENCEMENT

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

4 OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer shall
- 4.1.1 pay the Deposit to the Owner on the date of this Deed
- 4.1.2 notify the Owner within 10 Working Days of each of the following events:
- a) the grant of Planning Permission
 - b) the commencement of any Challenge Proceedings
 - c) the final determination of any Challenge Proceedings
 - d) Implementation of the Development
 - e) expiry of the Planning Permission without the Development having been Implemented
- 4.1.3 Notify the Owner of the Required Capacity within 10 Working Days of the date on which the Planning Permission is granted
- 4.1.4 Pay the Allocation Fee (less the Deposit) within 5 Working Days of date on which the Planning Permission is Challenge Free
- 4.1.5 Not Commence the Qualifying Scheme unless and until it has paid the Allocation Fee to the Owner

5 OBLIGIONS OF THE OWNER

5.1 The Owner shall:

5.1.1 Following receipt of the Deposit reserve the Reserve Capacity for the Developer until the earlier of the Expiry Date or the date on which the Allocation Fee is paid.

5.1.2 Following receipt of the Allocation Fee if it shall

a) notify the Council in writing that the Allocation Fee has been paid and that the Required Capacity has been Allocated to the Development;

b) maintain the Required Land in accordance with the Woodland Scheme and the terms of the Section 106 Agreement in Perpetuity

5.1.3 In the event that the Nitrate Mitigation and/or Phosphate Mitigation requirement for the Development decreases before the Allocation Fee has been paid, the Allocation Fee payable under Clause 4.1.4 will be amended to reflect the fee that is actually required pursuant to an updated calculation for the Development to be calculated in accordance with the Allocation Fee as defined in this Deed.

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

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

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

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

5.2.4 any liabilities on the Owner under the Planning Agreement (save in respect of payment of costs and any other obligations to be discharged on or before completion of the Planning Agreement) are conditional upon the implementation of the Planning Permission; and

5.2.5 the Owner will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner has parted with all its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

6 NOTICES

6.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing.

6.2 Any notice, consent, demand or any other communication served under this Deed must be either:

- 6.2.1 delivered by hand;
 - 6.2.2 sent by first class post, pre-paid or recorded delivery; or
 - 6.2.3 sent via email.
- 6.3 If sent in accordance with clause 6.2.1 or 6.2.2 above, any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 6.4 If sent in accordance with clause 6.2.3 above, any notice, consent, demand or any other communication served shall be sent to marka@thegrangehampshire.co.uk, and estate@thegrangehampshire.co.uk on behalf of the Owner and richard@shorewoodhomes.co.uk on behalf of Developer or to such other email address as one party may notify in writing to the others at any time as its address for service.

7 DETERMINATION OF DISPUTES

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 7 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.
- 7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer and the Tenant cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 7.5 The Specialist is to act as an independent expert and:
- 7.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
 - 7.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

- 7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
 - 7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

8 ASSIGNMENT

- 8.1 At any time prior to the earlier of
- 8.1.1 the Expiry Date and
 - 8.1.2 the date on which the Required Capacity has been Allocated
- the Developer may with the Owner's approval assign the benefit of this Deed to a third party (such approval not to be unreasonably withheld or delayed).
- 8.2 Following the date on which the Required Capacity has been Allocated the Developer may with the Owner's prior written approval assign the benefit of the Allocation and/or this Deed to a third party (such approval not to be unreasonably withheld or delayed) PROVIDED ALWAYS that the Developer shall pay the Owner's reasonably legal costs incurred in connection with the amendment of any updated or revised Capacity Monitoring Report required by the Council.
- 8.3 For the avoidance of doubt, in the event that the benefit of this Deed is assigned to a third party pursuant to clause 8.1 or clause 8.2 the Required Capacity shall continue to be Reserved for and assigned to the Development as specified in this Deed.

9 TERMINATION OF THIS DEED

- 9.1 This Deed will come to an end and the obligations in this deed will immediately terminate on the earlier of:
- 9.1.1 the Expiry Date prior to the date on which the Required Capacity has been Allocated; and
 - 9.1.2 the expiry of the Perpetuity Period;
- 9.2 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Terminating Event occurs prior to the date on which the Required Capacity has been Allocated.

- 9.3 Without affecting any other right or remedy available to it, the Owner may terminate this Deed with immediate effect by giving notice to the Developer if any of the following events occur:
- 9.3.1 the Developer is in fundamental breach of any of its obligations in this Deed; or
 - 9.3.2 the Developer is in substantial breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Owner.
- 9.4 If this Deed is terminated in accordance with the provisions of Clause 9.2 or Clause 9.3 then:
- 9.4.1 the Owner may use the Site as they see fit in their absolute discretion;
 - 9.4.2 Neither party shall have any further rights or obligations under this Deed save for the rights of either party in respect of any earlier breach of this Deed;
 - 9.4.3 any sums paid to the Owner by the Developer under the terms of this Deed shall not be refunded.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

11 JURISDICTION

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

12 FEES

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

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

EXECUTED AS A DEED BY

THE GRANGE HAMPSHIRE LLP

acting by two members:

DocuSigned by:
Mark Asliburton
4706CF7A3ACE425...

.....
(Signature of Member)

DocuSigned by:
Alexander Baring
2ACE7DACA682443...

.....
(Signature of Member)

EXECUTED as a **DEED** by)
SHOREWOOD HOMES LTD)
Acting by a director in the presence of:-)

DocuSigned by:
Richard Wickins
5D818C13FC0F46A...

.....
(Full name of witness)

DocuSigned by:
Max Blake
AA7CE30D6A7C47A...

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(Signature of witness)

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Address

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Occupation