Dated 11th July 2019

NORMAN ROBERT GAUTREY OWEN WILLIAM CLARKE LINDA ANN MYNOTT MARTIN PAUL GAUTREY DORIS LILIAN GAUTREY

and

GLADMAN DEVELOPMENTS LIMITED

and

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

and

CAMBRIDGESHIRE COUNTY COUNCIL

SECTION 106 AGREEMENT PURSUANT TO
S106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO

Land at Rampton Road
Cottenham
Cambridge
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THIS AGREEMENT is made on 11th July 2019

PARTIES:

1) DORIS LILIAN GAUTREY of ............................................................... and
   NORMAN ROBERT GAUTREY of ............................................................... and
   OWEN WILLIAM CLARKE of ............................................................... and
   LINDA ANN MYNOTT of ............................................................... and MARTIN PAUL
   GAUTREY of .................................................. (the ‘First Owner’) 

2) GLADMAN DEVELOPMENTS LIMITED (company registration number 3341567) whose
   registered office is at Gladman House Alexandria Way Congleton CW12 1LB
   (the ‘Second Owner’) 

3) SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL of South Cambridgeshire Hall, Cambourne
   Business Park, Cambourne, Cambridge CB23 6EA
   (‘the District Council’) and

4) CAMBRIDGESHIRE COUNTY COUNCIL of Shire Hall, Castle Hill, Cambridge CB3 0AP
   (‘the County Council’) 

INTRODUCTION

(A) The District Council and the County Council are the local planning authorities for the
    purposes of the Act for the area in which the Land is situated.

(B) The County Council is the local highway authority, the libraries and lifelong learning
    authority and the education authority for the area in which the Land is situated

(C) The First Owner and the Second Owner have either entered into/ acceded to the Promotion
    Agreement

(D) Subsequent to the Original Planning Obligations Gladman Developments Limited have
    acquired Vera Margaret Norman’s interest in the Land and is therefore now the “Second
    Owner”

(E) The Second Owner has submitted the Section 73 Application to the District Council for
    permission under section 73 of the Act to vary condition 1 of the Original Permission and
    include an additional condition to allow the Land to be developed in phases and the parties
    have agreed to enter into this Deed in order to secure the planning obligations applicable to
    the Original Permission.

(F) The parties hereto are prepared to enter into this Deed in order to secure the planning
    obligations it creates in the event that the Section 73 Permission is granted.

THIS DEED PROVIDES:

OPERATIVE PART

1 Definitions

For the purposes of this Deed the following expressions shall have the following meanings:
the Act means the Town and Country Planning Act 1990 as amended,

First Planning Obligation means the deed of agreement dated 9 August 2017 appended to this Deed at Appendix 1 (in relation to planning obligations other than Affordable Housing)

Land means the "Site" as such term is defined in the Original Planning Obligations.

Original Permission means the outline planning permission subject to conditions granted by the District Council on 9 August 2017 under the District Council’s reference S/2413/17/OL in respect of which the Section 73 Application has been made

Original Planning Obligations means the First Planning Obligation and the Second Planning Obligation

Second Planning Obligation means the deed of agreement dated 9 August 2017 appended to this Deed at Appendix 2 (in relation only to Affordable Housing)

Section 73 Application means an application to the District Council validated on 29 October 2018 for the variation of condition 1 of the Original Permission and the inclusion of an additional condition to allow the Land to be developed in phases and allocated reference number S/4116/18/VC

Section 73 Development means the development of the Land in accordance with the Section 73 Permission for the erection of up to 200 residential dwellings (including up to 40% affordable housing) and up to 70 apartments with care (C2), demolition of no.127 Rampton Road, introduction of structural planting and landscaping, informal public open space and children’s play area, surface water flood mitigation and attenuation, vehicular access points from Rampton Road and associated ancillary works. All matters reserved with the exception of the main site accesses.

Section 73 Permission means any planning permission issued by the District Council in determining the Section 73 Application

2 Construction of this Deed
2.1 Words and expressions defined in the Original Planning Obligations have the same meanings in this Deed (including within the recitals to this Deed) unless the context requires otherwise.

2.2 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.3 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.

2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act of Parliament for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act of Parliament or deriving validity from it.

2.7 Save in respect of clause 9 (Indemnity) references to any party to this Deed shall include the successors in title to that party and any person deriving title through or under that party and in the case of the District Council and the County Council the successors to their respective statutory functions.

2.8 The headings and contents list are for reference only and shall not affect construction.

3 Legal basis
3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers and has been entered into the District Council and the County Council pursuant to these powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as local planning authority against the Owner.

4 Conditionality
4.1 This Deed is conditional upon:

4.2 the grant of the Section 73 Permission, and

4.3 the Commencement of Development

save for the provisions of clauses 7, 8, 9 and 10 which shall come into effect immediately upon completion of this Deed.

5 The Owner’s covenants
The Owner covenants with the District Council and the County Council to be bound by the terms and planning obligations of the Original Planning Obligations, PROVIDED THAT:

5.1.1 The Original Planning Obligations shall be read mutatis mutandis so that references in the Original Planning Obligations to:

5.1.2 the Application shall be read as references to the Section 73 Application,

5.1.3 the Planning Permission shall be read as references to the Section 73 Permission,

5.1.4 the Development shall be read as references to the Section 73 Development,

AND FURTHER PROVIDED THAT (for the purposes of this Deed only) the First Planning Obligation shall be deemed to incorporate the amendments set out in Schedule 1.

6 The District Councils’ and the Council’s covenants
The District Council and County Council both covenant with the Owner by this Deed to be bound by the terms and planning obligations of the Original Planning Obligations read mutatis mutandis so that references in the Original Planning Obligations to:

6.1 the Application shall be read as references to the Section 73 Application,

6.2 the Planning Permission shall be read as references to the Section 73 Permission,

6.3 the Development shall be read as references to the Section 73 Development,

7 Contributions
7.1 If any financial contribution has (prior to the date of this Deed) been paid or is (on or after the date of this Deed) paid to the District Council and/or the County Council pursuant to the development of the Land in accordance with the Planning Permission and/or the Original

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Planning Obligations there shall be no requirement to pay the same contribution in respect of the development of the Land pursuant to the Section 73 Permission and/or this Deed and vice versa,

7.2 In the event that the Commencement of Development occurs in respect of the Section 5.73 Permission, then the obligations contained in paragraphs 3 and 4 of the Second Schedule to the First Planning Obligation shall cease to be of effect in respect of the Original Permission only.

7.3 In the event that the Commencement of Development occurs in respect of the Original Permission then the Owner shall not Commence Development in respect of the Section 73 Permission and vice versa.

7.4 The Owner shall confirm in writing to the District Council and the County Council whether it is to commence development in respect of either the Original Permission or the Section 73 Permission prior to the commencement of development in respect of either of them.

8 Miscellaneous

8.1 The Second Owner shall pay to the District Council on completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation, preparation and execution of this Deed.

8.2 The Second Owner shall pay to the County Council on completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed.

8.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

8.4 The Owner agrees with the District Council and the County Council to give prompt written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged, the notice to contain details of the transferee’s full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council and the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.

8.6 This Deed shall be registrable as a local land charge by the District Council.

8.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Section 73 Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.

8.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or part of the Land to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause 8.9.

8.10 This Deed shall not be enforceable against:

8.10.1 owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them save as expressly permitted by the Original Planning Obligations; or
8.10.2 a statutory undertaker after the transfer of any statutory apparatus and any land upon or in which that statutory apparatus is situated by the Owner to that statutory undertaker.

8.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Section 73 Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8.12 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers, duties, and obligations of the District Council and/or the County Council under all statutes, by-laws, statutory instruments, orders, and regulations in the exercise of their respective functions as a local authorities.

9 Indemnity
9.1 The Second Owner (to the extent that the First Owner has not been released from the planning obligations set out in this Deed pursuant to clause 8.9 of this Deed) hereby indemnifies and shall keep indemnified the First Owner during the term of the Promotion Agreement against all or any actions, judgements, penalties, damages, losses, costs, claims, expenses, liabilities, and demands arising from the obligations of the First Owner under this Deed and any breach or non-performance of those obligations PROVIDED THAT this clause shall not be for the benefit of any successor in title to the First Owner pursuant to a Disposal as defined in the Promotion Agreement.

10 Jurisdiction
This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

IN WITNESS of which each party has duly executed this deed as a deed and it is delivered on the date set out above.
SCHEDULE 1
AMENDMENTS TO THE FIRST PLANING OBLIGATION

1. The wording of paragraph 3.1 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following:

"Prior to Commencement of Development on any Phase of Development to submit to the District Council for approval the Open Space Works Specification and the Management Plan relating to that Phase of Development"

2. The wording of paragraph 3.4 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following:

"Not to permit the Occupation of more than ninety-five per cent (95%) of the Dwellings on any Phase of Development until the Open Space and Archaeological Protection Area located on that Phase of Development has been transferred to the Management Company in accordance with the details approved by the District Council under the Management Plan and on the terms set out in Schedule 4"

3. The wording of paragraph 3.6 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following:

"Not to amend any Management Plan without the District Council's written consent"

4. The wording of paragraph 4.1 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following:

"Prior to the Commencement of Development on any Phase of Development the Owner shall submit to the District Council for approval the Ecological Enhancement Scheme and the Ecological Management Plan relating to that Phase of Development"

5. The wording of paragraph 4.2 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following:

"The Owner shall not Commence Development or permit the Commencement of Development on any Phase of Development until the Ecological Enhancement Scheme and the Ecological Management Plan relating to that Phase of Development have been approved in writing by the District Council"

6. The wording of paragraph 4.4 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following:

"To implement any agreed Ecological Enhancement Scheme in accordance with its terms"

7. The wording of paragraph 4.6 of Schedule 2 to the First Planning Obligation shall be deleted and replaced with the following
"The Owner shall not amend any Ecological Management Plan without the District Council's written consent"

8. Schedule 4 to the First Planning Obligation shall be deleted and replaced with the following:

**SCHEDULE 4**

Provisions relating to any transfer of the Open Space and the Archaeological Protection Area

Any transfer of the Open Space and the Archaeological Protection Area to the Management Company shall:

i. be a transfer of the entire relevant freehold interest of the Open Space and the Archaeological Protection Area
ii. be free from any pre-emption or option agreement
iii. be free from any mortgage, charge, lien or other such incumbrance
iv. be free from any lease, licence or any other third-party interests
v. be subject to a covenant which (in the case of the Open Space) prohibits the use of the relevant Open Space for any purpose other than for public recreation and amenity subject to the right of the Management Company to construct any buildings or other structures ancillary to such use or (in the case of the Archaeological Protection Area) prohibits the use of the relevant Archaeological Protection Area for any purpose other than as an archaeological protection area in accordance with the Planning Permission
vi. (in the case of the Open Space only) include free of consideration all usual and necessary rights of way with or without vehicles for the benefit of the relevant Open Space
vii. (in the case of the Open Space only) reserve free of consideration in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the relevant Open Space
viii. (in the case of the Open Space only) reserve free of consideration in favour of the Owner the right to lay and use new services subject to the prior written agreement of the District Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the relevant Open Space and the relevant Archaeological Protection Area
x. not require consideration in excess of one pound (£1)
xii. contain a covenant for the benefit of the District Council that the Management Company shall manage and maintain the relevant Open Space and the relevant Archaeological Protection Area in accordance with the approved relevant Management Plan this Deed and the Planning Permission"
xii.

9. The definition of Dwelling in the Second Planning Obligation shall be deleted and replaced with the following:
'means a dwelling (including a house flat, maisonette but for the avoidance of doubt excludes the 70 apartments for care) to be constructed pursuant to the Planning Permission and "Dwellings" shall be constructed accordingly'
EXECUTED as a deed by
GLADMAN DEVELOPMENTS LIMITED
acting by [Redacted]

[Redacted]

in the presence of:

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness

OR

Signed as a deed by
as attorney for GLADMAN DEVELOPMENTS LIMITED under a power of attorney dated 23 August 2018

as attorney for GLADMAN DEVELOPMENTS LIMITED

in the presence of:

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness

Gladman Legal Department
Gladman House
Alexandria Way
Congleton Business Park
Congleton Cheshire CW12 1LB

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The COMMON SEAL of SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL was hereunto affixed in the presence of:

for Chief Executive

Authorised Signatory

The COMMON SEAL of CAMBRIDGESHIRE COUNTY COUNCIL was hereunto affixed in the presence of:

Authorised Signatory