

Dated: \_\_\_\_\_ 20

WOKINGHAM BOROUGH COUNCIL

- and -

EDWARD MAURICE OWEN and MARY HANNAH OWEN

- and -

PALATINE HOMES LTD

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**Deed of Agreement to Provide Planning Obligations  
pursuant to Section 106 of the Town and Country Planning Act 1990 and  
Section 111 Local Government Act 1972  
in relation to the proposed development on land at  
109 Victoria Road Wargrave Wokingham RG10 8AG  
Planning Reference Number 243229**

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Wokingham Borough Council  
Shute End  
Wokingham  
Berkshire  
RG40 1BN

This Deed is made the

day of

20

**BETWEEN**

- (1) WOKINGHAM BOROUGH COUNCIL of Council Offices Shute End Wokingham Berkshire RG40 1WH ("the Council")
- (2) EDWARD MAURICE OWEN and MARY HANNAH OWEN both of Victoria Dairy, Wargrave, Berkshire ("the Owners")
- (3) PALATINE HOMES LTD (Company registration number 08511459) whose registered office is at Ospreys Scotswood Close HP9 2LJ ("the Developer")

**WHEREAS**

1. The Council is the local planning authority for the purpose of the Act for the area in which the Site is situated and by whom the obligations created by this Deed are enforceable.
2. The Council is the local highway authority for the area in which the Site is situated.
3. The Owners are the freehold owner of the Site registered at the Land Registry under title numbers BK108087 and BK541606 both subject to a contract for sale dated 20 December 2024 in favour of the Developer
4. The Planning Application has been made to the Council for planning permission for the Development on the Site.
5. Each obligation undertaken in this deed by the Owner is a planning obligation for the purposes of Section 106 of the Act.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 DEFINITIONS**

For the purposes of this Deed the following words and expressions shall have the following meanings:

"Act" the Town and Country Planning Act 1990, as amended

"Affordable Housing" housing of different tenures provided with or without subsidy support for purchase and/or rent as defined in the National Planning Policy Framework

published by the Ministry of Housing, Communities & Local Government (or equivalent at the time).

“Affordable Housing Contribution”

a contribution of £144,437.89 Index- Linked towards the off-site provision or regeneration of Affordable Housing within the Council’s administrative area

“Approved”

approval in writing by the Council under hand of the Head of Development Management (or equivalent at the time) and “Approval” shall be construed accordingly.

“Commencement of Development”

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of marking out, surveying, ground investigations, archaeological investigations, demolition, site clearance, site preparation, investigation for the purposes of assessing contamination, remedial action in respect of contamination, diversion and laying services and the erection of any temporary means of enclosure for the purposes of site security and the temporary display of advertisements and “Commence”, “Commencement” and “Commence Development” shall be construed accordingly

“Development”

the proposed erection of 8 dwellings following demolition of the existing buildings and structures plus alterations to the existing access as set out in the Planning Application

|                               |                                                                                                                                                                                                                                                                                                           |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Dwelling”                    | any dwelling (including a house flat or maisonette with associated garden garage driveway and parking spaces) to be constructed on the Site pursuant to the Planning Permission                                                                                                                           |
| “Estate Roads”                | the highways, carriageways and footways (including the lighting and drainage) to be constructed on the Site.                                                                                                                                                                                              |
| “Estate Roads Bond”           | an Advance Payment Code bond or guarantee for a sum sufficient to construct the Estate Roads in accordance with the Estate Roads Specification.                                                                                                                                                           |
| “Estate Roads Inspection Fee” | a sum calculated on the basis of up to 10% of the sum referred of the Estate Roads Bond representing the Council's reasonable fees for approving the Estate Roads Specification and the carrying out of any inspections and testing of materials used during the construction of the Estate Roads.        |
| “Estate Roads Specification”  | the specification and plans including (but not limited to) the design, construction (to a durable and serviceable standard) and future maintenance (to ensure their safe use by the public including pedestrians, cyclists and mechanically propelled vehicles) of the Estate Roads.                      |
| “Index”                       | the national all-in tender price index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or such other reference base used to compile the national all-in tender price index as shall be published by the Building Cost Information Service of the Royal |

Institution of Chartered Surveyors or its successor in function

“Index-Linked”

means that the sum of money payable to the Council under this Deed shall be varied by movements in the Index between the date of this Deed and the date of actual payment and increased in accordance with the following formula:

Amount Payable = Relevant Amount x (A divided by B)

Where the Relevant Amount = the payment to be Index Linked

A = the figure for the Index which applied when the Index was last published prior to the date the Relevant Amount is actually paid under this Deed

B = the figure for the Index which applied when the Index was last published prior to the date of this Deed

PROVIDED THAT the Index-Linked sum shall never be less than the original sum specified as payable under this Deed

It should be noted that the index presents forecast figures which are published quarterly. These forecast figures are updated and finalised periodically. If the indexation figure has not been finalised at such time as A is calculated then the forecast figure will be used for the purposes of the calculation

“Management Company”

a limited company registered at Companies House or any such future management company which

shall replace it in respect of which the Owners of the Site shall be and then all of the owners of the Dwellings comprised in the Development shall be members/shareholders and of which the principle objects shall include (but not be limited to):

- (a) to hold the legal interest in the Estate Roads within the Site;
- (b) to levy and collect charges including the service charges from persons having a relevant legal interest within the Site in respect of the cleaning, maintenance, winter maintenance and repair of the Estate Roads and arranging all necessary insurances;
- (c) to keep in repair and to maintain the Estate Roads; and,
- (d) to manage the Estate Roads

“Monitoring Fee” the sum of £538 (Index Linked) per planning obligation trigger for each distinct planning obligation in this Deed being the sum of £1,614

“Occupation” and “Occupied” means personal residential occupation of a Dwelling by an individual or individuals in right of an interest in the Dwelling purchased or rented by that individual or individuals

“Plan” the plan attached to this Deed

“Planning Application” the full planning application made under reference 243229 for the Development

|                       |                                                                                                                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Planning Permission” | the planning permission granted pursuant to the Planning Application and shall include any subsequent permissions under Section 73 of the Act permitting the carrying out of the Development |
| “Site”                | the land known as 109 Victoria Road, Wargrave, Wokingham, RG10 8AG and shown edged red on the Plan                                                                                           |

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of the restriction.
- 2.5 Where more than one person is obliged to observe or perform an obligation the obligation can be enforced against all such persons jointly and against each individually 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 for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.7 References to any party to this Deed shall include the successors in title to that party and to anyone deriving title through or under that party and in the case of the Council the successor to its statutory functions.
- 2.8 The clause headings shall not be taken into account for the purposes of the construction or interpretation of this Deed.
- 2.9 References to this Deed include references to its schedules and the schedules form a part of this Deed.

- 2.10 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.11 An obligation in this deed on a person not to do something includes an obligation not to agree, permit or allow such thing to be done.
- 2.12 Any phrase introduced by the words “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 62 Berkshire Act 1986 and Section 1 Localism Act 2011 and creates planning obligations for the purposes of Section 106 of the Act.
- 3.2 The obligations imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and its successors in title and assigns and the persons claiming under or through it.

### **4 CONDITIONALITY**

- 4.1 This Deed is conditional upon the grant of the Planning Permission save for paragraphs 1.3 and 1.4 of the First Schedule and paragraphs 2 and 4 of the Second Schedule which are conditional upon the grant of the Planning Permission and the Commencement of Development .

### **5 THE OWNER'S COVENANTS**

- 5.1 The Owners covenant with the Council as set out in the First Schedule and Second Schedule.
- 5.2 The Owners covenant with the Council that it will give not less than seven (7) days prior notice in writing to the Council of:
  - 5.2.1 the date of Commencement of Development; and,
  - 5.2.2 the date of first Occupation of the Dwellings.

## **6. MISCELLANEOUS**

- 6.1 The Developer shall pay no later than completion of this Deed to the Council its reasonable legal fees of £2,150.
- 6.2 It is hereby agreed and declared that a person who is not a party to this Deed shall not be entitled in his own right to enforce any of the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be enforceable as a local land charge and shall be registered as such by the Council and if the Council so requires with the Land Registry.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is to be given by any party or any person on behalf of any party hereto under this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement, approval, consent or expression of satisfaction shall at all times act reasonably.
- 6.5 Where any payment of costs or other payments are to be made by the Owner to the Council such costs and other payments shall be deemed to be reasonable and proper.
- 6.6 Any notices shall be deemed to have been properly served if sent by recorded delivery:
  - (a) In the case of the Council marked for the Head of Development Management (or equivalent at the time).
  - (b) In the case of any other party to the address set out at the beginning of this Deed or where a company their registered address (and where such party is a company addressed to the Company Secretary).
- 6.7 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 Site but

without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.9 This Deed shall cease to have effect if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner and/or Developer) it or expires prior to the Commencement of the Development.
- 6.9 The obligations in this Deed shall not be enforceable against any statutory undertaker who acquires an interest in any part of the Site for the purpose of its statutory undertaking.

## **7 WAIVER**

- 7.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **8. INDEXATION**

- 8.1 It is hereby agreed that all financial payments to the Council under this Deed shall be Index Linked.
- 8.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

## **9 OWNERSHIP**

- 9.1 The Owners warrant that no person other than the Owners and Developer has any legal or equitable interest in the Site other than what is stated at the beginning of this Deed.

- 9.2 The Owners agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan save that this clause shall not apply to the disposal of a Dwelling to an owner/occupier.

## **10 INTEREST**

- 10.1 Any payment which is due to the Council under the terms of this Deed that is paid after the date the payment is due shall attract interest at the rate of 4% above the National Westminster Bank PLC base rate from time to time being charged from the date payment was due to the date payment is received by the Council.

## **11 VAT**

- 11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

## **12 JURISDICTION**

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

## **13 DELIVERY**

- 13.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been date

## **FIRST SCHEDULE CONTRIBUTIONS**

The Owners covenant with the Council:

- 1.1 Prior to Commencement of the Development to pay the Monitoring Fee to the Council; and

- 1.2 Not to Commence the Development until the Monitoring Fee has been paid to the Council.
- 1.3 Prior to Occupation of the Development to pay the Affordable Housing Contribution to the Council; and
- 1.4 Not to Occupy the Development until the Affordable Housing Contribution has been paid to the Council.

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**SECOND SCHEDULE**  
**ESTATE ROADS**

The Owners covenant with the Council:

1. Not to Commence Development until the Owners have:
  - (a) Submitted and the Council has Approved the Estate Roads Specification;
  - (b) Submitted and the Council has Approved the details of the Management Company;
  - (b) Provided the Estate Roads Bond in a form Approved by the Council; and,
  - (c) Paid the Estate Roads Inspection Fee to the Council.
2. Not to allow or permit first Occupation of any Dwelling until the Owners have:
  - (a) Completed the Estate Roads in strict accordance with the Estate Roads Specification and the completed Estate Roads have been Approved by the Council; and,
  - (b) Transferred the Estate Roads to the Management Company.
3. The Owner shall not transfer any material interest in the Estate Roads to a Management Company until the Estate Roads are completed in strict accordance to paragraph 2 of this Third Schedule.
4. The Estate Roads shall be maintained by the Owners in strict accordance with the Estate Roads Specification (or as otherwise Approved by the Council) in perpetuity.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL OF )  
WOKINGHAM BOROUGH COUNCIL )  
was hereunto affixed in the presence of: )

Authorised Signatory/ Solicitor

SIGNED AS A DEED )  
by the said EDWARD MAURICE OWEN )  
In the presence of:- )

Witness Signature:  
Witness Name and Address:

Witness Occupation

SIGNED AS A DEED )  
by the said MARY HANNAH OWEN )  
In the presence of:- )

Witness Signature:  
Witness Name and Address:

Witness Occupation

EXECUTED AS A DEED BY     )  
PALATINE HOMES LTD        )  
Acting by                     )

Director:

In the presence of:

Witness name:

Witness signature:

Witness address:

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