DATED 9th July 2018

THOMAS MARTIN ABRAM AND KATHERINE MARY ABRAM
(the Owners) (1)

and

READING BOROUGH COUNCIL
(the Council) (2)

AGREEMENT

constituting Planning Obligations relating to land at 74 Northcourt Avenue, Reading, RG2 7HQ

(Appl. No.171055 (VARIAT)

C J Brooks BSc
Head of Legal Services
Reading Borough Council
Civic Offices Bridge Street
Reading RG1 2LU
DX 40124 Reading (Castle St)
IKEN NO.5896
26th June 2018

THIS AGREEMENT is made the 9th day of July 2018

BETWEEN:

THOMAS MARTIN ABRAM AND KATHERINE MARY ABRAM both of 74 Northcourt Avenue Reading RG2 7HQ (hereinafter referred to as "the Owners") (1) and

READING BOROUGH COUNCIL of Civic Offices Bridge Street Reading RG1 2LU ("the Council") (2)

RECITALS

A. Planning Obligation

This Agreement constitutes a planning obligation within the meaning of the term in Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act")

B. The Land

The Council is the Local Planning Authority for the purposes of the 1990 Act for the Borough of Reading in which the land at 74 Northcourt Avenue Reading RG2 7HQ ("the Land") more particularly described in the Schedule hereto is situated and the Council is the authority who can enforce the provisions of this Agreement

C. Land Ownership

The Owners are the owner of the freehold of the Land and have an interest in the Land within the meaning of the term in Section 106(9) (b) of the 1990 Act

D. Planning Application

An application (given reference 171055 (VARIAT) by the Council) was submitted to the Council for the development of the Land hereinafter described

E. The First Agreement and Planning Permission

(1) The Council and the Owners having regard to the Development Plan and to all other material considerations including the Court of Appeal decision in the case of *Secretary for Communities and Local Government and West Berkshire Council and Reading Borough Council (CO/76/2015)* considered that the Planning Permission should be granted for the Development pursuant to the Application subject to the prior completion of the First Agreement

(2) The First Agreement was completed on 5th October 2017 and the Planning Permission issued by the Council

(3) The Owners and the Council have agreed variations to the First Agreement and on the completion of this Agreement the First Agreement will cease to have any effect

NOW IN PURSUANCE OF THE POWERS CONTAINED in Section 106 of the 1990 Act IT IS HEREBY AGREED AND DECLARED between the parties hereto as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following expressions shall have the under mentioned meanings:-

"1990 Act"

means the Town and Country Planning Act 1990 as amended

"Affordable Housing"

means social rented housing affordable rented housing and intermediate housing as defined in Annex 2 of the National Planning Policy Framework published on 27th March 2012 or any subsequent definition in any revision amendment or re-enactment thereof published by the U K Government

"the Affordable Housing Contribution"

means the sum of TWENTY TWO THOUSAND POUNDS (£22,000.00) (as increased by the Indexation provision at Clause 12) towards the provision by the Council of

Affordable Housing in the Borough which is not being provided by the Owners on the Land

"Agreed Existing Development Value"

means the sum of EIGHT HUNDRED AND SEVENTY THOUSAND FIVE POUNDS (£875,000) being the average of two independent valuations by estate agents commissioned by the Owners and agreed by the Council

"this Agreement"

means this planning obligation by agreement pursuant to Section 106 of the 1990 Act

"the Application"

means the application for planning permission submitted to the Council and given reference number 171055 (VARIAT)

"Deemed Disposal"

means a deemed transfer of the freehold interest or grant of a long leasehold estate or interest in the New Dwelling at Open Market Value where the Owners does not dispose of the New Dwelling but let it out or otherwise permit Occupation of the said New Dwelling which for the avoidance of doubt excludes a transfer to a surviving spouse

"the Deferred Affordable Housing Contribution"

means a sum which shall not exceed EIGHT THOUSAND POUNDS(£8,000) calculated in accordance with Clause 5 which is payable to the Council on the first Disposal or Deemed Disposal of the New Dwelling at Open Market Value PROVIDED THAT such Disposal or Deemed Disposal takes place within five years of the Effective Date

"develop" and "development"

shall be construed in accordance with Section 55 of the 1990 Act

"Disposal"

means the transfer of the freehold interest or the grant of a long leasehold estate or interest (not less than a 60 year term) in the New Dwelling and for the avoidance of doubt Disposal shall include the exchange of contracts

"the Development"

means the erection of one detached 4 bed dwelling and detached garage to rear of existing dwelling served by new driveway (resubmission of application151675) but with a minor material amendment to permission 160255 to allow an enlargement of the approved house at the southern end at ground floor level to be permitted by the Planning Permission

"the Effective Date"

means the date of this Agreement

"the First Agreement"

means the Section 106 Agreement dated 5th October 2017 and made between the Owners and the Council and which relates to the Land and the Development

"Implementation"

means the carrying out of a "material operation" as defined in Section 56(4) of the 1990 Act and **"Implement"** and **"Implemented"** shall be construed accordingly

"Index"

means the All Items Index of Retail Prices issued by the Office for National Statistics

"the Land"

means the land described in the Schedule hereto

"New Dwelling"

means the new detached dwelling to be formed in the carrying out of Development pursuant to the Planning Permission

"Net Profit"

means the difference between the sale price of the Disposal of the New Dwelling or the Open Market Value in the case of a Deemed Disposal and the Agreed Existing Development Value

"Occupation"

means (for the purposes of the covenant in Clause 4) the first beneficial occupation of a New Dwelling for residential purposes following Implementation of the Planning Permission and "Occupied" shall be construed accordingly

"Open Market Value"

means the price at which the sale of the relevant freehold or long leasehold interest with vacant possession would have been completed unconditionally for cash consideration on the date of valuation assuming:

- a willing seller and a willing buyer;
- that the sale is an arm's-length transaction;
- that prior to the date of valuation there had been a reasonable period (having regard to the nature of the New Dwelling and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;
- that the state of the market level of values and other circumstances were on an earlier assumed date of exchange of contracts the same as on the date of valuation;
- that no account is taken of any additional bid by a prospective purchaser with a special interest;
- that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
- that this Agreement did not bind the interest concerned

"the Planning Permission"

means planning permission granted by the Council on 5th October 2017 under reference 171055

"the Prescribed Period"

means the period commencing on the date of receipt by the Council of the whole of the Affordable Housing Contribution and expiring at the end of five full financial years (ending 31 March) following the financial year in which the payment is received by the Council

"Working Days"

means days (other than Saturdays Sundays or public holidays in England) when banks in London are open for business

1.2 **Interpretation**

IT IS HEREBY FURTHER AGREED that unless the context otherwise requires:

1.2.1 the singular shall include the plural and vice versa

1.2.2 references to any party shall include the successors in title of that party

1.2.3 where a party includes more than one person the obligations of those persons shall be joint and several

1.2.4 references to Clauses Schedules and the Annexure are references to clauses schedules and the Annexure respectively in this Agreement

1.2.5 references to a statute or statutory instrument shall mean and include any statutory revision amendment or re-enactment thereof

1.2.6 words denoting an obligation on a party to do any act or 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 permit infringement of the restriction

AND THAT clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation

2. CONDITIONALITY

2.1 Subject to Clause 2.2 below this Agreement shall have immediate effect

2.2 The covenants by the Owners in Clause 4 are conditional upon the grant by the Council of the Planning Permission on the Effective Date and Implementation of the Development

3. COVENANTS BY THE OWNERS: DECLARATION

The covenants by the Owners hereinafter set out are entered into with the intent that those covenants shall (subject to Clause 7) be enforceable without any limits of time against the Owners and any person deriving title from the Owners to all or any part of the Land and any person deriving title under them in respect of a lesser interest in the whole or any part of the Land as if that person had also been an original covenanting party in respect of the interest for the time being held by him

4. THE OWNERS COVENANTS

4.1 The Owners jointly and severally COVENANT AND AGREE with the Council to pay the Affordable Housing Contribution as increased by the indexation provision in Clause 12 to the Council no later than the date of first Occupation of the New Dwelling to be Occupied and not to Occupy the New Dwelling until such payment has been made to the Council in full including any interest due thereon under the terms of this Agreement

4.2 The Owners further jointly and severally COVENANT AND AGREE with the Council to pay the Deferred Affordable Housing Contribution if any as set out in Clause 5 below

5. THE DEFERRED AFFORDABLE HOUSING CONTRIBUTION

5.1 The Owners shall notify the Council in writing at least twenty (20) Working Days of the intended Disposal or Deemed Disposal of the New Dwelling (provided it is due to take place within five years of the Effective Date) setting out the sale price in the case of a Disposal and the Open Market Value in the case of a Deemed Disposal and the anticipated Net Profit

5.2 The Council shall be entitled to request further written information from the Owners to support any justification of the sale price or Open Market Value and the anticipated Net Profit provided such request is made within fifteen (15) Working Days of the receipt of the notice in Clause 5.1 and where no request is made within that period the sale price or Open Market Value (as the case may be) shall be deemed to be agreed

5.3 If no agreement is reached under Clause 5.2 either party may refer the dispute to arbitration in accordance with Clause 18 below

5.4 The Deferred Affordable Housing Contribution shall be FIFTY PER CENTUM (50%) of the Net Profit subject always to a maximum payment of EIGHT THOUSAND POUNDS (£8,000)

5.5 If the Deferred Affordable Housing Contribution becomes due and payable as set out in this Clause 5 the Owners shall pay such sum to the Council no later than twenty (20) Working Days after the date of (a) completion of the Disposal or Deemed Disposal of the New Dwelling or (b) the determination of the dispute under the provisions of Clause 18 hereof

6. THE COUNCIL'S COVENANTS

The Council COVENANTS AND AGREES with the Owners to re-pay to the person who paid the Affordable Housing Contribution and the Deferred Affordable Housing Contribution (if any) under this Agreement such amount of any such payment which has not within the Prescribed Period been expended or contracted to be expended together with any interest earned on any balance then remaining unspent of the said Contributions at the rate of one per centum below Lloyds Bank PLC base rate for the time being in force such payment to be made within twenty

(20) Working Days of written demand made following the expiry of the Prescribed Period

7. CESSER OF LIABILITIES

The liabilities of the persons who for the time being are the Owners under this Agreement in relation to the Land shall cease (subject to and without prejudice to the Council's rights in relation to any antecedent breach of the obligations contained in this Agreement) after the person has parted with all his interest in the Land

8. NO WAIVER

No waiver (whether express or implied) by the Council of any breach of or default by the Owners in performing or observing any of the terms of or covenants obligations or restrictions in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms covenants obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owners

9. RIGHTS OF THIRD PARTIES

It is not intended that any of the provisions of this Agreement be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the parties to this Agreement

10. LOCAL LAND CHARGE

This Agreement is and shall be registered as a Local Land Charge by the Council

11. REVOCATION

In the event that the Planning Permission expires or is quashed before implementation or is (without the consent of the Owners) revoked by any statutory enactment then in that event the provisions of this Agreement shall lapse and determine and in that event the Council will thereafter effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement

12. INDEXATION

The amount of the Affordable Housing Contribution payable under the provisions of Clause 4 of this Agreement shall be increased by an amount equivalent to the increase in the Index from 9th December 2016 until the date on which the said contribution is payable

13. INTEREST ON UNPAID MONIES

If any payment due under this Agreement is paid late interest at the rate of 4% per annum above the base rate of the Lloyds Bank PLC for the time being in force will be payable from the date payment is due to the date of payment

14. LEGAL FEES

The Owners agree to reimburse the Council the legal costs and expenses incurred by the Council in the preparation and completion of this Agreement in the sum of £850.00 such sum to be paid to the Council on the Effective Date

15. PAYMENTS TO THE COUNCIL

Any payments due to the Council under the terms of this Agreement (SAVE AND EXCEPT for the legal fees payable to the Council under the provisions of the Clause 13 and the monitoring fee under the provisions of Clause 14) shall be paid to the Council by means of telegraphic transfer to the Council as follows:

Reading Borough Council
Sort Code: 30-91-31
Account Number: 00271502
Lloyds Bank plc 24 Broad Street Reading RG1 2BT
quoting reference: Land at 74 Northcourt Avenue (171055)

16. NOTICES

Any notice or other written communication to be served by one party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post to the party to be served at its address herein specified or such other address as

may from time to time be notified for the purpose by notice in writing and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by a duly authorised signatory

17. ADDRESSES FOR SERVICE

The address for any notice or other written communication is for the Council at Civic Offices Bridge Street Reading RG1 2LU and for the Owners as specified above or any other address notified in writing to the Council

18. ARBITRATION

18.1 In the event of any dispute arising between the parties in respect of this Agreement the dispute shall be referred:-

(a) in the case of a dispute regarding the interpretation or meaning of any provision in this Agreement to leading planning counsel to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Law Society or

(b) in the case of a dispute regarding the works or other technical matters referred to in the schedules to a member of the Institution of Civil Engineers to be agreed between the parties or failing agreement to be appointed by the President for the time being of such institution or

(c) in the case of any other dispute regarding this Agreement to a member of the Royal Institution of Chartered Surveyors to be agreed between the parties or failing agreement to be appointed by the President for the time being of such Institution

18.2 Any referral pursuant to Clause 18.1 may be made on the joint application of the parties or on the application of any party and any such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996

18.3 The decision of any expert appointed pursuant to Clause 18.1 (the "Expert") shall be final and binding on the parties and whose costs shall be in his award

18.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties to the dispute within the minimum practical timescales allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act

19. AGREEMENT AND DECLARATION

It is agreed by the Owners and the Council that should the Development the subject of the Planning Permission be varied under a new planning permission ("the VARIAT planning permission") granted by the Council under Section 73 of the 1990 Act the planning obligations in this Agreement shall apply to the VARIAT planning permission

20. THE FIRST AGREEMENT

It is hereby agreed that with effect from the Effective Date all the obligations restrictions and covenants that relate to and apply to the Land in the First Agreement shall no longer be enforceable by the Council against the Owners and their successors to the Land

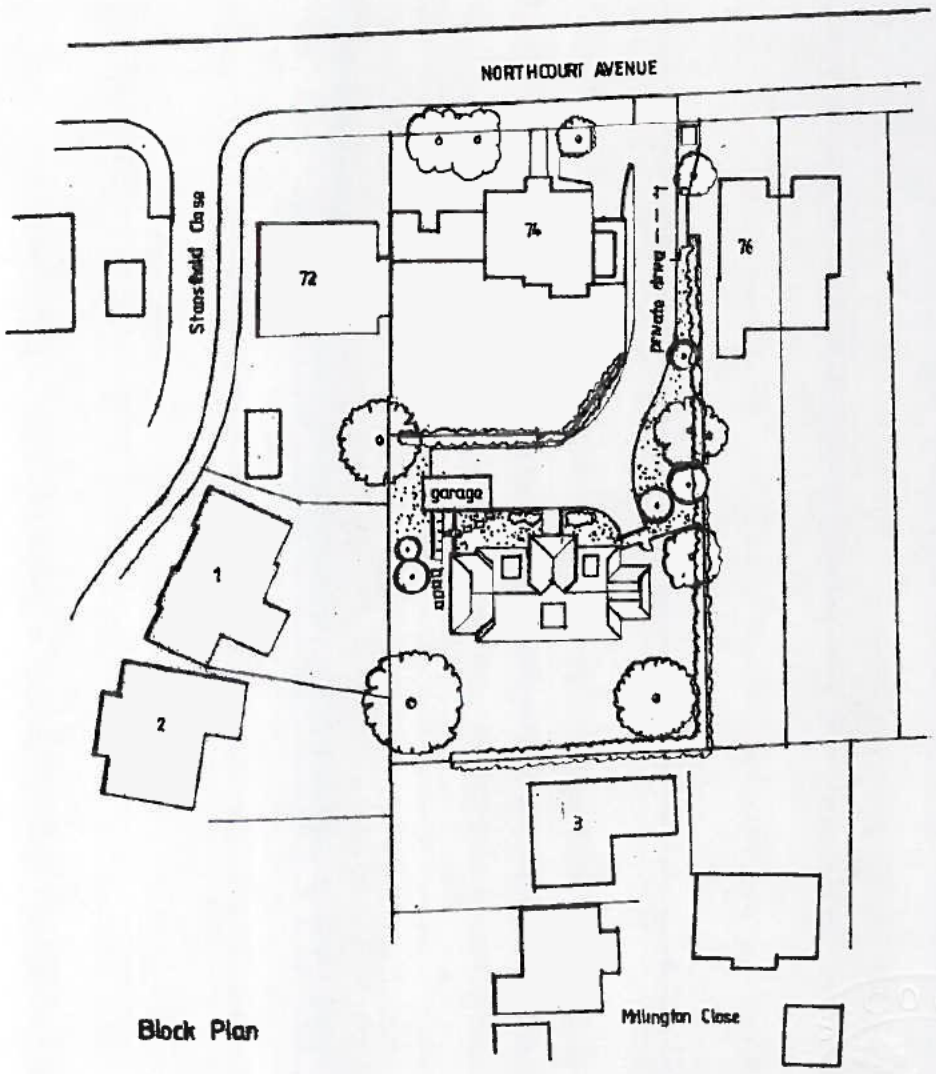
EXECUTED as a deed by the parties hereto and delivered on the date written at the start of this deed

THE SCHEDULE

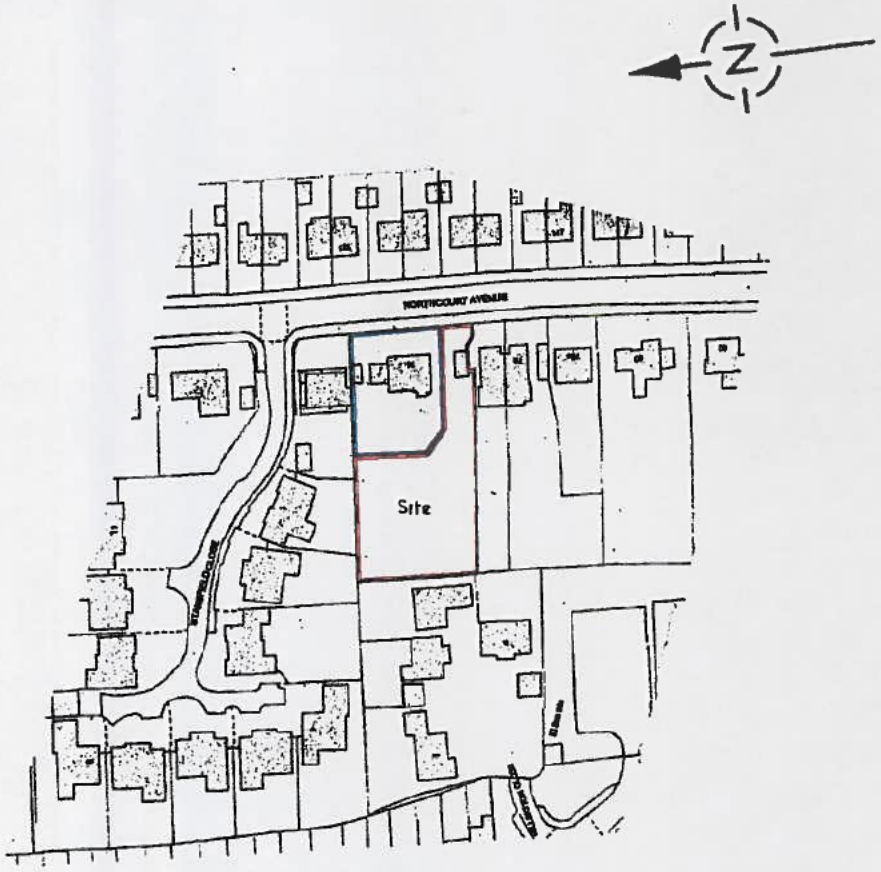
(The Land)

All that land at 74 Northcourt Avenue Reading RG2 7HQ the subject of the Application and which comprises the land registered at the Land Registry under Title Number BK243592 shown edged red on the plan annexed hereto

THE PLAN



Block Plan



Location Plan

0 5 10 15 20m

[redacted]

New House, 74 Northcourt Avenue, Reading, Berkshire. for Mr & Mrs. T. Abram.	Location & Block Plans Garage Elevations	1:1250 +500 July 2015	Matt Andrews Architect 24 Northcourt Avenue Reading RG2 7HA Berkshire	SF 6 Rev E Rev E 2017.06.22

SIGNED AS A DEED (but not delivered until the date hereof) by the said **THOMAS MARTIN ABRAM** in the presence of:-)

[redacted]

sign here

WITNESS

Name: DOMINIC RICARD REMEDIOS

Address: 63 TREDEGAR ROAD
EMMER GREEN
READING RG4 8PF

Signature: [redacted]

SIGNED AS A DEED (but not delivered until the date hereof) by the said **KATHERINE MARY ABRAM** in the presence of)

[redacted]

sign here

WITNESS

Name: DOMINIC RICARD REMEDIOS

Address: 63 TREDEGAR ROAD
EMMER GREEN
READING RG4 8PF

Signature: [redacted]

EXECUTED (BUT NOT DELIVERED)
UNTIL THE DATE HEREOF) by)

the affixing of THE COMMON)

SEAL of **READING BOROUGH**)
COUNCIL in the presence of:-)

[redacted]

Authorised Signatory

Minute	HPRS 23.07.14
Originator	SQ
Seal No.	208/18
Checked	

DATED 9th July 2018

THOMAS MARTIN ABRAM AND KATHERINE MARY ABRAM
(the Owners) **(1)**

and

READING BOROUGH COUNCIL
(the Council) **(2)**

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