Dated 2020

**s106 of the Town and Country Planning Act**

**Supplemental and Variation Agreement**

**between**

 **SHEFFIELD CITY COUNCIL**

**and**

**AVANT HOMES (ENGLAND) LIMITED**

……………………………

**Relating to Land AT Owlthorpe / Moorthorpe Way, Sheffield**

THIS DEED is dated 2020

1. **SHEFFIELD CITY COUNCIL** of Town Hall, Pinstone Street, Sheffield S1 2HH (“Council”)
2. **AVANT HOMES (ENGLAND) LIMITED** (Company Registration Number 01043597) whose registered office is situated at 6 –9 Tallys End, Barlborough, Chesterfield, S43 4WP (“Developer”)
3. Recitals

3.1 The Council is the local authority for the area within which the Site is situated.

3.2 The Developer having acquired the freehold from the Council is the registered freehold proprietor of the freehold land being the Site which is registered at HM Land Registry under title number SYK160571.

3.3 The Developer has submitted the Application for planning permission seeking the Planning Permission and the Council refused planning permission on 5.6.2020.

3.4 The Appeal has been submitted to the Secretary of State consequent upon the Council's decision to refuse planning permission for the Development

3.5 The Developer by entering into this Agreement does so to create planning obligations in respect of the Site and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

3.6 The Parties have agreed to enter into this Agreement in order to secure the planning obligations contained in the Agreement in the event that the Planning Permission is granted pursuant to the Appeal and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010

1. Definitions

4.1 In this Deed the following expressions shall have the following meaning:

 **"1990 Act"** means the Town and Country Planning Act 1990 (as amended);

 **“Accounting Date”** means the first day of April in every year or such other date or dates as the Rent Charge Owner may from time to time determine;

**“Accounting Period”** means a period of twelve months ending on the Accounting Date and the expression “relevant Accounting Period” shall be construed accordingly;

**“Affordable Housing”** means housing for sale or rent provided to eligible households whose needs are not met by the market in accordance with the definition at Annex 2 of the National Planning Policy Framework 2019 (or any future guidance that supplements or replaces it) where eligibility is determined with regard to local incomes and local house prices and which remain at an affordable price for future eligible households;

**"Appeal"** means the appeal submitted to the Secretary of State under reference APP/J4423/W/20/3258555 pursuant to the refusal of the Application by the Council dated 5th June 2020

**"Application”** means the application for planning permission with reference 19/03143/FUL submitted to the Council.

**“Base Index Date”** means the date on which a Planning Permission is granted by the Secretary of State or Inspector under the Appeal;

**“CIL Regulations”** means the Community Infrastructure Levy Regulations 2010 (as amended);

**“Buffer Strip Works”** means the landscaping works detailed on plan/drawing ref POS Plan Drawing No 148 on the land identified shaded green therein;

**"Commencement of Development"** means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act SAVE THAT the term “material operation” shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, archaeological investigation, diversion and laying of drainage and services, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing and hoardings to the site boundary and "Commence Development" shall be construed accordingly;

**"Contributions"** means the Donetsk Way Tram Stop Contribution, the Street Lighting Contribution, the Owlthorpe Park Masterplan Contribution, the Tree Compensation Works Contribution and the Footpath Connection Contribution, to be paid by the Developers to the Council in accordance with Schedule 2 hereto;

**"Decision Letter"** means the letter issued by the Inspector or the Secretary of State determining the Appeal;

**“Deed”** means this deed;

**“Development”** means the development of the Site in accordance with the Planning Permission;

**“Donetsk Way Tram Stop Contribution”** means the sum of sixteen thousand six hundred and sixty six pounds (£16,666.) to be expended by the Council on improvements to the Donetsk Way Tram Stop.

**"Dwellings"** means the residential units that may be built on the Site as part of the Development and "Dwelling" shall be construed accordingly;

**“Eligible Person”** means persons whose housing needs are not met by the market and who in respect of Shared Ownership Units, qualify for help to buy in accordance with the criteria of Homes England’s (or any replacement body or successor thereto) local help to buy agent (currently “Help to Buy North East Yorkshire and Humber”) or any replacement agent or successor thereto;

**“****Estate Rent Charge”** means the provisionsin clauses 2 of Schedule 1 below providing for each House Owner to make a reasonable contribution to the costs of the Council in discharging its obligations in relation to carrying out the SUDs Management and Maintenance Responsibilities, the Owlthorpe Park Provision and Maintenance Scheme and the On Site POS Management and Maintenance Scheme;

**"Footpath Connection Contribution"** means the sum of five thousand pounds (£5,000 ) to be expended by the Council towards the provision of a stoned footpath connection between the west end of the estate road adjoining plot 34 to the right of way ECK/171 to the West of the Site;

**“Growing Season”** means the period from 1st March until the 30th of September each year;

**“House Owner”** means the owner or occupier of a Dwelling;

**"Index"** means the 12 (twelve) month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;

**“Index Linked”** means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it;

**"Inspector"** means an inspector appointed by the Secretary of State to determine the Appeal pursuant to Schedule 6, of the 1990 Act;

**"Interest Rate"** means interest at 4 (four) per cent above the base lending rate of the Bank of England from time to time and in every case compounded on the first day of June and December in each year;

**"Landscape and Ecological Management Plan"** means the plan to be prepared by the Council, incorporating short, medium and long term aims and objectives; management responsibilities; and maintenance schedules for all compensation works and a scheme to monitor and evidence whether the bio diversity net gain has been delivered in accordance with the plan.

**"****Local Wildlife Site"** means Owlthorpe Local Wildlife Site;

**"Local Wildlife Site Contribution"** means the sum of fourteen thousand pounds (£14,000.00) to be expended by be Council towards the provision within specified timescales of additional litter bins, dog waste bins and signs on the approach to the Local Wildlife Site (LWS) and fencing to secure part of the LWS from encroachment to compensate from the increased pressure from encroachment that will result from the Development;

**"National Planning Policy Framework"** means the National Planning Policy Framework published by the Ministry of Communities and Local Government in February 2019 (as amended in June 2019) (or any future guidance or initiative that replaces or supplements it);

**"Occupation"** means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operations and "Occupant" "Occupy" and "Occupier" shall be construed accordingly;

**"Off-Site Biodiversity Compensation Contribution"** means the sum of two hundred and thirty thousand four hundred pounds (£230,400) to be expended by the Council on the provisions and measures set out in the Landscape and Ecological Management Plan.

**“****On Site POS”** means thelandscaped areas shownon plan/drawing ref Pos Plan Drawing No. 148 showing The Buffer Strip Works and the Play Area.

**“****On Site POS Management and Maintenance Scheme”** means the scheme to be prepared by the Council setting out the ongoing works to be undertaken for the management and future maintenance of the On Site POS;

**"Open Market Dwellings"** means the Dwellings excluding the Affordable Units and "Open Market Dwelling" shall be construed accordingly;

**"****Owlthorpe Park"** means the land shown on plan OMP-UED-Z0-XX-DL-L-0001;

**“****Owlthorpe Park Provision and Maintenance Scheme”** means the scheme to be prepared by the Council setting out the ongoing works to be undertaken for the provision of recreational facilities on the Owlthorpe Park including the provision of the Play Area, future maintenance and management of Owlthorpe Park;

**"Owlthorpe Park Masterplan Contribution"** means the sum of five thousand four hundred and seventy seven pounds (£5,477) to be expended by the Council towards the production of the Owlthorpe Park Masterplan;

**“the Planning Permission”** means any planning permission to be granted by the Secretary of State in respect of the Appeal;

**“Plan”** means plan N1276 001 Rec C appended to this Agreement;

**“Play Area”** means a LEAP to be provided on the part of the Owlthorpe Park shown indicatively on drawing/plan ref POS Plan Drawing No.148 by reference ‘Indicative Location of LEAP’;

**“Protected Tenant”** in respect of a Shared Ownership Unit means any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Shared Ownership Unit; or

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Shared Ownership Unit; or

(c ) has been granted a shared ownership lease (where a share of the Shared Ownership Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Shared Ownership Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Shared Ownership Unit; or

and

their mortgagees and/or any person or body deriving title through or from any of the parties mentioned in paragraphs (a) to (c) above

**"Registered Provider"** means the Council or any other registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered by Homes England under the provisions of Section 111 of the Housing and Regeneration Act 2008;

**“****Rent Charge”** means a rentcharge at the Rentcharge Rate for the whole Site per annum in respect of the cost of the future maintenance of the SUDS, the performance of the requirements of the Owlthorpe Park Provision and Maintenance Scheme and the On Site POS Management and Maintenance Scheme subject to indexation in line with the Index from the Base Index Date to be due on 1 January in every year;

**“Rent Charge Owner”** means Sheffield City Council of The Town Hall, Pinstone Street, Sheffield, S1 2HH or the person or the body for the time being entitled to the benefit of the Rent Charge;

**“Rent Charge Payment Date”** means 1st April in each year;

**“Rentcharge Rate”** means the sum for the Rent Charge to be agreed in writing between the Council and the Developer;

**"Secretary of State"** means the Secretary of State for Housing, Communities and Local Government or any substitute or any Inspector appointed by him;

**“Shared Ownership Lease”** means a lease to be granted for a term of not less than 125 years which shall accord with the requirements of, and be consistent with any model shared ownership lease as approved from time to time by Homes England (or any body that replaces it or any statutory successor);

**“Shared Ownership Housing”** means Affordable Housing provided by a Registered Provider which is let by way of Shared Ownership Lease granted to Eligible Persons where the percentage equity share to be marketed and the percentage rent payable under retained equity is agreed in writing between the Council and the Registered Provider;

**“Shared Ownership Units”** means those 15 Dwellings of Affordable Housing as shown on plan reference N1276 110 Rev D to be provided by a Registered Provider as Shared Ownership Housing and “Shared Ownership Unit” shall be construed accordingly;

**“Site”** means the land shown edged red on the Plan to which the Application relates

**"Street Lighting Contribution"** means the sum of twenty one thousand four hundred and eighty five pounds (£21,485) to be expended by the Council towards the provision of street lighting;

**“SUDs”** means the sustainable urban drainage system to be provided on the SUDs Land

**“SUDS Adoption Fee”** means the sum of ten thousand pounds (£6,500) which in respect of the Councils costs associated with the adoption of the SUDs;

“**SUDs Land”** means the area of land shown on which the SUDs are to be constructed as shown edged red on the attached drawing ref N1276 001 Rev C;

**“SUDs Maintenance Contribution”** means the sum of ten thousand pounds (£10,000) which shall be used by the Council to meet the costs of carrying out the SUDs Management and Maintenance Responsibilities and in particular to meet any shortfall in the quantum of the Estate Rent Charge to meet the full costs of the Council in carrying out the SUDs Management and Maintenance Responsibilities;

**“SUDs Management and Maintenance Responsibilities”** means that part of the SUDs Scheme that will provide details in connection with the ongoing management and maintenance of the SUDS to be agreed between the Council and the Developer;

**“SUDs Planting Scheme”** means the part of the Suds Scheme that is shown on Plan 3573/4 Rev D appended hereto detailng the planting and landscaping works to be done in relation to the SUDs following the completion of the SUDs;

**“SUDs Scheme”** means written details relating to the SUDs Works Scheme, SUDS Planting Scheme and SUDs Management and Maintenance Responsibilities in aggregate;

**“SUDs Works Scheme”** means the part of the SUDs Scheme detailing the construction of the SUDs set out in the attached drawing ref P2741-01-02 Rev G;

**“Tree Compensation Works Contribution”** means the sum of twenty two thousand nine hundred and thirty five pounds and ninety one pence (£22,935.91) which to be expended by the Council towards the provision of tree planting on land adjoining the Site; and

**“Working Days”** means any day excluding a Saturday a Sunday and any bank holiday.

1. Statutory Powers

 This Deed is made pursuant to section 106 of the Town and Country Planning Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and any other enabling powers.

1. OPERATIVE Provisions

6.1. The Developer hereby covenants with the Council that the Land shall be permanently from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule and the Developers acknowledges that their respective interests in the Land shall be bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule; and

6.2. The Council covenants with the Owner to comply with its obligations in Schedule 5 and where applicable in Schedule 1

.6.3 The parties agree that if any application arising from the Planning Permission is made pursuant to Section 73 of the 1990 Act (the “Section 73 Application”) and a planning permission is granted pursuant to the Section 73 Application (the “Section 73 Permission”), then this Deed shall apply mutatis mutandis to the development permitted by the Section 73 Permission (the “Section 73 Development”) and shall continue to bind the Site as set out in this Deed and all references to the ‘Application’, ‘Planning Permission’ and the ‘Development’ in this Deed shall be construed to include the Section 73 Application, the Section 73 Permission and the Section 73 Development.

6.4 For the purposes of clause 6.3 any Section 73 Application relating to either the Planning Permission or any subsequent Section 73 Permission is construed to be “arising from the Planning Permission”.

6.5 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

6.6 Where two or more people form a party to this Deed, then all of that party’s obligations in this Deed can be enforced against both or all of the persons jointly and against both or all of the persons individually and where more than one party undertakes or is required to comply with an obligation in this Deed then such obligation can be enforced against both or all parties jointly and against both or all parties individually.

6.7 If any provision in this Deed is in whole or in part held to any extent to be illegal, invalid or unenforceable it shall be severed from this Deed to the extent required but the legality, validity and enforceability of the remainder of the Deed is unaffected and in the event of any such severance the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so severed.

6.8 Nothing in this Deed shall prevent or limit development under any other permission other than the Planning Permission or a subsequent Section 73 Permission.

6.9 Nothing in this Deed constitutes a grant of planning permission or an obligation to grant planning permission and nothing in this Deed grants any other approval, consent or permission required from the Council in the exercise of any other statutory function.

6.10 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date.

6.11 No provisions of this Deed will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the parties to this Deed and their successors in title.

6.12 No provisions of this Deed will be enforceable against occupiers of individual commercial units or residential units (save in respect of the Affordable Housing provisions of this Deed insofar as they relate to Dwellings) and no provision of this Deed will be enforceable against any utility provider or statutory undertaker whose interest in the Site is limited to the purposes of its undertaking

7. Conditionality

7.1 The planning obligations comprised in this Agreement shall not become effective until the following conditions are satisfied:

7.1.1 the Planning Permission has been granted; and

7.1.2 (except where stated otherwise in this Agreement) the Commencement of Development..

8. TERMINATION OF THIS DEED

 8.1 This Deed will forthwith determine and cease to have effect if:

8.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable; or

8.1.2 the Planning Permission expires before the Commencement Date without having been implemented

9. NOTICES

9.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

9.2 Any notice, demand or any other communication to be served on the Landowner is to 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.

9.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Head of Planning and the CIL/106 Monitoring Officer at Planning Service, Howden House, 1 Union Street, Sheffield, S1 2SH quoting the Planning Permission reference.

9.4 Subject to clause 6.5 unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

9.4.1 if delivered by hand, at the time of delivery;

9.4.2 if sent by pre-paid first class post, on the second Working Day after posting; or

9.4.3 if sent by recorded delivery, at the time delivery was signed for.

9.5 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

9.6 Notwithstanding clauses 9.1 to 9.5, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

10. COSTS OF THIS DEED

 Prior to or upon completion of this Deed the Landowner is to pay to the Council its reasonable and proper legal costs together with all disbursements of £3,750 which are incurred in connection with the preparation, negotiation completion and registration of this Deed

11. DETERMINATION OF DISPUTES

11.1 Subject to clause 11.7, if any dispute arises out of or relating to the terms of this Deed, any party may give to the any other party written notice requiring the dispute to be determined under this clause 11.

11.2 Any notice given pursuant to clause 11.1 above must propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

11.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any party to the dispute to the president or the next most senior available officer of the Law Society who will have the power, with the right to take such further advice as they may require, to determine the appropriate type of Specialist and to arrange the Specialist’s nomination under clause 11.4.

11.4 Any dispute over the identity of the Specialist is to be referred at the request of any 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 they may require, to determine and nominate the appropriate Specialist or to arrange their nomination. If no such organisation exists, or the parties to the dispute 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.

11.5 The Specialist is to act as an independent expert and:

11.5.1 each party to the dispute may make written representations within fifteen Working Days of the appointment of the Specialist and will copy the written representations to the other party;

11.5.2 each party to the dispute is to have a further fifteen Working Days to make written comments on the other’s representations and will copy the written comments to the other party or parties;

11.5.3 the Specialist is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as they may reasonably require;

11.5.4 the Specialist is not permitted to take oral representations from the parties to the dispute without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

11.5.5 the Specialist is to have regard to all representations and evidence before them when making their decision, which is to be in writing, and the Specialist must give written reasons for their decision; and

11.5.6 the Specialist must use all reasonable endeavours to publish their decision within 30 Working Days of their appointment.

11.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 11, including costs connected with the appointment of the Specialist and the Specialist’s own costs, but not the legal and other professional costs of each party to the dispute in relation to a dispute, will be decided by the Specialist.

11.7 This clause 11 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.

12. NO WAIVER

12.1 No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy and in any event no waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the obligations in this Deed shall constitute a continuing waiver.

12.2 No such failure, delay or waiver shall prevent the Council from enforcing any of the obligations that are not complied with and no single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13. INDEXATION OF CONTRIBUTIONS

13.1 All financial contributions payable to the Council pursuant to this Deed shall be increased to reflect any increase in the Index occurring in the period from and including the date of this Deed to and including the date of actual payment.

13.2 Should the Index cease to exist, or should it be replaced or rebased, then the term shall include reference to any index which replaces the Index or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed).

14. INTEREST

 Should any financial contribution payable to the Council pursuant to this Deed not have been paid to the Council despite having become due then the Developer shall pay interest thereon at the interest rate of four per cent per annum above the base lending rate of Barclays Bank plc for the period from the due date to and including the date of payment.

15. CIL REGULATIONS

15.1 If in determining the Appeal the Secretary of State or the Inspector expressly states in the Decision Letter that any planning obligation contained in this Deed:

 (a) is not a material planning consideration; or

 (b) can be given no weight in determining the Appeal; or

 (c ) does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations

 then subject to clause 6.7 of this Deed such planning obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Decision Letter.

16 Third Parties

 A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

17. Jurisdiction

 This Deed shall be governed by and interpreted in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.

18. EXECUTION

 The parties have executed this Deed as a deed and it is delivered on the date set out above

SCHEDULE 1

1. SUDS Management and Maintenance Part 1

1.1 That once the Developer considers that the SUDs have been completed in accordance with the SUDS Scheme to serve notice of completion on the Council

1.2 The Developer shall allow and arrange for the Council Representative to have access to the SUDs at all reasonable times for the purpose of inspecting the same and ensuring compliance with this Agreement.

1.3 The Developer shall on being so reasonably requested in writing by the Council Representative open up for inspection any part of the SUDs which may have been covered up.

1.4 The Council shall within 30 Working Days of receipt of notice of completion of the SUDs Works Scheme pursuant to clause 1.1 above either: (a) confirm in writing that the SUDS are approved and accepted as completed in accordance with the SUDs Works Scheme or (b) provide to the Developer with detailed reasons in writing as to why the SUDs are not approved PROVIDED THAT in the event that the Council has not responded to the Developer in writing within the said 30 Working Days period then the Council shall be deemed to have approved the SUDs.

1.5 In the event that the Council does not approve the SUDs under paragraph 1.4 above then the Developer and the Council shall liaise with the aim of agreeing the outstanding works that need to be done to secure approval and the procedure in paragraph 1.4 above will be repeated in relation to the outstanding works as necessary PROVIDED THAT if it has not been possible to reach agreement within 20 Working Days of receipt by the Developer of the Council’s written response either party may refer the same for determination under clause 11 (disputes procedure).

1.6 Once the Council has approved the SUDs pursuant to paragraph 1.4the Developer will carry out the planting and landscaping in accordance with the SUDS Planting Scheme and when completed will serve notice on the Council and the procedure set out in paragraph 1.4 will operate in relation to the approval of the works by the Council.

1.7 Following the Council’s approval of the planting and landscaping provided in accordance with SUDs Planting Scheme the Developer will maintain the SUDs in accordance with the Management and Maintenance Scheme for a period of at least 18 months which includes two full Growing Seasons from the date of approval by the Council and will remedy any defects in the SUDs or in the planting and landscaping which may occur during this period.

1.8 Following the expiration of the period specified in paragraph 1.7 and subject to the Developer’s compliance with the obligations in paragraph 1.7 and 1.9 hereof the Council will assume responsibility for the Management and Maintenance of the SUDs in accordance with the SUDs Management and Maintenance Responsibilities.

1.9 On the Council assuming responsibility for the Management and Maintenance of the SUDs the Developer will pay both the SUDS Adoption Fee and the SUDs Maintenance Contribution to the Council.

1.10 The Council shall allow and arrange for the Developer and any officer, representative, or agent of the Developer to have access to the SUDs Land at all reasonable times for the purpose of carrying out the Developers obligations under this Agreement.

2. ESTATE RENT CHARGE

2.1 The Developer will procure that the transfer to the buyer of each Dwelling comprised in the Development contains covenants substantially in the form set out below (or in such other form as agreed in advance by the Council in writing) direct with the Council under which:-

1. The House Owner will on the Rent Charge Payment Date pay to the Rent Charge Owner the Rent Charge arising in respect of any relevant Accounting Period.
2. Where under the terms of this transfer any sum of money becomes due and payable by the House Owner to the Rent Charge Owner and remains unpaid for a period of 14 days from the date of demand the House Owner shall pay to the Rent Charge Owner before as well as after any judgement interest on such sum from the date on which the payment of such sum became due and payable until the date of actual payment at a rate of 4% above the base rate for lending for the time being of Royal Bank of Scotland and shall pay to the Rent Charge Owner all costs charges and expenses properly incurred in connection with the recovery of such arrears
3. Not to dispose of the Dwelling without:
	1. ensuring that the incoming owner enters into a Deed of Covenant in favour of the Rent Charge Owner in substantially the form set out below; and
	2. making payment to the Rent Charge Owner of all outstanding sums which have fallen due in respect of Rent Charge prior to the date of such transfer.

**Form of Deed of Covenant**

THIS DEED OF COVENANT is made the [ ] day of [ ] 20[ ]

BETWEEN

(1) [ ] of [ ] (“the Transferee”)

(2) Sheffield City Council of The Town Hall Pinstone Street Sheffield S1 2HH (“the Rent Charge Owner”)

WHEREAS

(A) By a transfer dated [ ] (“the Original Transfer”) Avant Homes (England) Limited transferred to [ ] (“the Original Purchaser”) the Property known as [ ] (“the Property”) and the Original Transfer contained a covenant on the part of the Original Purchaser for himself and his successors in title not to dispose of the Property without contemporaneously procuring the new owner or owners thereof enters into a Deed of Covenant in the form of these presents (mutatis mutandis).

(B) The Property is currently owned by [ ] (“the Current Owner”) and is registered at the Land Registry under title number SYK[ ].

(C) The Transferee has contracted with the Current Owner for the purchase of the Property.

(D) The consent of the Rent Charge Owner is required before the transfer of the Property in favour of the Transferee can be registered at the Land Registry.

OPERATIVE PROVISIONS

1 The Transferee hereby covenants with the Rent Charge Owner as follows:

1.1 to observe and perform all the covenants and stipulations on the part of the Original Purchaser contained in the Original Transfer; and

1.2 on any sale transfer or other disposal of the Property to procure that the new owner or owners thereof enters into a Deed of Covenant in the form of the Deed of Covenant set out in the Original Transfer (mutatis mutandis).

The Rent Charge Owner hereby consents to the registration of the transfer of the Property in favour of the Transferee at the Land Registry.

In this deed whereby the context so admits:

words importing the singular number only include the plural number and vice versa words importing the masculine gender only include feminine gender and reference to “Rent Charge Owner” and “the Transferee” shall include their respective successors in title;

where there are two or more persons included in the expression “the Transferee” covenants expressed to be made by the Transferee shall be deemed to be made by such persons jointly and severally.

This document is executed by a deed and is delivered on the date stated at the beginning of this deed.

 Whereby:

 “Accounting Date” means the first day of April in every year or such other date or dates as the Rent Charge Owner may from time to time determine;

“Accounting Period” means a period of twelve months ending on the Accounting Date and the expression “relevant Accounting Period” shall be construed accordingly;

“Base Index Date” means the date of the grant of the planning permission to which the Rent Charge relates;

“Buffer Strip Works” means the landscaping works to be carried out on plan/drawing ref POS Plan Drawing No 148 on the land shaded green therein;

“On Site POS” means the landscaped areas shown on plan/drawing ref POS Plan Drawing No.148 showing the Buffer Strip Works and the Play Area.

“On Site POS Management and Maintenance Scheme ” means the scheme to prepared by the Council setting out the ongoing works to be undertaken for the management and future maintenance of the On Site POS;

“Owlthorpe Park Management and Maintenance Obligations” means the ongoing works to be undertaken by the Rent Charge Owner towards the Provision, future maintenance and management of Owlthorpe Park;

“Rent Charge” means a rentcharge at the Rentcharge Rate for the whole Site per annum in respect of the cost of the future maintenance of the SUDS, the performance of the requirements of the Owlthorpe Park Provision and Maintenance Scheme and the On Site POS Management and Maintenance Scheme subject to indexation in line with the Retail Prices Index from the Base Index Date;

“Rent Charge Owner” means Sheffield City Council of The Town Hall Pinstone Street Sheffield S1 2HH or the person or body for the time being entitled to the benefit of the Rent Charge

“Rent Charge Payment Date” means 1st April in each year.

“SUDS” means the sustainable urban drainage system that serves the Property

1. to procure that an application is made to the Land Registry for entry of a restriction onto the register of the title of each Dwelling comprised in the Development in standard form L in Schedule 4 of the Land Registration Rules 2003 namely:

'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of a transfer dated [ ] and made between [name] (1) and [name] (2) have been complied with or that they do not apply to the disposition’

SUDS WORKS SCHEME PART 2

OWLTHORPE PARK PROVISION AND MAINTENANCE PART 3

1. The Council acknowledges that it shall be responsible for the maintenance and management of Owlthorpe Park in accordance with the Owlthorpe Park Provision, and Maintenance Scheme and The Estate Service Charge provisions in paragraph 2 Of Part 1 of this Schedule (with any necessary amendments) shall apply to the effect that the proportionate costs incurred by the Council in carrying out the maintenance and management requirements of the Owlthorpe Park Provision and Maintenance Scheme shall be met by the Rent Charge to be included by the Developer in all the transfers to the buyer of each Dwelling comprised in the Development

ON-SITE OPEN SPACE AND PLAY AREA. PART 4

1. Prior to the Occupation of 75% of the Dwellings the Developer will provide the On Site POS and will not permit the Occupation of more than 75% of the Dwellings until the On Site POS has been provided.
2. The provisions of paragraphs 1.1 to 1.5 inclusive of Part 1 to this Schedule with necessary amendments shall apply In relation to the approval of the On Site POS works by the Council.
3. The provisions of paragraph 1.7 and 1.8 with necessary amendments shall apply in relation to the initial maintenance of the On Site POS and the assumption of responsibility by the Council for the ongoing management and maintenance on the On Site POS following the expiration of the 18 month maintenance by the Developer.
4. Once the Developer has complied with paragraph 3 of this Part 4 of to this Schedule the Council and will transfer the Buffer Strip Works to the Council for a peppercorn.

**SCHEDULE 2**

**CONTRIBUTIONS**

1. Prior to the Commencement of Development the Developer shall pay the Contributions
2. The Developer will not Commence Development until the Contributions have been paid to the Council

**OFF-SITE BIODIVERSITY COMPENSATION CONTRIBUTION**

1. To pay the Off-Site Biodiversity Compensation Contribution by the phased stages set out below and not to carry out development beyond the said phases until the specified staged payment has been made to the Council
	1. Fifty per cent of the Off-Site Biodiversity Compensation Contribution prior to the Occupation of any Dwelling on the Site
	2. The remaining Fifty per cent of the Off-Site Biodiversity Compensation Contribution prior to the Occupation of 50 Dwellings on the Site

**SCHEDULE 3**

1. Prior to the Commencement of Development the Developer shall pay the Local Wildlife Site Contribution to the Council.

**SCHEDULE 4**

1. AFFORDABLE HOUSING

4.1 Not to permit, cause or allow Occupation of more than 20 Open Market Dwellings until 5 of the Shared Ownership Units have been Substantially Completed and transferred to a Registered Provider.

4.2. Not to permit cause or allow Occupation of more than 40 Open Market Dwellings until 10 of the Shared Ownership Units have been Substantially Completed and transferred to a Registered Provider..

4.3. Not to permit, cause or allow Occupation of more than 55 Open Market Dwellings until all 15 of the Shared Ownership Units have been Substantially Completed and transferred to a Registered Provider:

4.4 Not to Occupy any Dwelling other than as a Shared Ownership Unit Occupied by an Eligible Person pursuant to a Shared Ownership Lease.

4.5 To provide any evidence which the Council may reasonably request at any time in order to enable the Council to monitor compliance with this Schedule 4, within 20 Working Days of any such request.

4.6 It is agreed that the obligations in this Schedule shall not be binding on any Protected Tenant or any person deriving title from the Protected Tenant (save for a Registered Provider), who may be entitled to dispose of any Shared Ownership Unit in question free of the restriction set out in paragraph 4.4 of this Schedule PROVIDED THAT:

4.7 If the proposed transfer is intended to take place within ten years of the Protected Tenant’s acquisition of the Shared Ownership Unit pursuant to their Protected Tenant status, they must, prior to seeking to dispose of the Unit in question, give prior written notice to the Council and the Registered Provider of their intention to dispose, such written notice to contain a plan identifying the Shared Ownership Unit in question together with its postal address;

4.8 In the event that the Council or the Registered Provider responds within 40 Working Days from receipt of a notice served pursuant to paragraph 4.7 above indicating that reasonable arrangements for the transfer of the Shared Ownership Unit in question can be made in such a way as to safeguard it as a Shared Ownership Unit (which may include the Council or any Registered Provider purchasing the unit from the Protected Tenant) then the Protected Tenant shall co-operate with such reasonable requirements and arrangements of the Council, the Registered Provider and the proposed transferee and use reasonable endeavours to secure such transfer on terms to be agreed between the Protected Tenant the Council, the Registered Provider and the proposed transferee;

4.9 If neither the Council nor the Registered Provider serves its response to the written notice served on it by the Protected Tenant within the said 40 Working Day time period then the Protected Tenant shall be entitled to dispose of the Shared Ownership Unit in question to any person, and upon completion of such disposal, PROVIDED THAT the Protected Tenant complies with paragraph 4.8 at the time of disposal and subject always to paragraph 4.11 below, the Dwelling shall be free of the restriction set out in paragraph 4.4 of this Schedule;

4.10 Where paragraphs 4.7 and 4.8 apply but the Council or any other person (using reasonable endeavours) has been unable, within 60 Working Days (beginning on the day after the date of the Council’s receipt of the Protected Tenant’s written notice served pursuant to paragraph 4.7), to enter into a binding contract for the sale and transfer of the Unit in question by the Protected Tenant, then PROVIDED THAT the Protected Tenant has complied with its obligations under this schedule, they shall be entitled to dispose of the Shared Ownership Unit in question to any person, and upon completion of such disposal, PROVIDED THAT the Protected Tenant complies with paragraph 4.11 at the time of disposal, the Dwelling shall be free of the restriction set out in this Schedule;

4.11 Upon the sale of a Shared Ownership Unit by a Protected Tenant the staircasing sums received must be reinvested towards provision of Affordable Housing within Sheffield; and

4.12 Where the purchaser of a Shared Ownership Unit from a Protected Tenant is a Registered Provider, the restrictions in this Deed shall continue to apply to that Shared Ownership Unit; and

4.13 Notwithstanding the above or anything else contained or referred to in this Deed nothing in this Deed shall require the Council or any Registered Provider to act contrary to any of their statutory duties or obligations

4.14 Any Chargee must prior to seeking to dispose of any Shared Ownership Unit pursuant to any default under the terms of its security documentation give prior written notice to the Council of its intention to dispose, such written notice to contain a plan identifying the Shared Ownership Unit in question together with its postal address and evidence of all monies due under the terms of the relevant security documentation and:

4.15 In the event that the Council responds within 30 Working Days from receipt of a notice indicating that reasonable arrangements for the transfer of the Shared Ownership Unit in question can be made in such a way as to safeguard it as a Shared Ownership Unit or as Affordable Housing of another tenure within Annex 2 of the National Planning Policy Framework then the Chargee shall co-operate with such reasonable requirements and arrangements of the Council and the proposed transferee(s) and use reasonable endeavours to secure such transfer on terms to be agreed between the Chargee the Council and the proposed transferee(s) PROVIDED THAT such terms in respect of each Shared Ownership Unit in question shall provide for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating to the Dwelling in question;

4.16 If the Council does not serve its response to the written notice served on it by the Chargee within the said 30 Working Day time period then the Chargee shall be entitled to dispose of the Unit in question free of the restriction set out in paragraph 4.4 of this Schedule which shall from the time of completion of the disposal cease to apply;

4.17 Where paragraph 4.15 applies but the Council or any other person (using reasonable endeavours) has been unable, within 30 Working Days (beginning on the day after the date of the Council’s receipt of the Chargee’s written notice served pursuant to this paragraph 4.14), to enter into a binding contract for the sale and transfer of the Shared Ownership Unit by the Chargee then PROVIDED THAT the Chargee has complied with its obligations under this paragraph 4.15 (confirmation of such compliance not to be unreasonably withheld or delayed by the Council following a written request for such confirmation which may be made for on behalf of the Chargee) then the Chargee shall be entitled to dispose of the Unit in question free of the restriction set out in paragraph 4.4 of this Schedule which shall from the time of completion of the disposal cease to apply

4.18 Notwithstanding anything contained or referred to in this Deed nothing in this Deed shall require any Chargee to act contrary to any statutory duties or statutory obligations nor contrary to its duties and rights under the relevant security documentation nor to accept a consideration in respect of any Shared Ownership Unit which is less than the amount due and outstanding under the terms of the relevant security documentation relating to that particular Unit.

**SCHEDULE 5**

5 COUNCIL COVENANTS

The Council hereby covenants with the Developer: -

**General**

5.1 The Council will on the reasonable written request of the Developer at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

5.2 To issue separate receipts on request for any sum or contribution paid to the Council under this Agreement.

5.3 The prepare the Landscape and Ecological Management Plan and the On Site POS Management and Maintenance Scheme

**Contributions**

5.4 To apply the Contributions towards the purposes specified in this Agreement and not apply any parts of the Contributions for any other purposes than those stated and the Council shall (on the reasonable request of the payee or the payee’s nominee) provide evidence that the monies have been so applied.

5.5.To apply the Off-Site Biodiversity Contribution towards the purposes specified in this Agreement and not apply the Off-Site Biodiversity Contribution for any other purposes than those stated and the Council shall (on the reasonable request of the payee or the payee’s nominee) provide evidence that the monies have been so applied.

5.6 To apply the SUDS Adoption Fee and SUDS Maintenance Contribution towards the purposes specified in this Agreement and not apply any parts of the SUDS Adoption Fee and SUDS Maintenance Contribution for any other purposes than those stated and the Council shall (on the reasonable request of the payee or the payee’s nominee) provide evidence that the monies have been so applied.

5.7 To apply the Local Wildlife Site Contribution towards the purposes specified in this Agreement and not apply the Local Wildlife Site Contribution for any other purposes than those stated and the Council shall (on the reasonable request of the payee or the payee’s nominee) provide evidence that the monies have been so applied.

**Repayment**

5.8 That in the event any parts of the Contributions, the Off-Site Biodiversity Contribution, the SUDS Adoption Fee and SUDS Maintenance Fee and the Local Wildlife Site Contribution or any part or parts thereof are not spent or committed within ten years of the date of payment (or the date of payment of the final instalment if applicable) of such payment then the sum or sums not spent or committed plus interest accrued will be repaid to the Developer or its nominee.

5.9 In relation to the Off-Site Biodiversity Compensation Contribution any sums intended or allocated to be expended in relation to the requirement to manage and monitor the Ecological enhancements provided pursuant to the Landscape and Ecological Management Plan over a 30 year period shall be treated as having been committed for the purposes of paragraph 5.8 of this Schedule 5.

Executed and Delivered as a Deed on the date of this document

**EXECUTED** under the Common Seal of )

**SHEFFIELD CITY COUNCIL**

 in the presence of

………………………………………..

………………………………………..

………………………………………..

**SIGNED** and **DELIVERED** as a **DEED** by **)**

**AVANT HOMES (ENGLAND) LIMITED** **)**

acting by **)**

Director / Attorney

in the presence of

Witness Signature:

Witness Name:

Witness: Address:

Witness Occupation: