

THIS AGREEMENT is made the 6th day of October 2016

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF GUILDFORD** the principal administrative office of which is at Millmead House Millmead Guildford Surrey GU2 4BB ("the Council")
- (2) **THE ROYAL HORTICULTURAL SOCIETY (Charity number 222879)** of 80 Vincent Square London SW1P 2PE (the " Owner")

BACKGROUND

- (i) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated
- (ii) The Applicant has the estate or interest described in the First Schedule
- (iii) The Application has been submitted to the Council by the Owner
- (vi) Surrey County Council is the highway authority (within the meaning of the Highways Act 1980) for the area within which the Land is situated and has required a contribution of £87,000 towards Sustainable Transport Improvements in the vicinity of the Land together with a contribution of £4,600 towards the monitoring of the travel plan
- (vii) The parties to this Deed have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of all provisions in this Deed the following expressions shall have the following meanings:

"1990 Act" the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991

"Application "	Erection of new part single-storey part two-storey building accommodating retail, entrance and visitor facilities and alterations to the car parking and hard and soft landscaping and following the demolition of the existing plant centre, the extensions to the Laboratory building, toilet blocks, Aberconway Cottage and part of Aberconway House under reference 16/P/01080.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and the phrases "Commence Development" and "Development will Commence" shall be construed accordingly.
"Development"	the Development of the Land as set out in and as detailed in and as authorised by the Planning Permission
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics
"Interest"	interest at 4 per cent above the base lending rate of the HSBC Bank Plc from time to time in force

"Land"	the land and premises against which this Deed may be enforced as detailed in the First Schedule and more particularly delineated edged with a red line on the Plan
"Members"	those persons who have taken out annual or life membership of the Royal Horticultural Society
"Opening"	the date on which the Development is opened for use by Members or the public (or if earlier the date on which any part of the Development is made available for use by Members or by the Public) and 'Open' shall be construed accordingly
"Plan"	Means the Plan entitled Proposed Site Plan with drawing number 212_P_00_01
"Planning Permissions"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application or by the Secretary of State for Communities and Local Government on appeal
"Section 106"	Section 106 Town and Country Planning Act 1990 as substituted by Section 12 Planning and Compensation Act 1991
"Sustainable Transport Improvements"	the provision of a shared footway/cycleway to be implemented on the existing footway adjacent to Wisley Lane, to encourage users of all abilities to travel by foot or bicycle and the provision of improvements to the substandard footway between Footpath 7 to Footpath 3 which connects the site

to the Byfleet area.

"Sustainable Transport Contribution" the sum of EIGHTY SEVEN THOUSAND POUNDS (£87,000.00) being a contribution towards the provision of the Sustainable Transport Improvements

"Travel Plan Monitoring Contribution" the sum of FOUR THOUSAND SIX HUNDRED POUNDS (£4,600) for the monitoring of the approved travel plan (submitted as part of the Application) compliance with which has been secured by condition

"Working Days" all days except Saturdays Sundays Bank Holidays and all other Public Holidays

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule such reference (unless the context otherwise requires) shall be a reference to a clause, paragraph or schedule in or to this Deed.
- 2.2 The headings to the clauses, schedules and paragraphs of this Deed shall not affect the interpretation of this Deed.
- 2.3 The Schedules to this Deed form part of it and the provisions set out in the Schedules shall have the same full force and effect as if expressly set out in the body of this Deed.
- 2.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.5 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.

2.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations may be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.7 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.

2.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor to its statutory functions.

2.9 References to Development shall refer to the Development and any part thereof.

3. ENABLING PROVISIONS

3.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other enabling powers.

3.2 This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act as amended and the covenants, restrictions and requirements imposed upon the Owner under this Deed are

enforceable by the Council as local planning authority against the Owner pursuant to Section 106(3) of the 1990 Act.

- 3.3 The parties hereto are satisfied that (where applicable) the provisions of this Deed comply with the requirement of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.

4. COMMENCEMENT

This Deed shall come into effect upon the date of this Deed but the obligations in Clause 5 (save for clause 5.2) and the Second Schedule shall be of no effect until the Commencement of Development occurs.

5. THE OWNERS COVENANTS

- 5.1 The Owner has agreed the amount of the Sustainable Transport Contribution and Travel Plan Monitoring Contribution with Surrey County Council and covenants with the Council to make the Sustainable Transport Contribution and Travel Plan Monitoring Contribution payments as set out in the Second Schedule.

- 5.2 The Owner has paid and the Council hereby acknowledges receipt of the following sums from the Owner on the date hereof:-

5.2.1 the reasonable legal costs of the Council incurred in the negotiation, and execution of this Deed in the sum of £670.00 and;

5.2.2 a monitoring fee of £500.00 in connection with the Council's expenses incurred in monitoring and ensuring compliance with obligations on the part of the Owner comprised in this Deed

6. THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in the Third Schedule.

7. RIGHTS OF THIRD PARTIES

None of the provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

8. REGISTRATION AS A LAND CHARGE

8.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registrable as such by the Council.

8.2 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of 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 shall be given on behalf of the Council by the Director of Development.

8.3 The Council will upon the written request of the Owner at any time after all the obligations on the part of the Owner contained in this Deed have been fully discharged or performed issue the Owner with written confirmation of such discharge or performance and the Council will thereafter effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

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

9. DETERMINATION OF THE PLANNING PERMISSION

9.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or it is modified (other than by agreement with or at the request of the Owner) or it expires by effluxion of time prior to the Commencement of Development.

9.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed but this Deed shall apply to any planning permission subsequently granted ("Subsequent Permission") under section 73 or 73A of the 1990 Act which permits non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission.

9.3 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence.

10. RELEASE

10.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after he shall have parted with his entire interest in the Land but without prejudice to his liability for any subsisting breach arising prior to parting with such interest.

10.2 No obligations undertakings or liabilities under this Deed shall be enforceable against statutory undertakers or utilities companies in relation to any part of the Development acquired by them for electricity

substations, gas governor stations and/or for the supply of any services comprised within the Development.

11. TITLE WARRANTIES

The Owner warrants that:

11.1 it has full authority to enter into this Deed

11.2 no person other than the Owner has any legal or equitable interest in the Land

11.3 it has investigated as necessary all matters of title to the Land and knows of no impediment to the validity of this Deed

11.4 it shall make good any loss to the Council as a result of a breach of this warranty within seven days of a request to do so.

12. WAIVER

12.1 No waiver (whether expressed or implied) by the Council or Owner 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 or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12.2 Nothing contained or implied in this Deed shall prejudice or affect the rights powers, duties and obligations of the Council in the exercise of its functions as local planning authority or under any public or private statute bylaw or regulation.

13. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of its interest or any part of its interest in the Land occurring before all the obligations under this Deed have been performed and discharged. Such notice to give details of the transferree's full name and registered office (if a company or usual address if not) together with (if the disposal is of part of the Land only) details of the part of the Land purchased by reference to a plan.

14. INDEXATION

Any sum stipulated as being payable by the Owner to the Council shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is payable pursuant to the provisions of this Deed.

15. INTEREST

If any payment due under the provisions of this Deed is paid more than seven days after the due date Interest shall in addition be payable on such sum from the date payment is due to the date of payment.

16. SERVICE OF NOTICES

16.1 Any notice or written communication to be served pursuant to this Deed shall be deemed to have been validly served if delivered by hand or sent by recorded delivery post to the relevant address of the relevant party as stated at the beginning of this Deed or such other address as may from time to time be notified by one party to the other as its address for service for the purposes of this Deed and any 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.

16.2 In the case in notices to the Owner they shall be marked "For the Attention of the Director General" and bearing the reference "RHS Wisley Gardens – Section 106 Agreement"

17. VAT

All sums payable in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable thereon.

18. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and Wales.

19. DELIVERY

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 dated.

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

FIRST SCHEDULE

Details of the Owner's Title, and description of the Land

The Owner is the owner with Freehold Title of the Land shown more particularly edged with a red line on the Plan and which forms part of the land and premises known as the RHS Garden, Wisley, Woking, Surrey, GU23 6QB title to part of which (formally known as Rectory Farm ,Wisley, Surrey) is unregistered and commences with a conveyance dated 9 September 1903 between Bernard Alexander Wilson, John Griffin Bristow and Herman George Wilson (1) and Cecil Hanbury, Ellen Willmott and John Thomas Bennett-Poé as Trustees of the Royal Horticultural Society (2), and as to other parts registered at the Land Registry under title numbers SY119870, SY258795 and SY258796

SECOND SCHEDULE

Owners Covenants to the Council

The Owner covenants with the Council as follows:-

1. Notices

- 1.1 The Owner shall not Commence Development unless and until it has given the Council not less than 5 (five) Working Days prior written notification of the date upon which the Development will Commence

1.2 The Owner shall not Occupy the Development unless and until it has given the Council not less than 5 (five) Working Days prior written notification of the date of Occupation

1.3 The notices referred to in paragraphs 1.1 and 1.2 of this Schedule shall be addressed to "The Section 106 Officer" who can be contacted on telephone 01843 444463 and by email at S106.officer@guildford.gov.uk

2. Payment of the Sustainable Transport Contribution and the Travel Plan Monitoring Contribution

Subject to Commencement of Development having occurred and subject also to the covenants on the part of the Council in the Third Schedule the Owner HEREBY COVENANTS with the Council:

2.1 To pay the Sustainable Transport Contribution to the Council as a contribution towards Surrey County Council's costs and expenses (including preliminary investigation, design, legal and administrative and supervision fees, salaries and overheads and the costs of advertising and of public consultation) incurred by Surrey County Council as highway authority in carrying out the Sustainable Transport Improvements within 10 working days of the date of Commencement of Development

2.2 To pay the Travel Plan Monitoring Contribution to the Council within 10 working days of the date of Commencement of Development

2.2 Not to Open the Development or any part thereof until the Sustainable Transport Contribution and the Travel Plan Monitoring Contribution have been paid to the Council

THIRD SCHEDULE

Council's Covenants

Subject to the Owner carrying out the Owner's obligations as set out in the Second Schedule the Council covenants with the Owner as follows:

- 1 To pass the Sustainable Transport Contribution to Surrey County Council in accordance with such arrangements as may be agreed from time to time between the Council and Surrey County Council

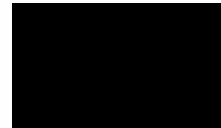
- 2 Where an approval, permission, consent or other form of authorisation is required from the Council under this Deed, such approval, permission, consent or authorisation shall not be unreasonably withheld or delayed.

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of THE COUNCIL)
OF THE BOROUGH OF GUILDFORD)
in the presence of:-)

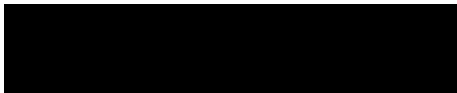
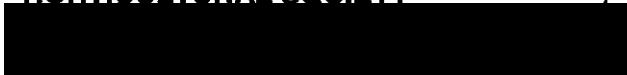


Authorised Signatory

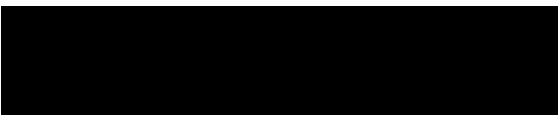
Sandra Herbert
Legal Services Manager



HORTICULTURAL SOCIETY)



Authorised Signatory



Authorised Signatory

DATED 6th October 2016

**THE COUNCIL OF THE BOROUGH
OF GUILDFORD**

and

**THE ROYAL HORTICULTURAL
SOCIETY**

DEED

Royal Horticultural Society Gardens,
Wisley Lane, Wisley, Woking, GU23 6QS

Stevens & Bolton LLP
Wey House
Guildford
GU1 4YD
Ref: CFD/RO.1422.0006

Sealing Authority -	[REDACTED]
Minute Reference	[REDACTED]
No. of Seal	[REDACTED]