

DATED.....22<sup>nd</sup> June.....2021

**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**FREDERICK CARL ANTONY WRIGHT and OWEN KYFFEN**

**-and-**

**HOLLINS STRATEGIC LAND LLP**

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

**under Section 106 of the Town and Country Planning Act 1990**

**relating to land on the north side of Berry Hill Road, Adderbury, Banbury**

*Anita Bradley*  
*Director of Law and Governance*  
*Bodicote House*  
*White Post Road*  
*Bodicote*  
*Banbury*  
*Oxfordshire OX15 4AA*

***Cherwell***  
**DISTRICT COUNCIL**  
**NORTH OXFORDSHIRE**



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THIS AGREEMENT is dated

22nd June

2021

## **PARTIES**

**(1) CHERWELL DISTRICT COUNCIL** of Bodicote House White Post Road Bodicote Banbury in Oxfordshire OX15 4AA ("**District Council**")

**(2) OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall New Road Oxford OX1 1ND ("**County Council**")

**(3) FREDERICK CARL ANTONY WRIGHT and OWEN KYFFEN** of Tall Trees, Weeping Cross, Bodicote, Banbury in Oxfordshire OX15 4ED ("**Owner**")

**(4) HOLLINS STRATEGIC LAND LLP** (Company number OC330401) whose registered office is situate at Suite 4, 1 King Street Manchester M2 6AW ("**Appellant**")

## **INTRODUCTION**

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the county planning authority for the purposes of the Act for the area in which the Site is situated and has powers and duties in respect of education highways, transport and the regulation of traffic
- (C) The Owner is the freehold owner of the Site subject to a promotion agreement in favour of the Appellant but otherwise free from encumbrances.
- (D) The Application has been submitted to the District Council and the District Council has resolved to refuse planning permission for the Development and duly refused the Application on 20<sup>th</sup> January 2020
- (E) An appeal to the Secretary of State against the refusal of the Application was submitted by the Appellant on 3<sup>rd</sup> July 2020
- (F) The Owner, the District Council the County Council and the Appellant have agreed that it is necessary in planning terms to enter into this Deed to mitigate the impact of the Development and make it acceptable in the event that the Planning Permission is

granted on Appeal and to be bound by and observe and perform the planning obligations subject to Clause 4.5 below

**NOW THIS DEED WITNESSES** as follows:

**OPERATIVE PART**

**1. DEFINITIONS**

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

| <b>Expression</b>             | <b>Meaning</b>   |
|-------------------------------|--|
| <b>“Act”</b>                  | the Town and Country Planning Act 1990 (as amended);   |
| <b>“Appeal”</b>               | The appeal submitted by the Appellant against the District Council’s refusal of the Application and allocated reference number APP/C3105/W/20/3255419;   |
| <b>“Application”</b>          | the application for outline planning permission submitted to the District Council and validated on 24 <sup>th</sup> May 2019 for the Development and allocated reference number 19/00963/OUT;  |
| <b>“Approval (Initial)”</b>   | means the approval of a Qualifying Application which first establishes the Composition of the Development  |
| <b>“Approval (Variation)”</b> | means any Qualifying Permission which alters the Composition of the Development as established further to the Planning Permission or as applicable preceding Approval (Variation);   |
| <b>“Bedroom”</b>              | means a room in a Dwelling designed as a bedroom or study/ bedroom and: <ul style="list-style-type: none"><li>• 1-Bed Dwelling means a Dwelling with 1 Bedroom; and</li><li>• 2-Bed Dwelling means a Dwelling with 2 Bedrooms;</li><li>• 3 Bed Dwelling means a Dwelling with 3 Bedrooms</li></ul> |



**Expression**

**Meaning**

- 4 Bed Dwelling means a Dwelling with 4 or more Bedrooms

and for the avoidance of doubt a studio unit shall be construed as a 1 Bed Dwelling;

**“Commencement of the Development”**

occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development (whether or not such operation is a lawful commencement of the Development) other than (for the purposes of this Deed and for no other purpose) operations consisting of: ;

- site clearance
- demolition work;
- 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;
- the temporary display of site notices or advertisements;

and **“Commence” “Commenced” and “Commencing”** or any other derivation of this term shall be construed accordingly

**“Composition of the Development”**

means the aggregate number of Dwellings comprised in the Development and where the context requires the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling;

| <b>Expression</b>        | <b>Meaning</b>  |
|--------------------------|---|
| <b>“Construction”</b>    | the construction of any building forming part of the Development including footings or foundations and <b>“Construct”</b> and <b>“Constructed”</b> shall be construed accordingly;  |
| <b>“Decision Letter”</b> | a letter issued by the Secretary of State or an Inspector determining the Appeal;   |
| <b>“Development”</b>     | the development of the Site with [details of development] as set out in the Application;  |
| <b>“Due Date”</b>        | if the provisions of Clause 12 are complied with is the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs   |
| <b>“Dwelling”</b>        | a building (including a house flat or maisonette) Constructed or proposed to be Constructed on the Site as part of the Development or part of such building designed for residential Occupation by a single household pursuant to the Planning Permission and including Affordable Housing (as defined in the Second Schedule); |
| <b>“Inspector”</b>       | a planning inspector appointed by the Secretary of State to consider the Appeal under delegated powers;   |
| <b>“Interest”</b>        | Interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time;  |
| <b>“Implementation”</b>  | occurs when the Development is initiated in accordance with Section 56 of the Act notwithstanding that any condition requiring compliance before that has not been complied with and <b>‘Implemented’</b> and <b>‘Implement’</b> or any other derivation of this term shall be construed accordingly                            |

| <b>Expression</b>                 | <b>Meaning</b>   |
|-----------------------------------|--|
| <b>“Notification (Variation)”</b> | means written notification of an Approval (Variation) containing a copy of that approval and details of the Composition of the Development established applying that approval;   |
| <b>“NPPF”</b>                     | the National Planning Policy Framework (as amended from time to time) or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede it;   |
| <b>“Occupation”</b>               | occupation for the purposes permitted by 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 <b>“Occupied”</b> and <b>“Occupy”</b> shall be construed accordingly;  |
| <b>“Plan”</b>                     | the plan attached to this Deed at the Annex to the First Schedule;   |
| <b>“Planning Permission”</b>      | the outline planning permission granted by the Inspector pursuant to the Appeal which where the context admits shall include each and every Qualifying Permission;   |
| <b>“Qualifying Applications”</b>  | an application for approval of Reserved Matters or any separate application(s) for full planning permission for the Development or any part of the Development or any application under Sections 73 or 96A of the Act relating to the Planning Permission or any application for approval of Reserved Matters relating to such permission further to an application under Sections 73 or 96A of the Act; |
| <b>“Qualifying Permissions”</b>   | approval of Reserved Matters or of any non-material amendment or grant of full planning permission as the case may be issued pursuant to a Qualifying Application  |

| <b>Expression</b>           | <b>Meaning</b>  |
|-----------------------------|---|
| <b>“Reserved Matters”</b>   | details of any one or more of appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval;                                  |
| <b>“Site”</b>               | the land against which this Deed may be enforced as described in the First Schedule and shown edged red on the Plan;  |
| <b>“Secretary of State”</b> | the Secretary of State for Housing Communities and Local Government or any other minister appointed to determine Appeals from time to time;   |
| <b>“Trigger Event”</b>      | any event that when it occurs requires any party to this Deed to pay any sum or carry out any works or take (or desist from taking) any other action including service of any notice. |
| <b>“Working Days”</b>       | Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27 <sup>th</sup> and 31 <sup>st</sup> December in any Calendar Year.                 |

## **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 interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

- 2.5 **“Including”** means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and **“include”** shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause, permit or allow infringement of that restriction.
- 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 District Council and County Council the successors to their respective statutory functions.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act Section, 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act
- 3.3 The covenants, restrictions and requirements set out generally herein are enforceable by the District Council and the County Council but
- 3.3.1 those set out in the Second Schedule the Third Schedule and the Fourth Schedule. are only enforceable by the District Council as local planning authority, and
- 3.3.2 those set out in the Fifth Schedule and the Sixth Schedule are only enforceable by the County Council as County planning authority

against the Owner and in accordance with Section 106(3)(b) of the Act against any person deriving title from the Owner .

#### **4. CONDITIONALITY**

4.1 Save as set out below this Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of the Development,

4.2 The provisions of Clauses 8.1.1, 8.1.2, 8.1.4, 11, 12, 15, 16, 17 and 18 (legal costs, monitoring and administering, change of ownership, notices, notifications, jurisdiction delivery and consent of Appellant) shall come into effect immediately upon completion of this Deed.

4.3 The provisions of Clause 20, paragraph 2.2 of the Second Schedule, paragraph 2.1 of the Third Schedule, paragraph 2.1 of the Fourth Schedule, paragraphs 2.1, 2.2 and 3.1.2 of the Fifth Schedule and paragraph 2.1 of the Sixth Schedule shall come into effect immediately upon the grant of the Planning Permission

4.4 Should the Secretary of State or his appointed Inspector make a finding that any of the covenants or obligations in this Deed or are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 then such covenant(s) or obligation(s) as so identified by the Secretary of State or his appointed Inspector shall be deemed to be of no effect notwithstanding the remaining provisions of this Deed which for the further avoidance of doubt shall remain in effect and enforceable.

#### **5. THE COVENANTS BY OWNER**

5.1 The Owner covenants with both the District Council and the County Council as set out herein and covenants with

5.1.1 the District Council as set out in the Second Schedule, the Third Schedule and the Fourth Schedule; and

5.1.2 the County Council as set out in the Fifth Schedule.

## 6. THE DISTRICT COUNCIL'S COVENANTS

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

## 7. THE COUNTY COUNCIL'S COVENANTS

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

## 8. MISCELLANEOUS

### 8.1 The Owner shall

8.1.1 pay to the District Council on the execution and completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation of the Deed and the preparation and execution of this Deed;

8.1.2 pay to the County Council on the execution and completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation of the Agreement and the preparation and execution of this Deed

8.1.3 reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council; and

8.1.4 on completion of this Deed or within 35 Working Days of the Secretary of State allowing the appeal whichever is the later pay

(a) to the District Council the sum of **£1,000.00** (One Thousand pounds);  
and

(b) to the County Council the sum of **£ 2,250.00** (Two Thousand pounds)

as a contribution towards the cost of monitoring and administering compliance with the obligations in this Deed

8.2 The Owner shall reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with

any enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council

- 8.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.4 This Deed shall be registrable as a local land charge by the District Council.
- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and in the case of the District Council or the County Council, any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:
- 8.5.1 the District Council by the Assistant Director: Planning and Development; and
- 8.5.2 the County Council by the Director for Environment and Place,
- 8.6 Following the District Council and the County Council being notified in writing and the District Council and the County Council being satisfied of the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission and every Qualifying Permission shall be quashed (and refused upon redetermination), revoked or otherwise withdrawn or (without the consent of the Owner ) it is modified by any statutory procedure or expires prior to Implementation PROVIDED ALWAYS that Implementation has not taken place.



- 8.9 If pursuant to Clause 8.8 above this Deed shall have ceased to have effect and as a consequence any contribution has been returned to the person who paid it pursuant to the provisions of paragraph 1.2 of the Seventh Schedule and/or paragraph 1.3 of the Eighth Schedule the Owner shall pay to the District Council and/or County Council so much of any contribution as has been returned immediately on any court of competent jurisdiction determining that the Planning Permission and/or any Qualifying Permission should stand
- 8.10 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.
- 8.11 Except for any provision hereof that restricts or prevents any Dwelling being Occupied or prevents a number of Dwellings being Occupied until another provision hereof is complied with this Deed shall not be enforceable
- 8.11.1 against owner-occupiers or tenants of any Dwelling nor any mortgagee or chargee of the interest of any such owner-occupier nor against those deriving title from them;
- 8.11.2 any statutory undertaker whose interest in the Site derives from having equipment necessary to carry out their undertaking on the Site or on adjoining land
- 8.12 Nothing contained or implied 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 and/or a Qualifying Permission granted (whether or not on appeal) after the date of this Deed
- 8.13 If the District Council consents pursuant to a Qualifying Application to any variation or release of any condition contained in the Planning Permission (or a previous Qualifying Permission) or if any such condition is varied or released following an appeal under section 78 of the Act the covenants and provisions of this Deed shall be deemed to bind the Qualifying Permission and to apply in equal terms to that Qualifying Permission save that where a different section 106 obligation is agreed by the District

Council and/or the County Council as being binding on any Qualifying Permission this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

## **9. WAIVER**

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

## **10. NO FETTER**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

## **11. CHANGE OF OWNERSHIP ETC**

The Owner agrees with the District Council and separately with the County Council to give each written notice of any change in the ownership of any of its interests in the Site within 10 Working Days and in any event before the next Trigger Event that arises following such change in ownership if sooner 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 provided that this clause shall not apply to:

11.1 the sale of individual Dwellings on the Development; or

11.2 any disposal of any part or parts of the Site for servicing or utility requirements or to a statutory body or service supply company for the purpose of carrying out their undertaking

## **12. NOTIFICATIONS**

The Owner agrees with the District Council and the County Council:

12.1 to notify the District Council and the County Council in writing no later than 5 Working Days prior to the anticipated date of each of the following:

12.1.1 Commencement of the Development;

12.1.2 first Occupation of the Development;

12.1.3 Occupation of 30% (thirty per cent) of the Market Dwellings;

12.1.4 Occupation of more than ten of the Dwellings;

12.1.5 Occupation of 60% (sixty per cent) of the Market Dwellings; and

12.1.6 Occupation of 75% (seventy-nine per cent) of the Market Dwellings

and not to Commence Occupy or cause or permit Occupation until the appropriate notice has been given and five Working Days have elapsed since it was served;

12.2 to notify the District Council and the County Council in writing of the actual date of each such event referred to in Clause 12.1 above no later than 10 Working Days after the event occurs;

12.3 to notify the District Council and the County Council within ten Working Days of the each of the usual quarter days (25 March, 24 June, 29 September and 25 December) the number of Dwellings on the Development which have been Occupied on that quarter day and their addresses/plot numbers together with a plan showing plot numbers

### **13. INTEREST**

13.1 If any payment due under this Deed is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.

13.2 Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the Due Date

### **14. VAT**

14.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the Owner shall pay to the District Council

and separately to the County Council any value added tax properly payable on any sums paid to the District Council and/or the County Council or works undertaken under this Deed upon presentation of any appropriate value added tax invoice addressed to the Owner .

## **15. NOTICES**

15.1 Any notice or notification to be given to the District Council under this Deed shall be sent to the District Council attention of the Assistant Director Planning and Development at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall direct from time to time.

15.2 Any notice or notification to be given to the County Council under this Deed shall be sent to the Director of Environment and Place, Oxfordshire County Council, County Hall, New Road, Oxford, OX1 1ND or to such other person at such other address as the County Council shall direct from time to time.

15.3 Any notice to be given

15.3.1 to the Owner shall be sent to the Owner at the Owner's address at the head of this Deed;

15.3.2 to the Appellant to the registered office and addressed to the Company Secretary

or to such other person at such address as the Owner and/or Appellant shall notify to the District Council and separately to the County Council from time to time.

15.4 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:

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

15.4.2 if sent by post, on the second Working Day after posting; or

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

15.5 If a notice, demand or any other communication is served after 16:00 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.

15.6 For the avoidance of doubt, 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 connection with those proceedings.

15.7 Any notice or notification to be given pursuant to this Deed shall be in writing and shall, unless otherwise agreed, be delivered by hand or sent by post.

## **16. JURISDICTION**

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

## **17. 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.

## **18. CONSENT OF APPELLANT**

The Appellant acknowledges that this Deed has been entered into by the Owners with its consent and further agrees and acknowledges that it shall be liable to comply with the obligations herein on behalf of the Owner if it obtains an interest in the Site from the Owner

## **19. DATA PROTECTION**

The parties to this Deed acknowledge and agree that information as to compliance with obligations pursuant to this Deed (including as to whether or not contributions have been paid) may be passed to:

19.1 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further

19.2 any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004

## **20. DISPUTES**

20.1 The provisions of the Ninth Schedule shall apply to any dispute arising in respect of the provisions in

20.1.1 the Second Schedule paragraph 2.1

20.1.2 the Third Schedule paragraph 2.1

20.1.3 the Third Schedule paragraphs 3.8, 3.12, 4.6 and 4.10 in respect of any decision by the District Council to refuse a Practical Completion Certificate and/or a Final Certificate or to issue a Defects Notice

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

**FIRST SCHEDULE**

**DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE SITE**

ALL THAT Freehold land shown edged with red on the Plan and being Land on the north side of Berry Hill Road, Adderbury, Banbury registered at the Land Registry under Title Number ON321870





ANNEX  
THE PLAN





**SECOND SCHEDULE**  
**COVENANTS WITH THE DISTRICT COUNCIL - AFFORDABLE HOUSING**

**1. DEFINITIONS**

1.1 In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| <b>Expression</b>                    | <b>Meaning</b>   |
|--------------------------------------|--|
| <b>Affordable Housing</b>            | housing for sale or rent that will be available for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) and which meets the definition in Annex 2 of NPPF   |
| <b>Affordable Housing Dwellings</b>  | the Intermediate Housing or Affordable Rented Housing or Social Rented Housing or such alternative tenure to be agreed with the District Council that shall comprise not less than 35% (thirty five per cent) of the total number of Dwellings on the Development  |
| <b>Affordable Housing Tenure Mix</b> | the mix of tenure and dwelling types whereby not less than 35% (thirty five per cent) of the Dwellings within the Development are provided as Affordable Housing as follows and whereby 70% of the Affordable Housing Dwellings shall be provided as Social Rented Housing and the remaining 30% (thirty per cent) shall be Intermediate Housing or such alternative mix of tenure as at any time may be submitted to the District Council for approval in writing |

| <b>Expression</b>                   | <b>Meaning</b>  |
|-------------------------------------|---|
| <b>Affordable Housing Scheme</b>    | a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out details of the numbers locations and external appearance of the Affordable Housing Dwellings; including the timing of construction of the Affordable Housing Dwellings.  |
| <b>Affordable Housing Site</b>      | that part or parts of the Site or any building or any buildings on the Site upon or within which there will be provided Affordable Housing Dwellings together with full rights of access to each Affordable Housing Site from the Site and the provision of all necessary Infrastructure and connections thereto and the necessary installations thereof for the dwellings to be constructed on the Affordable Housing Site   |
| <b>Affordable Housing Standards</b> | <p>the design criteria with which the Affordable Housing shall comply, namely:</p> <ul style="list-style-type: none"> <li>• (in relation to the Affordable Rented Housing or Social Rented Housing only) 50% to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings;</li> <li>• shall be located in clusters of no more than 10 Affordable Housing Dwellings with no more than 6 units of Affordable Rented Housing or Social Rented Housing in any one cluster;</li> <li>• shall be designed to the same external design as the Market Dwellings of the same type so as to be indistinguishable from the Market Housing; and</li> <li>• they shall be constructed to the nationally described space standard as set out in the Department for Communities and Local Government’s technical housing standards for 1-bedroom 2 person; 2-bedroom 4 person; 3-bedroom 5 person; and 4-bedroom 7 person Dwellings</li> </ul> |

| <b>Expression</b>                | <b>Meaning</b>   |
|----------------------------------|--|
| <b>Affordable Rented Housing</b> | rented housing provided by the Registered Provider to households who are eligible for social rented housing and which is not subject to the national rent regime but in line with the District Council's tenancy strategy, the rents shall be no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting whichever is the lower                         |
| <b>Allocations Scheme</b>        | the District Council's allocation policy from time to time which determines the District Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 166A of the Housing Act 1996 (and any amendment, re-enactment or successor provision)  |
| <b>Chargee</b>                   | any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it and includes any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 (including a Housing Administrator under the provisions of the Housing and Planning Act 2016) howsoever appointed or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security |
| <b>Help to Buy Agent</b>         | that organisation which is appointed by the Regulator or other such successor body to assess eligibility for and market low cost home ownership products   |
| <b>Infrastructure</b>            | in relation to the Affordable Housing Site: <ul style="list-style-type: none"> <li>• roads and footpaths to serve the Affordable Housing Site</li> <li>• temporary services for contractors and a haul road for the use of contractors;</li> </ul>   |

## Expression

## Meaning

- adequate inverts for the foul and surface water drains sufficient to serve the drainage requirements of the Affordable Housing Site;
- pipes sewers and channels sufficient to serve the Affordable Housing Site;
- spur connections to agreed inverts (to be available at a time or times to be agreed with the Registered Provider) from the Owner's foul and surface water drain run serving the Development up to the boundaries of the Affordable Housing Site such spur connections to be to a specification agreed with the Registered Provider;

and the following services:

- a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider;
- a water supply connection from the mains (size and termination position to be agreed with the Registered Provider);
- an electricity supply (size and termination position to be agreed with the Registered Provider);
- a gas supply (size and termination position to be agreed with the Registered Provider) (should it be required for the Affordable Housing Dwellings)
- a telephone spur (terminating in a junction box at a location agreed with the Registered Provider);
- if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a spur to the Affordable Housing Site (final locations to be agreed with the Registered Provider);

| <b>Expression</b>            | <b>Meaning</b>   |
|------------------------------|--|
|                              | PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable Housing Site nor to the Affordable Housing Dwellings   |
| <b>Intermediate Housing</b>  | housing at prices and rents above those for social rented housing but below open market prices or rents and for the avoidance of doubt the expression 'Intermediate Housing' includes Shared Ownership, shared equity and low cost homes for sale but does not include Affordable Rented Housing. The Intermediate Housing will be delivered as Shared Ownership Housing unless otherwise agreed between the District Council and the Owners |
| <b>Market Dwellings</b>      | that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing   |
| <b>Mortgage Land</b>         | the Affordable Housing Site or any part of it which is mortgaged or charged to a Chargee   |
| <b>Nominations Agreement</b> | an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Rented Dwellings and the Social Rented Dwellings on the Site and which shall guide in conjunction with the Allocations Scheme those persons eligible to be nominated to the Affordable Housing Dwellings  |
| <b>Qualifying Persons</b>    | those persons who have a local connection to Adderbury Parish or the District Council's administrative area and who are assessed by the District Council under its current Allocations Scheme and are nominated to Affordable Rented Housing and Social Rented Housing in accordance   |

| Expression                      | Meaning  |
|---------------------------------|--|
|                                 | with this Allocations Scheme and the Nominations Agreement   |
| <b>Registered Provider</b>      | a private provider of social housing which is designated in the register maintained by the Regulator or any similar future authority carrying on substantially the same regulatory or supervisory functions pursuant to section 111 of the Housing and Regeneration Act 2008 as a non-profit organisation under subsections 115(1)(a) or 278(2) of the Housing and Regeneration Act or which is designated in that register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008 which is on the District Council's list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and been approved in writing by the District Council |
| <b>Shared Ownership Housing</b> | ownership under the terms of a lease which accords with the Regulator's Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 10% - 75% of the equity in an Affordable Housing Dwelling from the housing provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity and where the lessee has the option to increase their percentage of ownership through a process of staircasing up to outright ownership   |
| <b>Social Rented Housing</b>    | Rented housing owned and managed by Registered Providers for which guideline target rents are determined through a national rent regime as described in Annex 2 of the National Planning Policy Framework dated February 2019  |



| <b>Expression</b>    | <b>Meaning</b>   |
|----------------------|--|
| <b>Staircasing</b>   | the exercise by the owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the entire interest in the dwelling after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and 'Staircases' or any other derivative thereof shall be construed accordingly |
| <b>The Regulator</b> | the Regulator of Social Housing constituted pursuant to the Housing and Regeneration Act 2008 (as amended) and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing  |

## 2. **AFFORDABLE HOUSING COVENANTS**

The Owner covenants with the District Council that they:

- 2.1 will submit a detailed scheme for the provision, proposed location and construction programme of the Affordable Housing Dwellings, including details of the proposed Affordable Housing Tenure Mix to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme;
- 2.2 will not Implement or cause or permit the Implementation of the Development until the Affordable Housing Scheme has been approved in writing by the District Council;
- 2.3 will not Occupy or cause or permit the Occupation of more than thirty per cent (30%) of the Market Dwellings until
  - 2.3.1 each area comprising the Affordable Housing Site has been offered to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession on completion and capable of being fully serviced and properly connected to the public highway and a Registered Provider has exchanged a binding contract for the purchase of the Affordable Housing; and

- 2.3.2 there has been provided to the District Council's reasonable satisfaction the Infrastructure to serve each parcel of the Affordable Housing Site and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);
- 2.4 will construct the Affordable Housing Dwellings and make the same ready for Occupation in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme to the reasonable satisfaction of the District Council as part of the Development upon the Site prior to use or Occupation of more than sixty per cent (60%) of the Market Dwellings;
- 2.5 will not cause or permit more than seventy five per cent (75%) of the Market Dwellings to be used or Occupied unless and until the Owner has constructed all of the Affordable Housing Dwellings and made the same ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing Site has been offered to and transferred to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway;
- 2.6 will not use or cause or permit the use of the Affordable Housing Site for any other purpose than for the provision of Affordable Housing in accordance with this Deed unless otherwise specified in this Deed;
- 2.7 will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected thereon except to a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings; and
- 2.8 will provide the Affordable Housing Dwellings in line with the Affordable Housing Indicative Dwelling and Tenure Mix or such other mix as may be agreed in writing between the Owner and the District Council.

### **3. MORTGAGEE EXEMPTION**

3.1 The provisions of paragraph 2 will not be binding on a bona fide purchaser for value from a Chargee exercising its power of sale (other than a purchaser which is a registered provider) or the successors in title of such purchaser if the Chargee:

3.1.1 has first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, in its mortgage, charge or other security; and

3.1.2 has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 3.1.1 above to dispose of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed to a Registered Provider or the District Council

3.1.3 has not been able to complete a transfer of the Mortgage Land to either the District Council or a Registered Provider

3.2 Subject to compliance with the provisions of paragraph 3.1 above the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraph 2 above with the effect that they shall cease to bind any person obtaining title to the Mortgage Land.

3.3 Notwithstanding the provisions of paragraph 3.1 above it is agreed that nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained within this Schedule) or all sums due under the terms of the Chargee's mortgage or charge together with costs and expenses of the sale of the Mortgage Land and interest due under the mortgage

### **4. ALLOCATION**

The Owner covenants not to allocate or cause or permit to be allocated any of the Affordable Housing Dwellings other than as follows:

4.1 the Social Rented Housing and Affordable Rented Housing shall only be allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement;

- 4.2 the Shared Ownership Housing shall be marketed through the Registered Provider's website or other marketing media used by the Registered Provider or where possible through the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the Help to Buy Agent's criteria shall be considered for the Shared Ownership Housing; or
- 4.3 as agreed by the District Council.

5. **MISCELLANEOUS**

It is agreed that

- 5.1 the provisions of this part will not be binding on any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any owner of Shared Ownership Housing who has staircased up to 100% or any mortgagee, chargee or successor in title thereto.
- 5.2 if the Affordable Housing Dwellings are vested or transferred to another Registered Provider pursuant to a proposal made by the Homes and Communities Agency pursuant to Sections 143A-169 of the Housing and Regeneration Act 2008 (or any statutory provision amending or replacing the same) then the provisions of this Agreement shall continue in respect of such other Registered Provider.

**THIRD SCHEDULE  
OPEN SPACE AND SUDS  
AND ANY OTHER INFRASTRUCTURE TO TRANSFER  
TO THE DISTRICT COUNCIL**

**1. DEFINITIONS**

- 1.1 In this Schedule and the Eighth Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| <b>Expression</b>                     | <b>Meaning</b>   |
|---------------------------------------|--|
| <b>“BS5837”</b>                       | means the British Standard for Trees in relation to design, demolition and construction – Recommendations, the latest version being published in 2012 and applies to all trees that could be affected during the carrying out of the Development   |
| <b>“Final Completion Certificate”</b> | means a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space and provision of the SUDS in accordance with the relevant scheme or specification approved pursuant to this Deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction   |
| <b>“Hedgerows Commuted Sum”</b>       | means Twenty-six pounds and sixty-six pence (£26.66 per linear metre)  |
| <b>“Index Linked”</b>                 | means adjusted according to the increase (if any) in the BCIS All in One Tender Price index published by the Royal Institution of Chartered Surveyors' Building Costs Information Service (or such other index as may from time to time replace the BCIS All in One Tender Price index or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing) between the date hereof and the Due Date |

| <b>Expression</b>                         | <b>Meaning</b>  |
|---|---|
| <b>"Informal Open Space"</b>              | means areas of informal open space to be provided on the Development as identified within any Qualifying Permission and/or the Open Space Scheme  |
| <b>"Informal Open Space Commuted Sum"</b> | means Nine pounds and eighty-two pence (£9.82) per square metre of Informal Open Space as shown in the Open Spaces Scheme;  |
| <b>"LAP"</b>                              | an equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 6 with a minimum area of 100m <sup>2</sup> and located a minimum of 5m from the nearest Dwelling boundary;   |
| <b>"LAP Commuted Sum"</b>                 | means the sum of Thirty Thousand Seven Hundred and Two Pounds and Two Pence (£30,702.02). Index Linked for each LAP proposed in the Open Spaces Strategy;   |
| <b>"Maintenance Period"</b>               | means a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate or such longer period as the District Council may determine if it is not satisfied that the Open Space and/or SUDS have been maintained in accordance with the Maintenance Plan during that period |
| <b>"Mature Trees"</b>                     | means those trees identified as such in the Open Spaces Scheme;   |
| <b>"Mature Trees Commuted Sum"</b>        | means two hundred and forty-one pence (£200.41) per Mature Tree;  |
| <b>"Open Space Commuted Sum"</b>          | means the sum calculated as follows:<br><br>$\begin{aligned} & ((A \times \text{the Informal Open Space Commuted Sum}) \text{ Index Linked} \\ & + \\ & (B \times \text{the Hedgerows Commuted Sum}) \text{ Index Linked} \\ & + \end{aligned}$   |

| <b>Expression</b>                           | <b>Meaning</b>   |
|---|--|
|   | <p>(C × the Mature Trees Commuted Sum) Index Linked<br/>+<br/>the LAP Commuted Sum</p> <p>÷ 15</p> <p>Where:</p> <p>A is the area in square metres of the Informal Open Space;</p> <p>B is the length in linear metres of hedgerows or mature trees comprised in the Open Space and</p> <p>C is the number of Mature Trees</p> <p>such areas lengths and numbers being determined by reference to the Open Spaces Scheme</p> |
| <b>"Maintenance Plan"</b>                   | <p>means a scheme that complies with the Technical Specification to be submitted to and approved in writing by the District Council in accordance with paragraph 2.1 below which identifies the proposed ongoing maintenance operations for the Open Space and the SUDS:</p>   |
| <b>"Open Space and SUDS Monitoring Fee"</b> | <p>means the sum of Three Thousand Eight Hundred and Eighty One Pounds and Forty Two Pence (£3,881.42) Index Linked as the cost of monitoring the provision and maintenance of the Open Space and SUDS at least twice in each calendar year after the Due Date</p>   |
| <b>"Open Space"</b>                         | <p>means the areas within the Site to be provided for recreation and amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include the Informal Open Space and the LAP;</p>   |

| <b>Expression</b>                         | <b>Meaning</b>  |
|---|---|
| <b>"Informal Open Space Commuted Sum"</b> | means Nine pounds and eighty-two pence (£9.82) per square metre   |
| <b>"Open Space Scheme"</b>                | <p>means a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the Open Space to be submitted to and approved in writing by the District Council for approval in accordance with paragraph 2.1 below which shall include:</p> <ul style="list-style-type: none"> <li>i.) details of the locations of Informal Open Space and the LAP of LAsP; and</li> <li>ii.) a timetable for carrying out the works and the planting comprised in the laying out landscaping of the Open Space to which the respective scheme relates</li> </ul> |
| <b>"Practical Completion Certificate"</b> | means a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Deed  |
| <b>"SUDS"</b>                             | means any balancing ponds, attenuation basins, ditches watercourses, swales or similar features, to be provided to form the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme and to be provided on the Development in accordance with the Qualifying Permission(s) and SUDS Scheme   |



| <b>Expression</b>                | <b>Meaning</b>  |
|----------------------------------|---|
| <b>“SUDS Commuted Sum”</b>       | <p>means the sum produced by multiplying</p> <p>the area in square metres of the part of the Site that accommodates all elements of the SUDS and</p> <p>the length in linear metres of any linear feature comprising an element of the SUDS</p> <p>expressed together as a single number multiplied by Thirty-two pounds and sixteen pence (£32.16) and the result divided by fifteen.</p>  |
| <b>“SUDS Scheme”</b>             | <p>means a sustainable urban drainage system scheme for the Development which is to be submitted and approved in writing by the District Council in accordance with paragraph 2.1 below which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development and the timescales for when the said works and features are to be carried out</p>   |
| <b>“Technical Specification”</b> | <p>means the specification set out in the document headed “Cherwell District Council and South Northamptonshire Council Contract for the provision of landscape maintenance services 01 April 2018 - 31 March 2024 Document 3: Technical Specifications” available at:</p> <p><a href="https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim_screen_cherwell-dc.gov.uk/Ea1lf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE">https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim_screen_cherwell-dc.gov.uk/Ea1lf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE</a></p> |

## **2. PRE-COMMENCEMENT/OCCUPATION**

- 2.1 Before Commencing the Development there shall be submitted to the District Council the proposed

2.1.1 Open Spaces Scheme ;

2.1.2 SUDS scheme

2.1.3 Maintenance Plan

and the Development shall not be Commenced until the District Council has approved each of them.

### 3. **OPEN SPACE**

#### 3.1 The Open Space

3.1.1 shall be provided; and

3.1.2 shall be provided in accordance with the Open Spaces Scheme

3.2 Nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the Open Spaces Scheme or the efficient implementation of the Management Plan and in particular:

3.2.1 no materials or equipment shall be stored on;

3.2.2 no services shall be run over, under or through;

3.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;

3.2.4 no parking area or temporary roadway shall be created or designated on;

any part of the Site that is to accommodate the Open Space or any part of it without the express prior written permission of the District Council having been requested and given unless such is essential for the creation of the Open Space itself.

3.3 Any Mature Trees and/or Existing Hedgerows shall be protected in accordance with BS5837 before any works comprised in the Development are carried out on the Site

3.4 The District Council shall be entitled on reasonable notice but no less than one Working Days' Notice to enter the Site with workman and contractors to remedy any default in compliance with paragraphs 3.2 and 3.3 above and to recover the cost thereof from the Owner

- 3.5 The Open Space shall be constructed laid out and seeded in accordance with the approved Open Space Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing;
- 3.6 The Lap shall, in addition to the obligations in paragraph 3.5 above be designed to and comply with the following:
- 3.6.1 the standards, policy, design principles and practice referred to in the Fields in Trust publication "Planning and Design for Outdoor Sport and Play" and the Play England publication "Design for Play – A guide to creating Successful Play Spaces" (or later revisions of these publications); and
- 3.6.2 achieve a minimum score rating of 'Good' as measure against RoSPA's Play Value Assessment and
- 3.7 The Open Space shall not be used for any purpose other than as public open space land as an amenity for the occupiers of the Development and surrounding area but with the prior written consent of the District Council:
- 3.7.1 the subsoil of the Open Space may accommodate services provided such services do not prejudice the function of the Open Space;
- 3.7.2 may be used for the storage of materials and equipment necessary for the maintenance of the Open Space;
- 3.7.3 may accommodate an area for the parking of cars and/or any other vehicles associated with the use of the Open Space; or
- 3.7.4 may reserve any necessary rights of access over the Open Space to any adjoining land
- 3.8 Upon completion of the Open Space the District Council shall be notified and invited to inspect the Open Space within 15 Working with a view to either
- 3.8.1 issue a Practical Completion Certificate that certifies that the Open Space has been provided in accordance with the Open Spaces Scheme to the satisfaction of the District Council; OR

3.8.2 issue a notice (Defects Notice) which states the Open Space has not been proved in accordance with the Open Spaces Scheme to a standard that satisfies the District Council and sets out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done

but in the event that the District Council considers that any failure to comply with the Open Spaces Scheme is minor and can be remedied within the Maintenance Period a Practical Completion Certificate may still be issued but endorsed with a note of the minor works to be done and the period in which the District Council expects them to be completed.

3.9 If a Defects Notice is issued the works specified in the Defects Notice shall be carried out and the District Council invited to re-inspect the Open Space with a view to securing the issue of the Practical Completion Certificate.

3.10 No more than 75% of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued for the Open Space and the Open Space Monitoring Fee has been paid;

3.11 After the issue of the Practical Completion Certificate the Open Space shall be maintained in accordance with the Maintenance Plan during the Maintenance Period and the general public shall be permitted to use the Open Space at all reasonable times save as necessary to carryout maintenance and in the interests of health and safety for the purposes for which it is provided

3.12 Upon completion of the Maintenance Period the District Council

3.12.1 if satisfied that the relevant Open Space has been maintained throughout the Maintenance Period in accordance with the Maintenance Plan and any minor defects set out in the Practical Completion Certificate have been remedied shall issue a Final Completion Certificate; or

3.12.2 if not so satisfied issue a Defects Notice and the provisions of paragraph 3.8 and 3.9 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate

3.13 At all reasonable times and upon reasonable notice officers servants and agents of the District Council may enter onto any necessary part of the Site for the purpose of inspecting the Open Space upon the District Council first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site. .

3.14 Upon completion of the Maintenance Period and issue of the Final Certificate

3.14.1 the freehold interest in the relevant Open Space shall be transferred to the District Council or such other body as the Council may direct on the following terms:

- (a) Consideration for the transfer shall be no more than One pound (£1-00);
- (b) To be with
  - (i) full title guarantee, and
  - (ii) vacant possession on completion
- (c) The transfer shall include such rights as may be necessary for the District Council to access the Open Space for purposes of maintenance repair improvement and replacement of any aspect of the Open Space
- (d) A covenant not to use or permit the Open Space to be used for anything other than the purposes that it was provided for and not to use it for any income generating use without the consent of the transferor (such consent not to be unreasonably withheld or delayed); and
- (e) Save as is inconsistent herewith on the Law Society's Standard Conditions of Sale applicable at the time of the issue of the Completion Certificate

3.14.2 A draft transfer shall be prepared by the transferor and sent to the District Council for approval or amendment within Twenty (20) Working Days of the issue of the Final Completion Certificate and once approved an executed transfer shall be delivered to the Council for its execution by the Council within Ten (10) Working Days

## 4. SUDS

### 4.1 The SUDS

4.1.1 shall be provided; and

4.1.2 shall be provided in accordance with the SUDS Scheme

4.2 Nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the SUDS Scheme or its efficiency or the efficient implementation of the Maintenance Plan and in particular:

4.2.1 no materials or equipment shall be stored on;

4.2.2 no services shall be run over, under or through;

4.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;

4.2.4 no parking area or temporary roadway shall be created or designated on;

any part of the Site that is to accommodate the SUDS or any part of it without the express prior written permission of the District Council having been requested and given unless such is essential for the creation of the SUDS itself

4.3 The District Council shall be entitled on reasonable notice but no less than one Working Days' Notice to enter the Site with workman and contractors to remedy any default in compliance with paragraph 4.2 above and to recover the cost thereof from the Owner

4.4 The SUDS shall be constructed laid out and seeded in accordance with the approved SUDS Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing;

4.5 The SUDS shall not be used for any purpose other than as public open space land as an amenity for the occupiers of the Development and surrounding area but with the prior written consent of the District Council:

4.5.1 the subsoil of the SUDS may accommodate services provided such services do not prejudice the function of the SUDS;

- 4.5.2 may be used for the storage of materials and equipment necessary for the maintenance of the SUDS;
  - 4.5.3 may reserve any necessary rights of access over the SUDS to any adjoining land
- 4.6 Upon completion of the SUDS the District Council shall be notified and invited to inspect the SUDS within 15 Working with a view to either
- 4.6.1 issue a Practical Completion Certificate that certifies that the SUDS has been provided in accordance with the SUDS Scheme to the satisfaction of the District Council; OR
  - 4.6.2 issue a notice (Defects Notice) which states the SUDS has not been proved in accordance with the SUDS Scheme to a standard that satisfies the District Council and sets out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done
- but in the event that the District Council considers that any failure to comply with the SUDS Scheme is minor and can be remedied within the Maintenance Period a Practical Completion Certificate may still be issued but endorsed with a note of the minor works to be done and the period in which the District Council expects them to be completed.
- 4.7 If a Defects Notice is issued the works specified in the Defects Notice shall be carried out and the District Council invited to re-inspect the SUDS with a view to securing the issue of the Practical Completion Certificate.
- 4.8 No more than 75% of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued for the SUDS and the SUDS Monitoring Fee has been paid;
- 4.9 After the issue of the Practical Completion Certificate the SUDS shall be maintained in accordance with the Maintenance Plan during the Maintenance Period
- 4.10 Upon completion of the relevant Maintenance Period the District Council
- 4.10.1 if satisfied that the relevant SUDS has been maintained throughout the Maintenance Period in accordance with the Maintenance Plan and any minor

defects set out in the Practical Completion Certificate have been remedied shall issue a Final Completion Certificate; or

4.10.2 if not so satisfied issue a Defects Notice and the provisions of paragraph 3.8 and 3.9 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate

4.11 At all reasonable times and upon reasonable notice officers servants and agents of the District Council may enter onto any necessary part of the Site for the purpose of inspecting the SUDS upon the District Council first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site. .

## 5. **TRANSFER**

5.1 Upon completion of the relevant Maintenance Period and issue of the Final Certificate for the Open Space and the SUDS

5.1.1 The Open Space Commuted Sum and the SUDS Commuted Sum shall be paid to the District Council

5.1.2 the freehold interest in the Open Space or SUDS (as the case may be) shall be transferred to the District Council or such other body as the Council may direct on the following terms:

(a) Consideration for the transfer shall be no more than One pound (£1-00);

(b) To be with

(i) full title guarantee, and

(ii) vacant possession on completion

(c) The transfer shall include such rights as may be necessary for the District Council to access the transferred land for purposes of maintenance repair improvement and replacement of any aspect of the Open Space and/or SUDS



- (d) A covenant not to use or permit the Open Space and/or SUDS to be used for anything other than the purposes that they were provided for and not to use it for any income generating use without the consent of the transferor (such consent not to be unreasonably withheld or delayed); and
- (e) Save as is inconsistent herewith on the Law Society's Standard Conditions of Sale applicable at the time of the issue of the Completion Certificate

5.1.3 A draft transfer shall be prepared by the transferor and sent to the District Council for approval or amendment within Twenty (20) Working Days of the issue of the Final Completion Certificate and once approved an executed transfer shall be delivered to the Council for its execution by the Council within Ten (10) Working Days

5.2 The Open Space and the SUDS shall continue to be maintained in accordance with the Maintenance Plan until their transfer in accordance with paragraph 5.1.2 above and the Open Space Commuted Sum and/or SUDS Commuted Sum are paid in accordance with paragraph 5.1.1 above



**FOURTH SCHEDULE**  
**ADDITIONAL COVENANTS TO AND CONTRIBUTIONS TO BE PAID TO THE**  
**DISTRICT COUNCIL**

**1. DEFINITIONS**

1.1 In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| <b>Expression</b>                    | <b>Meaning</b>   |
|--------------------------------------|--|
| <b>“Contributions”</b>               | <p>all and each of the:</p> <ul style="list-style-type: none"> <li>• Community Hall Contribution</li> <li>• Healthcare Contribution</li> <li>• Off-site Indoor Sports Facilities Contribution;</li> <li>• Off-site Outdoor Sports Facilities Contribution;</li> </ul> <p style="text-align: center;">and</p> <ul style="list-style-type: none"> <li>• Refuse Contribution</li> </ul> |
| <b>“Community Hall Contribution”</b> | <p>the sum calculated as follows:<br/>           Five hundred and twenty pounds only (£520-00) multiplied by (the Composition of the Development multiplied by 2.89) the resultant sum to be Index Linked<br/>           to be used towards the funding of new community hall facilities at a site off Milton Road in Adderbury</p>  |
| <b>“Healthcare Contribution</b>      | <p>the sum calculated as follows:<br/>           Three hundred and sixty pounds only (£360-00) multiplied by (the Composition of the Development multiplied by 2.89) the resultant sum to be Index Linked<br/>           to be used for the enhancement of existing primary care medical infrastructure to meet the needs of the growing population within the Banbury area</p>      |

**Expression**

**Meaning**

**“Index Linked”**

means adjusted according to the increase (if any) in the BCIS All in One Tender Price index published by the Royal Institution of Chartered Surveyors (or such other index as may from time to time replace the BCIS All in One Tender Price index or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing) between the published figure for the second quarter of 2017 and the Due Date

**“Off-site Indoor Sports Facilities Contribution**

the sum calculated as follows:

Three hundred and thirty-three pounds and thirty-two pence (£335.32) multiplied by (the Composition of the Development multiplied by 2.89) the resultant sum to be Index Linked towards the development of new indoor sport provision at a site off Milton Road in Adderbury

**“Off-site Outdoor Sports Facilities Contribution**

the sum calculated as follows:

Two thousand and seventeen pounds and three pence (£2017.03) multiplied by the Composition of the Development the resultant sum to be Index Linked towards the development of sports pitches and changing facilities off Milton Road, Adderbury

**“Refuse Contribution”**

the sum calculated as follows:

One-hundred and eleven pounds only (£111-00) multiplied by the Composition of the Development Index Linked towards the provision of waste and recycling bins to serve the Development

## **Expression**

**“TEMP”**

## **Meaning**

a training and skills plan which shall (as a minimum) include the arrangements by which the Owners and/or the Appellant will provide at least 2 construction (and related trades) apprenticeship starts during the construction of the Development in accordance with the following:

- the apprenticeships may be delivered through an accredited Apprenticeship Training Agency or other equivalent approach
- all apprenticeship opportunities arising shall be initially advertised within the administrative area of the District Council and if there are no suitable applicants identified as a result of such advertisements the opportunities shall be advertised to people residing in Oxfordshire and then the surrounding locality (e.g. Milton Keynes, Aylesbury and Northamptonshire)
- how the Owners and/or the Appellant and the appointed contractor will work directly with local employment/training agencies including Job Centre Plus and Bicester Job Club or any successor initiatives to identify employment opportunities related to the construction of the Development and skills and training to assist local people residing in Bicester and within 5 miles thereof to access job opportunities
- the apprenticeships may be delivered through an accredited Apprenticeship Training Agency or other equivalent approach

## Expression

## Meaning

- all apprenticeship opportunities arising shall be initially advertised within the administrative area of the District Council and if there are no suitable applicants identified as a result of such advertisements the opportunities shall be advertised to people residing in Oxfordshire and then the surrounding locality (e.g. Milton Keynes, Aylesbury and Northamptonshire)
- how the Owners and/or the Appellant and the appointed contractor will work directly with local employment/training agencies including Job Centre Plus and Bicester Job Club or any successor initiatives to identify employment opportunities related to the construction of the Development and skills and training to assist local people residing in Bicester and within 5 miles thereof to access job opportunities

1.2 The Owners and the Appellant covenant with the District Council as follows:

## 2. CONSTRUCTION APPRENTICESHIPS

- 2.1 not to Commence the Development until a TEMP has been submitted to the District Council and it has been approved in writing by the District Council
- 2.2 from the date of its written approval by the District Council to implement and fully comply with the TEMP as approved
- 2.3 on each anniversary of the date of Commencement until the construction of the Development has been completed to submit to the District Council a report which demonstrates the progress made towards achieving the outputs identified in the TEMP including the provision of at least the minimum number of apprenticeships identified therein.

### **3. FINANCIAL CONTRIBUTIONS**

The Owner covenants with the District Council:

#### **3.1 Community Hall Contribution**

3.1.1 to pay 50% of the Community Hall Contribution to the District Council prior to the first Occupation of any Dwelling on the Site and not to permit Occupation of any Dwelling on the Site until this has been paid; and

3.1.2 to pay the remaining 50% of the Community Hall Contribution to the District Council prior to the first Occupation of the 11th Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid.

#### **3.2 Healthcare Contribution**

3.2.1 To pay 50% of the Healthcare Contribution to the District Council prior to the first Occupation of any Dwelling on the Development and not to permit Occupation of any Dwelling on the Site until this has been paid; and

3.2.2 To pay the remaining 50% of the Healthcare Contribution to the District Council prior to the first Occupation of the 11th Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid.

#### **3.3 Off-site Indoor Sports Facilities Contribution**

3.3.1 To pay 50% of the Off-site Indoor Sports Facilities Contribution to the District Council prior to the first Occupation of any Dwelling on the Site and not to permit Occupation of any Dwelling on the Site until this has been paid; and

3.3.2 To pay the remaining 50% Off-Site Indoor Sports Facilities Contribution to the District Council prior to the first Occupation of the 11th Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid.

### **3.4 Off-site Outdoor Sports Facilities Contribution**

- 3.4.1 To pay 50% of the Off-site Outdoor Sports Facilities Contribution to the District Council prior to the first Occupation of any Dwelling on the Site and not to permit Occupation of any Dwelling on the Site until this has been paid; and
- 3.4.2 To pay the remaining 50% of the Off-site Outdoor Sports Facilities Contribution to the District Council prior to the First Occupation of the 11th Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid.

### **3.5 Refuse Contribution**

- 3.5.1 To pay 50% of the Refuse Contribution to the District Council prior to the first Occupation of any Dwelling on the Development and not to permit Occupation of any Dwelling on the Site until this has been paid; and
- 3.5.2 To pay the remaining 50% of the Refuse Contribution to the District Council prior to the Occupation of more than 50% of the Dwellings on the site and not to permit Occupation of more than 50% of the Dwellings on the Site until this has been paid.

3.6 on the issue of each Approval (Variation) if the relevant Approval (Variation) results in the Composition of the Development changing then:

- 3.6.1 for the purposes of calculating the Contributions which will be payable subsequent to the date of issue of the relevant Approval (Variation) the resultant Composition of the Development shall be used to calculate the Contributions; or
- 3.6.2 there shall be calculated the difference between the Contributions paid prior to the issue of the relevant Approval (Variation) and the amount that such Contributions would have been if they had been calculated by reference to the Composition of the Development resulting disregarding index linking.

3.7 If as a result of an Approval (Variation) the Contributions increase the Owner covenants to pay to the District Council the sum calculated further to clause 3.3.2 Index Linked within 10 Working Days of the grant of the Approval (Variation).



**FIFTH SCHEDULE  
FINANCIAL CONTRIBUTIONS AND  
COVENANTS TO THE COUNTY COUNCIL**

**1. DEFINITIONS**

1.1 In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| <b>Expression</b>                     | <b>Meaning</b>  |
|---------------------------------------|---|
| <b>Education Contribution</b>         | means together the Primary Education Contribution and the Secondary Education Contribution  |
| <b>Primary Education Contribution</b> | <ul style="list-style-type: none"> <li>• means the sum calculated by applying the Primary Line of the Matrix to the Composition of the Development as identified in the Notification (Initial) Index Linked (towards expansion of primary and nursery capacity at Christopher Rawlins CE (VA) Primary School payable in two instalments as follows:</li> <li>• Primary Instalment 1 being 50 % of the Primary Education Contribution and</li> <li>• Primary Instalment 2 being the remaining 50% of the Primary Education Contribution</li> </ul> <p>and which for illustrative purposes only is anticipated to be of Three Hundred and Forty Thousand Eight Hundred and Two Pounds (£340,802) Index Linked</p> |
| <b>Education Payment</b>              | means any instalment of part of the Education Contribution due to be paid pursuant to paragraph 2 of this Schedule  |

**Index Linked**

means in relation to

- the Public Transport Infrastructure Contribution and Public Rights of Way Contribution adjusted according to any increase occurring between January 2018 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:

|   |      |
|---|------|
| Index 1 Labour & Supervision                    | 25%  |
| Index 2 Plant & Road Vehicles                   | 25%  |
| Index 3 Aggregates                              | 30%  |
| Index 9 Coated Macadam &<br>Bituminous Products | 20%; |

- the Public Transport Service Contribution and any payment made further to paragraph 4.2 adjusted according to any increase occurring between January 2018 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics.;
- the Traffic Regulation Order Contribution adjusted according to any increase occurring between June 2019 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics.; and

**Expression****Meaning**

- the Education Contribution and any and any payment made further to paragraph 4.1 adjusted according to any increase occurring between index value 333 and the index value for the quarter period in which the contribution is paid in the BCIS All in-Tender Price Index published by the Royal Institution of Chartered Surveyors

or if at any time for any reason it becomes impracticable to use any such index such alternative index as may be agreed between the Owner and the County Council

**Matrix**

means the formula:

$$£(A \times W) + (B \times X) + (C \times Y) + (D \times Z)$$

When

A means the number of 1 Bed Dwellings

B means the number of 2 Bed Dwellings

C means the number of 3 Bed Dwellings

D means the number of 4 Bed Dwellings

W, X, Y and Z are as set out in Part 2 to this Schedule

**Notification (Initial)**

means written notification of the Approval (Initial) containing a copy of that approval and details of the Composition of the Development established by that approval

**Public Transport Service Contribution**

means the sum calculated as follows:

One thousand pounds (£1000.00) multiplied by the number of Dwellings in the Composition of the Development as identified in the Notification (Initial) the resultant sum to be Index Linked towards the enhancement of public transport bus services on the A4260 serving the site

| <b>Expression</b>                                   | <b>Meaning</b>   |
|---|--|
| <b>Public Transport Infrastructure Contribution</b> | means the sum of Ten Thousand Pounds (£10,000) Index Linked towards the provision of two sets of bus stop poles and premium route standard flags, and bus shelters   |
| <b>Traffic Regulation Order Contribution</b>        | means the sum of Three Thousand One Hundred and Twenty Pounds (£3,120) Index Linked towards the cost of the promotion, consultation and, if appropriate, the making of a TRO to enable relocation of the existing 30mph/national speed limit on Berry Hill Road from its current location to a point further south close to the junction with the A4260  |
| <b>Public Rights of Way Contribution</b>            | means the sum of Twenty Thousand Pounds (£20,000) Index Linked towards access mitigation measures on the footpaths to east and north of the site (Adderbury Footpaths 13, 6, 5 and 24 and Bridleway 9) including works such as surface improvement, signage and furniture along the routes   |
| <b>Secondary Education Contribution</b>             | <p>means the sum calculated by applying the Secondary Line of the Matrix to the Composition of the Development as identified in the Notification (Initial) Index Linked towards the expansion of capacity at the Warriner School payable in two instalments as follows:</p> <ul style="list-style-type: none"> <li>• Secondary Instalment 1 being 50 % of the Secondary Education Contribution and</li> <li>• Secondary Instalment 2 being the remaining 50% of the Secondary Education Contribution</li> </ul> <p>and which for illustrative purposes only is anticipated to be Two Hundred and Twenty Seven Thousand Seven Hundred and Forty Nine Pounds (£227,749) Index Linked</p> |

**Expression****Meaning****Revised Education Contribution**

means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix where this is higher than the Education Contribution or in the event that there is more than one Approval (Variation) the Revised Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix if that sum is higher. The Revised Education Contribution will be Index Linked

**Revised Public Transport Service Contribution**

means the sum calculated by multiplying One thousand pounds (£1,000) by the number of Dwellings in the Composition of the Development as identified in a Notification (Variation) where this is higher than the Public Transport Service Contribution or in the event that there is more than one Approval (Variation) the Revised Public Transport Service Contribution means the sum calculated by multiplying One thousand pounds (£1,000) by the number of Dwellings in the Composition of the Development established further to the later Approval (Variation) if that sum is higher. The Revised Public Transport Service Contribution will be Index Linked

**Transport Contributions**

means together the Public Transport Infrastructure Contribution the Public Transport Service Contribution the Public Rights of Way Contribution and the Traffic Regulation Order Contribution

**2. COVENANTS**

The Owner covenants with the County Council as follows:

- 2.1 to pay Primary Instalment 1 to the County Council prior to the Commencement of the Development
- 2.2 not to cause or permit the Commencement of the Development until it has paid the Primary Instalment 1 to the County Council
- 2.3 to pay the Transport Contributions Secondary Instalment 1 and Primary Instalment 2 to the County Council prior to first Occupation of any Dwelling; and
- 2.4 not to cause or permit the first Occupation of any Dwelling until it has paid the Transport Contributions Secondary Instalment 1 and Primary Instalment 2 to the County Council
- 2.5 to pay Secondary Instalment 2 to the County Council prior to first Occupation of more than 15 Dwellings; and
- 2.6 not to cause or permit the first Occupation of more than 15 Dwellings until it has paid Secondary Instalment 2 to the County Council

3. **OWNER'S COVENANTS (NOTIFICATION AND ASSESSMENT)**

- 3.1 The Owner covenants with the County Council as follows:-
  - 3.1.1 to give to the County Council the Notification (Initial) within 10 Working Days of the issue of the Approval (Initial)
  - 3.1.2 not to cause or permit Commencement of the Development until the Notification (Initial) has been given to the County Council
  - 3.1.3 to give to the County Council a Notification (Variation) within 10 Working Days of the issue of each Approval (Variation)
  - 3.1.4 where a Notification (Variation) has been given (or is required to be given further to clause 3.1.3) and the relevant Approval (Variation) results in the establishment of a Revised Education Contribution then
    - (a) for the purposes of calculating any Education Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Education Contribution shall be applied in place of the Education Contribution

- (b) there shall be calculated the difference between any Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Education Contribution would have been if it had been calculated by reference to the Revised Education Contribution (in both instances disregarding index linking)

3.1.5 where a Notification (Variation) has been given (or is required to be given further to clause 3.1.3) and the relevant Approval (Variation) results in the establishment of a Revised Public Transport Service Contribution then

- (a) for the purposes of calculating any Public Transport Service Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Public Transport Service Contribution shall be applied in place of the Public Transport Service Contribution
- (b) there shall be calculated the difference between any Public Transport Service Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Public Transport Service Contribution would have been if it had been calculated by reference to the Revised Public Transport Service Contribution (in both instances disregarding index linking)

#### **4. COVENANTS – PAYMENT (ADDITIONAL COVENANT)**

4.1 The Owner covenants with the County Council to pay to the County Council any sum calculated further to paragraphs 3.1.4(b) Index Linked with the next Education Payment subsequent to the date of grant of the relevant Approval (Variation) or if all the Education Payments have been paid to pay such sum Index Linked within 10 Working Days of the grant of the Approval (Variation)

4.2 The Owner covenants with the County Council to pay to the County Council any sum calculated further to paragraphs 3.1.5(b) Index Linked with the next Transport Contribution subsequent to the date of grant of the relevant Approval (Variation) or if all the Transport Contributions have been paid to pay such sum Index Linked within 10 Working Days of the grant of the Approval (Variation)

**Part 2**

|               | <b><u>1 Bed</u></b> | <b><u>2 Bed</u></b> | <b><u>3 Bed</u></b> | <b><u>4 + Bed</u></b> |
|---------------|---------------------|---------------------|---------------------|-----------------------|
| Primary       | £0.00               | £4,714.10           | £10,814.71          | £14,142.31            |
| Secondary     | £0.00               | £2,642.10           | £6,869.46           | £11,096.82            |
| <b>TOTALS</b> | <b>W= £0.00</b>     | <b>X=£7,356.20</b>  | <b>Y=£17,684.17</b> | <b>Z=£25,239.13</b>   |



**SIXTH SCHEDULE  
COVENANTS TO THE COUNTY COUNCIL**

**Part 1**

**1. DEFINITIONS**

1.1 In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| <b>Expression</b>           | <b>Meaning</b>   |
|-----------------------------|--|
| <b>“the 1980 Act”</b>       | means the Highways Act 1980 (as amended)   |
| <b>“Highways Agreement”</b> | means an agreement under Section 278 (and if appropriate section 38) of the 1980 Act in accordance with the form at Annex 1 to this Schedule (subject to any amendments that the circumstances may reasonably and properly require) which provides for the execution of the Works by the Owner at the Owner’s expense. |
| <b>“Works Plan”</b>         | means the drawing reference number Drwg no: 1899-F01 rev J attached to this Deed at Annex 2  |
| <b>“Works”</b>              | means the principal works together with associated preparatory and ancillary works and the amenity and accommodation works described in Part 2 of this Schedule  |

1.2 The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act

1.3 The parties intend to enter into the Highways Agreement

**2. WORKS OBLIGATIONS**

2.1 The Owner covenants with and undertakes to the County Council not to cause or permit the Commencement of the Development until:

- (a) There has been submitted to the County Council and approved by it in writing in principle drawings for the Works together with associated drawings and technical information as set out in the County Council's Section 278 application form as adjusted from time to time;
- (b) There has been submitted to the County Council and approved by it in writing plans detailing the land (if any) to be dedicated following completion of the Works and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated.
- (c) The anticipated duration of construction of the Works has been agreed with the County Council together with the longstop date for completion of the Works and commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works, has been agreed.
- (d) The Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 2.1(a) to 2.1(c) has been entered into by the Owner in respect of the Works together with all parties with an interest in any land to be dedicated further to the Highways Agreement and any mortgagee of such land has released it fully and effectively from its charge.

2.2 Notwithstanding the terms of paragraph 2.1 not to cause or permit the first Occupation of any Dwelling until the Highways Agreement has been entered into in accordance with paragraphs 2.1 (a) to 2.1 (c) above;

2.3 Not to cause or permit the first Occupation of any Dwelling on the Site unless and until the Works have been completed pursuant to and in accordance with the Highways Agreement.

## **Part 2 THE WORKS**

### **1. PRINCIPAL WORKS**

The provision and construction of the following works as shown indicatively on the Works Plan ("the Principal Works"):

- 1.1 A 5.5m wide access off Berry Hill Road including 2no. 2m wide footways either side of the access
- 1.2 2m wide footway along the length of Berry Hill Road to the north including new kerbing
- 1.3 improvements to the A4260 to include a 1.2m wide pedestrian refuge island within the existing hatched road markings to provide a safe crossing facility, associated footways and dropped kerbs

### **2. PREPARATORY AND ANCILLARY WORKS**

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Principal Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

- 2.1 all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- 2.2 all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- 2.3 all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- 2.4 all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs

- 2.5 all kerbs islands verges and reservations including the grading and seeding of grassed areas
- 2.6 all measures necessary to ensure visibility for drivers at any bend or junction
- 2.7 all traffic signs road markings bollards and safety barriers
- 2.8 all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

### **3. AMENITY AND ACCOMMODATION WORKS**

The provision and construction of all such amenity and accommodation works as the County Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

**ANNEX 1: HIGHWAYS AGREEMENT**

**DRAFT 278**

Standard s278 – do not use if an additional financial contribution is being

**DATED** \_\_\_\_\_ **20[ ]**

**OXFORDSHIRE COUNTY COUNCIL**

-and-

-and-

**(DEVELOPER)**

draft

-----  
Agreement relating to highway works at [ ] to be undertaken

by Developer  
-----

Sukdave Ghuman  
Head of Legal Services and Deputy Monitoring Officer  
Oxfordshire County Council  
County Hall  
New Road  
Oxford OX1 1ND



**THIS DEED** is made on the \_\_\_\_\_ day of

Two Thousand and

**BETWEEN:-**

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) ..... ("the Owner")
- (3) ..... (company registration number.....)  
..... ("the Developer")
- (4) .....

**1. Interpretation**

In this Deed:-

- 1.1 "the 1980 Act" means the Highways Act 1980
- 1.2 "the 1990 Act" means the Town and Country Planning Act 1990
- 1.3 "As-Built Drawings" means detailed plans and drawings showing the Works in the form in which they have actually been executed and completed required under Condition 29 of the Standard Conditions
- 1.4 "Certificate of Completion" means a certificate issued under Condition 30 of the Standard Conditions
- 1.5 "the Council" means the said Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority or planning authority and any duly appointed employee or agent of the Council or such successor

- 1.6 “the Dedication Plan” means the plan marked ‘B’ annexed to this Deed or such other plan as the Owner [the Developer and the Mortgagee] and the Council agree should be substituted for it
- 1.7 [“the Developer” means of/ whose registered office is at \_\_\_\_\_ and its successors in title and assigns]
- 1.8 “the Development” means [ \_\_\_\_\_ ]
- 1.9 “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
- 1.10 “including” means including without limitation and ‘include’ shall be construed accordingly
- 1.11 “Index-Linked” means adjusted according to any increase occurring between \_\_\_\_\_ and the date of payment to the Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

|         |                                    |     |
|---------|------------------------------------|-----|
| Index 1 | Labour & Supervision               | 25% |
| Index 2 | Plant & Road Vehicles              | 25% |
| Index 3 | Aggregates                         | 30% |
| Index 9 | Coated Macadam & Bitumous Products | 20% |



or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the Owners and the County Council

1.12 “the Maintenance Costs” means the sum of ( ) Index Linked as calculated in respect of the cost of future maintenance of the Works

1.13 [“the Mortgagee” means the said of/whose registered office is at and its successors in title and assigns]

1.14 “the Off-Site Works” means such part of the Works (if any) as is to be executed outside the Site

1.15 “the Owner” means the said of/ whose registered office is at and its successors in title and assigns

1.16 “the Planning Application” means the application for planning permission for the Development numbered

#### ALTERNATIVE

“the Planning Permission” means planning permission reference number [ ] for the Development of the Site

1.17 “the Site” means the land Oxfordshire shown edged black on the Site Plan

- 1.18 “the Site Plan” means the plan marked “Plan A” annexed to this Deed
- 1.19 “the Standard Conditions” means the Council’s Standard Conditions for the Control of Highway Works in Conjunction with Development (2016 Edition) a copy of which is annexed to this Deed
- 1.20 “the Works” means the works specified in the Schedule
- 1.21 “the Works Plan” means the drawing(s) numbered [ ] annexed to this Deed
- 1.22 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply
- 1.23 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation
- 1.24 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed
- 1.25 Where the context so requires:-
- 1.25.1 the singular includes the plural and vice versa
- 1.25.2 the masculine includes the feminine and vice versa
- 1.25.3 ‘persons’ includes bodies corporate associations and partnerships and vice versa

- 1.26 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons
- 1.27 Where more than one party enters into any obligation or liability those parties are jointly and severally liable
- 1.28 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

## **2. Preliminary**

- 2.1 The Owner is the owner of freehold of the Site registered with absolute title under title number [ ] [subject to an Option in favour of the Developer (and/or) a Charge in favour of the Mortgagee but otherwise] free from incumbrances as the Owner hereby warrants
- 2.2 For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Site
- 2.3 For the purposes of the 1980 Act, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Council is the highway authority and the traffic authority for certain highways in the area which includes the Site
- 2.4 [The (Owner/Developer) [has] submitted the Planning Application for the Development to the district planning authority

Alternative 1

The district planning authority is minded to grant planning permission for the Development subject inter alia to the completion of this Deed]

Alternative 2

It is a condition of the Planning Permission that the Development shall not be [ ] before certain works (which the Council is authorised to execute) are executed for the provision of safe and convenient access to the Site from the highways in the vicinity.

Alternative 3

The Owner has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990 dated [ ] and made between [ ] that the Development shall not be implemented [as therein defined] prior to the completion of this Deed and shall not be occupied prior to the completion of the Works in accordance with the Deed

- 2.5 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.6 It has been agreed between the Owner and the Council that in lieu of the Owner paying the cost of the Off-Site Works the Off-Site Works should be executed by the Owner in conjunction with the carrying out of the Development

2.7 This Deed (which the Council are satisfied will be of benefit to the public) is made under Sections 38 72 and 278 of the 1980, Act Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and all other enabling powers and is a planning obligation for the purposes of Section 106 of the 1990 Act entered into by the Owner the Developer and the Mortgagee in respect of the Site and enforceable by the Council

2.8 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 and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality .

### **3. Covenants**

The Owner and the Developer covenant:-

3.1 not to cause or permit [any planning permission obtained for the Development/the Planning Permission to be implemented (save insofar as is necessary for the execution of the Works)] [any building forming part of the Development[to be occupied] [to open for business] before the Works have been completed

3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council

- 3.3 in executing the Works to observe and perform all the obligations which fall on "the Developer" under the Standard Conditions and
- 3.4 to complete the Works not later than and in any event within from the date on which the Works started
- 3.5 not to commence the Works until the Maintenance Costs have been paid to the Council and to pay Maintenance Costs to the Council prior to commencing the Works
- 3.6 not to apply for the issue of the Certification of Completion until it has paid the Maintenance Costs to the Council
- 3.7 to give the Council written notice of any disposal of an interest in the Site and of the name and address of the new owner and the date of the disposal within 14 days of such disposal
- 3.8 if any payment to be made to the Council is not paid on or before the due date for payment to pay interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc from such due date to the date of payment<sup>1</sup>

**4. Adoption as Highway**

- 4.1 On the issue of a Certificate of Completion for the Works the whole of the land shown [hatched black] on the Dedication Plan (subject to modification as provided in clause 4.2) shall be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of

the Standard Conditions be a highway maintainable at public expense

4.2 The Council may after consideration of the As-Built Drawings require the substitution of a modified dedication plan in which event that shall be agreed with the Owner [the Developer the Mortgagee] and the dedication as provided in clause 4.1 shall have effect in respect of the modified area

4.3 the Owner consents to the noting of the provisions of clause 4 of this Deed on the register under title number [ ]

**5/6 Act Reasonably**

Where a matter falls within a party's discretion that party shall exercise such discretion in a reasonable and expeditious manner and shall give any requisite notice of that decision and any other notice provided for by this Deed (including the Standard Conditions) without undue delay

**6/7 [the Mortgagee (consider further amendment to accord with mortgagee provision in Section 106 agreement)**

The Mortgagee acknowledges that the Site is bound by the obligations contained in this Deed [and in the event that the dedication area is revised further to clause 4.2 the Mortgagee agrees that any part of the dedication area which is subject to its charge shall be released from such charge on dedication

pursuant to clause 4.1 and the Mortgagee will execute such further documentation as may be required to effect this]

**7/8 Costs**

7.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of this Deed [and [ ] towards the costs of administering and monitoring the provisions of this Deed relating to the Contribution]

7.2 The Owner will reimburse the Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Deed including correspondence monitoring and site visits by or on behalf of the Council

7.3 [The Owner will not claim any compensation in respect of the provision of this Deed]

**8. Third Party Rights**

This Deed does not create any right enforceable by any person not a party to it except that it may be enforced by the successors in title and assigns of the parties and by any successor to the Council's statutory functions

**9. Notice**

Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning & Place of the Council (Ref) County Hall, New Road, Oxford OX1 1ND or to



such other person at such other address as the Council shall direct from time to time [and any notice or notification to be given to [ ] shall be sent to [ ] or to such other person at such address as the [ ] shall notify in writing to the Council from time to time

**10. No Waiver**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the Council in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Owner/the Developer/the Mortgagee from any liability under this Deed

**11. No Fetter**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity

**12. VAT**

All works undertaken pursuant to and all payments made in accordance with the terms of this Deed shall be exclusive of value added tax and the Owner shall pay the Council any value added tax properly payable on any sums paid to the Council or works undertaken under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner

**13. Jurisdiction**

This Deed is governed by and interpreted in accordance with the Law of England

**14. Delivery**

The provisions of this Deed shall be of no effect until this Deed has been dated

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

## SCHEDULE

### The Works

#### 1. Principal Works

The provision and construction in the position indicated in principle on the Works Plan of the following works ("the Principal Works")

- (a)
- (b)
- (c)

#### 2. Preparatory and Ancillary Works

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction

- (g) all traffic signs road markings bollards and safetybarriers
- (h) all tapers joints and reinstatements necessary where thePrincipal Works abut the existing highway

**3. Amenity and Accommodation Works**

The provision and construction of all such amenity and accommodation works as the Council shall consider requisite forthe protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

**EXECUTION**

**OXFORDSHIRE COUNTY COUNCIL**  
**STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS**  
**IN CONJUNCTION WITH DEVELOPMENT**

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Anita Bradley  
Director of Law & Governance and Monitoring  
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County Hall  
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**OXFORDSHIRE COUNTY COUNCIL**  
**STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS**  
**IN CONJUNCTION WITH DEVELOPMENT**

**GENERAL**

**1. INTERPRETATION**

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 30.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.

1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.

1.14 References to the Construction (Design and Management) Regulations are to the Construction (Design and Management) Regulations 2015 as varied or replaced from time to time.

1.15 Any reference to any enactment includes any amendments to or modification of it and the version of it for the time being in force shall apply.

## **2. RELATIONSHIP WITH AGREEMENT**

These Conditions shall be construed together with and subject to the Agreement and in the event of any inconsistency between the Conditions and the Agreement the latter shall prevail.

## **3. COMMUNICATIONS WITH THE COUNCIL**

Any notice or other communication required by these Conditions to be given by the Developer to the Council shall be given in writing to the Council's Director for Environment & Economy at his main office at County Hall, New Road, Oxford OX1 1ND or to such other person and/or at such other place as he may identify in writing to the Developer.

## **4. APPROVALS AND CERTIFICATES**

4.1 No approval consent authorisation or payment as specified in Condition 4.3 shall create any contractual relationship between the Developer and the Council beyond that contained in the Agreement or operate in any way as a warranty or otherwise imply that the subject matter of such approval consent authorisation or payment is fit for its intended purpose nor shall it relieve the Developer or any professional adviser or contractor engaged in connection with the Works from their respective obligations to use all proper skill and care in respect of the Works.

4.2 The Council will not be liable for any loss damage or injury which the Developer may sustain arising from action taken in consequence of such approval consent authorisation or payment.

4.3 The matters referred to in Condition 4.1 are:

4.3.1. any approval or consent given by the Council in respect of the discharge by the Developer of its obligations under these Conditions; or any technical approval or consent issued by the Council in respect of the Works.

4.3.2. any authorisation given or implied by or under these Conditions in respect of anything done or to be done by the Developer on or in relation to any highway; or any payment made by the Developer to the Council under these Conditions.



## **5. COUNCIL TO ACT IN DEFAULT OR EMERGENCY**

5.1 In the event that either of the following circumstances occur:-

5.1.1. if the Developer shall be materially in default in respect of any of the provisions of the Agreement including these Conditions requiring work to be done or not done, or to be done in a particular manner or by a particular time and if such default continues after the Council have given to the Developer not less than 21 days' written notice of the steps they require to be taken to remedy such default; or

5.1.2. if it shall appear to the Council at any time during the course of execution of the Works that danger to persons or prejudice to the structure or stability of the public highway or of adjoining land exists or is imminent, and that it is not reasonably practicable to cause the Developer to take the necessary remedial steps forthwith;

the Council may take such steps themselves to the exclusion of the Developer and charge the expenses incurred (including their reasonable administrative costs) against the Developer.

5.2 Such expenses will be a debt due to the Council and recoverable by them by action or otherwise and for the avoidance of doubt the Council may recover such expenses under the Bond where the Council has taken such steps because the Developer is in default as provided in Condition 5.1.1 or where the Council has taken such steps in an emergency further to Condition 5.1.2 and in the latter case the Developer has failed to discharge the Council's expenses.

## **6. INDEMNITY**

The Developer shall indemnify the Council and keep them indemnified against;

6.1 all actions, liabilities, claims, costs and proceedings which may arise from the execution and completion of the Works (except insofar as may arise from the negligence or default of the Council) and from anything done or not done by the Developer or by its employees or contractors in connection with the Works;

6.2 all actions, liabilities, claims, costs and proceedings arising in connection with or incidental to or in consequence of the lawful use of the highway following upon the carrying out or completion of the Works under the Land Compensation Act 1973 or under regulations made pursuant to Section 20 of the Land Compensation Act 1973 (insulation against noise) and any grants made by the Council under such regulations in accordance with its established policy. The Council may by advertisement invite claims under the Land Compensation Act 1973 and under regulations made pursuant to Section 20 of that Act.

## 7. HEALTH AND SAFETY

The Developer shall act as the only client in respect of the Works for the purposes of The Construction (Design and Management) Regulations.

## 8. PAYMENTS

Where the Council seeks any payment further to these Conditions then save where there is express provision as to timing for payment such payment shall be due within 28 days of written request from the Council and if payment is not made within such 28 day period (or where applicable such other period as expressly provided) then interest at 4% per annum above the base rate from time to time of Lloyds Bank PLC shall be payable from the expiration of the 28 day period until the date of payment.

## PRELIMINARIES

### 9. SUBMISSIONS TO THE COUNCIL

The Developer shall submit to the Council the information and other matters specified in column 1 below in accordance with the timetable set out in column 2 below and the notes set out in column 3 below: -

#### Highway Matters

9.1

| Information   | Timetable   | Notes   |
|---|---|---|
| <b>Detailed plans</b> (which shall include a layout plan to a scale of 1:1250 or 1:2500 according to whichever is the Ordnance Survey base scale for the area), drawings and specifications of the Works (including the drainage of them) and the materials to be used to comply with the relevant standards and specifications of the Council for the time being in force, together with such structural and drainage calculations as the Council may consider necessary having regard to the nature of the Works; | No later than <b>3 months before any tender is invited</b> for the execution of the Works | There shall be paid to the Council on the submission a sum equal to 0.4% of the estimated gross cost of the Works as identified in Condition 12 |

9.2

|  |   |   |
|--|---|---|
| <p><b>A detailed programme</b> designed to ensure the orderly and timely execution and completion of the Work with the minimum of disturbance and disruption to use of the highway and occupiers of property and to facilitate the implementation of any such measures in respect of undertaker's apparatus as may be identified pursuant to Condition 10.</p> | <p>No later than <b>2 weeks after the acceptance of any tender</b> for the execution of the Works</p> | <p>Significant programme changes to be identified not less than 2 weeks prior to the change</p> |
|--|---|---|

9.3

|   |  |  |
|---|--|--|
| <p><b>(a) Measures for the control of vehicles and plant</b> to be used in the course of execution of the Works (including vehicles engaged on the transport of materials and equipment to and from the Works) and measures for traffic regulation in order to minimise and/or alleviate damage to the highway disturbance to occupiers of property and disturbance and disruption to use of the highway (including traffic congestion) ;and</p> <p><b>(b) traffic safety measures and measures including lights, guards, fencing and warning signs</b> in order to protect the Works and/or for the safety and convenience of the public</p> | <p>No later than 2 weeks before the Works are expected to commence</p> |  |
|---|--|--|

9.4

|   |  |  |
|---|--|--|
| <p><b>Safety Audit Stage 2 Report</b></p> | <p>No later than <b>3 months before any tender is invited for the execution of the Works</b></p> |  |
|---|--|--|

9.5

|  |  |  |
|--|--|--|
| <p>Details in accordance with Condition 15 of the <b>persons proposed to be invited to tender.</b></p> | <p>No later than <b>1 month before any tender is invited</b> for the execution of the Works.</p> |  |
|--|--|--|



9.9

|  |   |  |
|--|---|--|
| <b>Condition survey</b> (comprising photographs) of land and highway adjoining and neighbouring the site of the Works together with such further areas as the Council may require. | No later than <b>1 month before the Works are expected to commence.</b> |  |
|--|---|--|

9.10

|  |   |  |
|--|---|--|
| Notification of the <b>identity of the contractor</b> who has submitted a successful tender. | No later than <b>2 weeks after the acceptance of any tender</b> for the execution of the Works. |  |
|--|---|--|

In any particular case any information or matter may be submitted to the Council at such later time as the Council may consider expedient subject to the Council identifying such later time in writing.

## 10. UNDERTAKERS' APPARATUS

10.1 The Developer shall in preparing the Scheme of Works consult every undertaker within the meaning of the New Roads and Street Works Act 1991 whose apparatus or services lie in, on, under or over the site of the Works or may otherwise be affected by the Works (whether or not it is intended to connect into such services in connection with the Works), with a view to the identification and implementation of any measures considered necessary by the undertakers for the protection of, or otherwise in relation to, their apparatus or services, and shall be responsible for all dealings with such undertakers in respect of the implementation of such measures and for all costs payable to the undertakers in that behalf.

10.2 For the avoidance of doubt the Developer shall comply with statutory requirements relating to street works (as defined in the 1991 Act).

## 11. AUTHORISATIONS

11.1 Authorisations signifies all rights, approvals and consents and any other requisite action to enable the Works to be properly and lawfully executed and completed (in accordance with the Agreement including these Conditions) and the subsequent implementation and functioning of the Works including (but not so as to provide an exhaustive list of examples)<sup>2</sup>:-

11.1.1. planning permission for the Works;

11.1.2. authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and / or be implemented and function;

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<sup>2</sup> Examples may also include noise consent from district council

- 11.1.3. authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function<sup>3</sup> ;
  - 11.1.4. street works licence further to the New Roads and Street Works Act 1991;
  - 11.1.5. authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in the Council's opinion to enable the Works to proceed and/or to be implemented and function<sup>4</sup>; and
  - 11.1.6. any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.
- 11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.
- 11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.
- 11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.
- 11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.
- 11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

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<sup>3</sup> This relates to for example Section 127HA.

<sup>4</sup> This is directed at securing any requisite TROs which are integral to the Works e.g. bus lanes and also there may be various works such as traffic calming and signals where consultation is mandatory.

## **12. BOND**

12.1 The Developer and a bondsman satisfactory to the Council shall enter into a Bond in such form as shall have been approved by the Council guaranteeing the execution and completion of the Works in accordance with the Agreement including these Conditions.

12.2 The amount of the Bond shall be

12.2.1. the gross cost of the Works (including any costs payable to undertakers pursuant to Condition 10) as then (being one month before the Works are proposed to be commenced) estimated by the Council and such estimate may take into account any bills of quantities prepared or tenders received by the Developer in respect of the Works and submitted by it to the Council; and

12.2.2. adjusted to take account of inflation for the duration of the Works (and subsequently) as reasonably estimated by the Council; and

12.2.3. adjusted to reflect the full costs that may be incurred by the Council as provided in Condition 5.1 (Council to act in default or emergency).

## **13. MONITORING AND OTHER COSTS**

13.1 The Developer shall pay to the Council in respect of the costs to be incurred by the Council in monitoring the execution and completion of the Works (and administration of the Agreement) a sum equal to 9% of the amount of the Bond, subject to a minimum payment of £2,150

Note: The provisions of Condition 27.2 also apply

13.2 The Developer shall pay to the Council legal costs reasonably incurred in connection with the drafting and completion of the Bond.

## **14. INSURANCE**

The Developer shall take out and maintain, until two years after the date on which the Council issues the Certificate of Completion (or if later the date on which all defects and outstanding works have been made good and completed as mentioned in Condition 33), such insurances satisfactory to the Council in the sum of £10million (or such higher sum as the Council may require) as may be appropriate to cover the liability of the Developer and of its employees and contractors in respect of any injury or damage to persons or property which may arise from or in connection with the execution and completion of the Works.

## **15. CONTRACTORS**

15.1 The Developer shall not employ any contractor or agent for the execution of the Works except such contractor or agent as shall be recognised by the Council as being of proven competence and good standing in the field of civil and electrical engineering and experienced in the type and scale of the work which is to be the subject of the contract, and for that purpose the Developer shall not invite tenders for the execution of the Works except from persons proposed to and approved in writing by the Council before any such tender is invited; The employment of a contractor or agent shall not remove or abate any obligation on the part of the Developer arising from the Agreement including these Conditions.

15.2 The Developer shall appoint a contractor to undertake the Works in compliance with the following:-

15.2.1. advertising/publication of the proposed contract for carrying out the Works sufficient to open up the market to competition and for the transparency and impartiality of the procurement procedure to be reviewed such advertising/publication to include the essential details of the contract to be awarded and of the award methodology;

15.2.2. awarding the contract for the Works further to competition applying such transparent and impartial procurement procedures and award methodology.

15.2.3. the Developer shall without cost to the Council supply such information as the Council may reasonably require to demonstrate compliance with this Condition.

## **16. PRECONDITIONS TO LETTING CONTRACT**

The Developer shall not let any contract for the execution of Works unless and until:-

16.1 The Scheme of Works has been approved by the Council; and

16.2 Safety Audit Stage 2 Report has been approved by the Council.

## **IMPLEMENTATION OF THE WORKS**

### **17. COMMENCEMENT OF WORKS**

The Developer shall only undertake the Works at such times as have previously been approved by the Council

### **18. NO WORK PENDING APPROVALS ETC**

18.1 The Works shall not be commenced before the following have occurred:

18.1.1. the Council has issued written approval of the Scheme of Works;



- 18.1.2. Safety Audit Stage 2 Report has been approved;
  - 18.1.3. evidence of all Authorisations have been supplied to the Council;
  - 18.1.4. the Bond duly executed as a deed by the Developer and the approved guarantor has been delivered to the Council;
  - 18.1.5. the costs referred to in Condition 13 have been paid to the Council;
  - 18.1.6. the Council has given its written approval to the insurances referred to in Condition 14;
  - 18.1.7. the noise survey assessment and modelling in accordance with Condition 9.8 has been supplied to the Council and if appropriate the information referred to in the second part of that Condition has been supplied to the Council
  - 18.1.8. the surveys referred to in Condition 9.9 (condition survey) has been supplied to the Council.
- 18.2 The Developer must have readily available at the site of the Works a copy of the insurances and approved Scheme of Works and shall retain them at the site for the duration of the Works and produce them to any representative of the Council on request.

## **19. GENERAL CONDUCT**

- 19.1 The Developer shall execute and complete the Works in compliance with the approved Scheme of Works, in a sound and workmanlike manner with proper materials and in accordance with good engineering practice and in compliance with all statutory requirements and the provisions of the Agreement including these Conditions.
- 19.2 Without prejudice to the generality of Condition 6.2 and Condition 19.1 the Developer shall provide the Council with such assistance, information and documentation as the Council shall require to comply with any obligations under the Noise Insulation Regulations 1975 including assistance in responding to any claims made under Regulation 13 of those Regulations.

## **20. MONITORING OF SITE AND MATERIALS**

20.1 The Developer shall at all reasonable times give to the Council free access to every part of the Works and shall permit them to monitor them and inspect all materials used or intended for use in the Works.

20.2 Where the Council require any such materials to be tested the Developer shall reimburse the Council the reasonable cost of such testing.

## **21. ERRORS AND DEFECTS**

If in the course of execution of the Works it shall appear to the Council:

21.1 that any error has arisen in the position, levels, dimensions or alignment of the Works; or

21.2 that any work carried out or materials used for the purpose of the Works are defective to such extent as to prejudice in any respect the structure, stability, durability or subsequent functioning of the Works; or

21.3 that any damage has occurred in respect of the Works; or

21.4 that in any other respect the Works are not in accordance with the Scheme of Works;

and the Council notify the Developer in writing of this then the Developer shall, at its own expense and to the satisfaction of the Council, forthwith take such remedial steps as the Council shall specify in the notice. For the avoidance of doubt this Condition is without prejudice to Condition 19.

## **22. SUSPENSION OF WORK**

If in the opinion of the Council some part of the Works ought not properly to be commenced or continued by reason either of:-

22.1 the dependence of that part on the completion of remedial steps specified in a notice given under Condition 21; or

22.2 adverse weather conditions such as to prejudice the structure or stability of that part if executed under those conditions;

the Developer shall on the written order of the Council suspend the progress of that part of the Works for such time or times and in such manner as the Council may consider necessary, and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Council.

## **23. VARIATIONS AND ADDITIONS**

In the event that any of the following circumstances arising in the course of execution of the Works,;-

- 23.1 if discovery is made of adverse ground conditions or artificial obstruction or any other unforeseen factor which in the opinion of the Council necessitate a modification of the Works to avoid or compensate for such conditions, obstruction or other factor in the interests of the satisfactory completion and subsequent functioning of the Works; or
- 23.2 if it shall appear to the Council requisite, in accordance with good engineering practice and to ensure satisfactory completion and subsequent functioning of the Works that any work or materials should be added, or that any such work or materials proposed by the Developer to be done or used should be omitted or changed; or
- 23.3 if it shall appear to the Council expedient that any obligation arising from the approved Scheme of Works should be deferred by reason of delay incurred by the Developer arising from some cause not within the Developer's control; or
- 23.4 otherwise if in a particular case the Developer and the Council so agree;

the Scheme of Works shall be varied and/or augmented in manner notified in writing by the Council to the Developer, and in the application of these Conditions any reference to the Scheme of Works shall be construed as a reference to the Scheme of Works as so varied and/or augmented.

## **24. PREVENTION OF NOISE, DISTURBANCE ETC**

- 24.1 All work shall be carried out without unreasonable noise and disturbance and in such manner as not to interfere unnecessarily or unreasonably with the use and enjoyment of property adjoining or near the Works by their owners and occupiers.
- 24.2 Without prejudice to the generality of Condition 24.1, no work shall be carried on between the hours of 8.00pm and 7.00am the following day or on any Sunday or public holiday except insofar as:-
  - 24.2.1. any operations are necessary to avoid disruption to or for the control of traffic on any highway; or
  - 24.2.2. any work is unavoidable or absolutely necessary for the safety of life or property or the safety of the Works; or
  - 24.2.3. the Council have in writing otherwise agreed.

## **25. PROTECTION OF HIGHWAY**

- 25.1 Insofar as the Works affect in any respect the existing highway such part shall be executed with the minimum of disturbance to that highway and traffic using that highway consistent with the work in hand.
- 25.2 In the event of it appearing to the Council at any time that such disturbance has occurred or is likely to occur to such extent as to prejudice the structure of the highway or the safety of users the Developer shall forthwith take such remedial steps as the Council may require.
- 25.3 Prior to the commencement of the Works the Developer will provide suitable vehicle and wheel cleaning apparatus and ensure that such apparatus is maintained in good and useable condition and used by all vehicles immediately before leaving the site of the Works to prevent mud or other materials being deposited on the adjoining existing highway.
- 25.4 In the event of Developer receiving any complaint it will promptly notify the Council.

## **26. SAFEGUARDING OF COMPLETED WORK**

The Developer shall until the Council have issued the Certificate of Completion take all steps necessary to protect and maintain those parts of the Works which have been executed, so that upon substantial completion of the whole of the Works every part of the Works is in a sound and workmanlike condition and free from any damage and any material wear and tear.

## **COMPLETION AND CONSEQUENTIAL MATTERS**

### **27. COMPLETION OF WORKS**

- 27.1 The Works shall be executed and completed within such period as the Agreement may define (whether by duration or by reference to a specified date or both), provided that in the event of delay to the work arising from some cause not within the Developer's control the Developer shall be entitled to a reasonable extension of such period.
- 27.2 Without prejudice to any right or remedy of the Council, the Council may at any time by notice to the Owner permit an extension of time as the Council shall in its discretion determine and the Developer shall pay within 14 days of demand such additional monitoring fees (in addition to that provided for in Condition 13 ) as is necessary to reimburse to the Council the additional cost incurred in monitoring the Works by reason of the grant of such extension of time

**28. PRE COMPLETION - CLEARANCE OF SITE AND STAGE 3 SAFETY AUDIT**

28.1 On substantial completion of the Works the Developer shall clear away and remove from the site of the Works all plant, surplus material, rubbish and temporary works and items of every kind, and shall leave the whole of the site of the Works clean and in a workmanlike condition to the satisfaction of the Council.

28.2 On substantial completion of the Works (and clearance of the site of the Works) the Developer shall lodge a stage 3 Safety Audit report together with the 'Designer's response' with the Council and the Developer shall execute and complete all works as advised by the Council arising from the Safety Audit recommendations.

**29. HEALTH AND SAFETY**

29.1 The Developer shall furnish to the Council the Health and Safety File prepared in accordance with Interim Advice Note 105/08 - Implementation of Construction (Design and Management) 2007 issued by the Highways Agency (now Highways England) as revised and/or replaced from time to time. The Health and Safety File shall include detailed plans and drawings showing the Works as the same have actually been executed and completed and the Developer shall at his own cost ensure that the Council shall not be prevented by copyright or otherwise from reproducing such plans and drawings or part of them as the Council may require for purposes relating only to the Works and the highway and the Developer shall furnish satisfactory evidence to the Council that this has been done. The plans and drawings furnished under this Condition shall be no less detailed than the plans and drawings submitted under Condition 9.1 unless the Council shall in writing otherwise agree.

**30. COMPLETION CERTIFICATE**

Subject always to prior compliance with the pre completion requirements (Condition 28) and with Condition 29 the Council shall issue the Certificate of Completion forthwith if the Council is satisfied that the Works (save for such minor outstanding works as the Council shall agree) have been completed in accordance with the Agreement including these Conditions

**31. DEDICATION AS HIGHWAY**

Upon the issue of the Certificate of Completion unless the Agreement provides otherwise the whole of the land comprised in the Works (so far as not already forming part of the public highway and excluding such part as the Developer and the Council may in writing agree) shall be deemed to have been dedicated as public highway and shall thereafter subject always to compliance with Conditions 34 & 35 be a highway maintainable at public expense.

## **32. EASEMENTS**

32.1 The Developer shall forthwith following the issue of the Certificate of Completion:-

32.1.1. transfer to the Council all those rights and easements (so far as the same do not at that time already subsist in favour of the Council) referred to in Condition 11.1.6; and

32.1.2. grant to the Council any easement which in the Council's opinion is necessary to ensure the permanent and satisfactory drainage or lighting of the Works in respect of any land which is retained by the Developer and such easement shall be in a form previously approved by the Council and the Developer will procure that any person with an interest in the relevant land joins in the deed of easement for the purpose of consenting to and confirming such easement.

32.2 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising from any such transfer or grant of easement.

## **33. NOISE INSULATION**

The Developer shall within 1 month after the opening of the Works to public traffic supply to the Council an update of the information required pursuant to part 2 of Condition 9.8 (noise survey assessment and modelling- map lists and works) which relates to all eligible properties at the date of the opening of the Works to public traffic.

## **34. REMEDYING OF DEFECTS AND OUTSTANDING WORKS**

34.1 If at any time during the period of two years following the date on which the Council issue the Certificate of Completion:-

34.1.1. any defect in the Works becomes manifest (not being a defect arising solely from normal use by the public as a highway or from accidental or wilful damage by any third party); or

34.1.2. the Developer shall fail to complete any of the outstanding works mentioned in Condition 30 (minor outstanding Works on issue of Certificate of Completion)

34.1.3. and the Council notify the Developer in writing of this

then the Developer shall at his own expense cause such defect to be made good or outstanding works to be completed (as the case may be) to the satisfaction of the Council.

34.2 Forthwith on receipt of any notification from the Council further to Condition 34.1 the Developer will agree with the Council the timing of the carrying out of such remedial or outstanding works and unless otherwise agreed shall secure their completion within one month of

receipt of such notification (except in the event of delay arising from some cause not within the Developer's control when the Developer shall be entitled to a reasonable extension of time).

### **35. STAGE 4 ROAD SAFETY AUDIT**

35.1 The Council may require the Developer to carry out a Safety Audit Stage 4 at any time within 36 months from the opening of the Works and to lodge the report with the Council together with the "Designer's response" within 2 months and the Council shall notify the Developer of all works required to be undertaken arising from the Safety Audit recommendations

35.2 In the event that notification of works is given by the Council further to Condition 35.1 prior to the full release of the Bond the Developer shall execute and complete all the works as advised by the Council. The Developer will agree with the Council the time that he will be carrying out such works and unless otherwise agreed shall secure their completion within 1 month of receipt of such notification (except in the event of delay arising for some cause not within the Developers control, when the Developer shall be entitled to a reasonable extension of time).

35.3 In the event that notification of works is given by the Council further to Condition 35.1 subsequent to the full release of the Bond the Developer shall pay to the Council within 28 days of written request from the Council the costs incurred or to be incurred by the Council in carrying out such works.

### **36. RELEASE OF BOND**

36.1 Upon the issue of the Certificate of Completion the Bond shall be deemed to be released by eighty per cent (80%) of its original value;

36.2 The Bond shall be deemed to be fully discharged at the latest of the following:

36.2.1. the date two years after the date on which the Council issue the Certificate of Completion; and

36.2.2. the date on which all defects and outstanding works have been made good and completed as referred to in Condition 34; and

36.2.3. the date on which all works have been completed as referred to in Condition 35.2

36.2.4. the Council have recovered their full expenses in all cases where Condition 5 applies (Council may act in default or emergency);

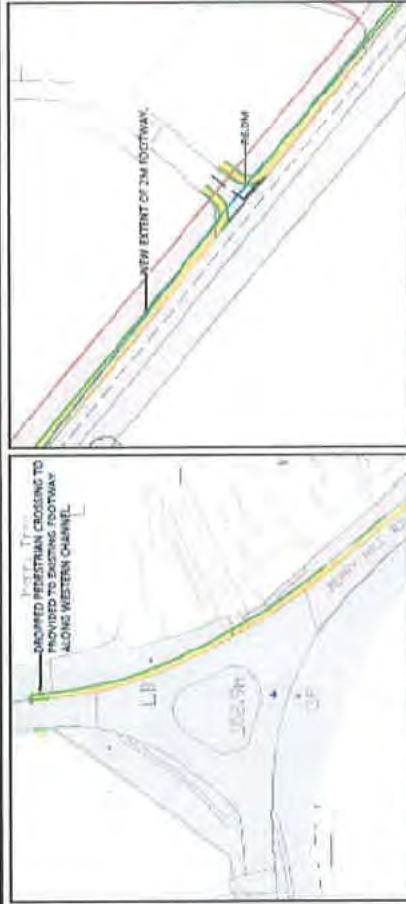
36.2.5. the date on which the Council have received the transfers or grants further to Condition 32;

36.3 Conditions 36.1 and 36.2 are without prejudice to the Council's absolute discretion from time to time upon application of the Developer to release the Bond to an extent commensurate with the proportion of the Works that have been executed and completed at such time.



**ANNEX 2:  
WORKS PLAN**

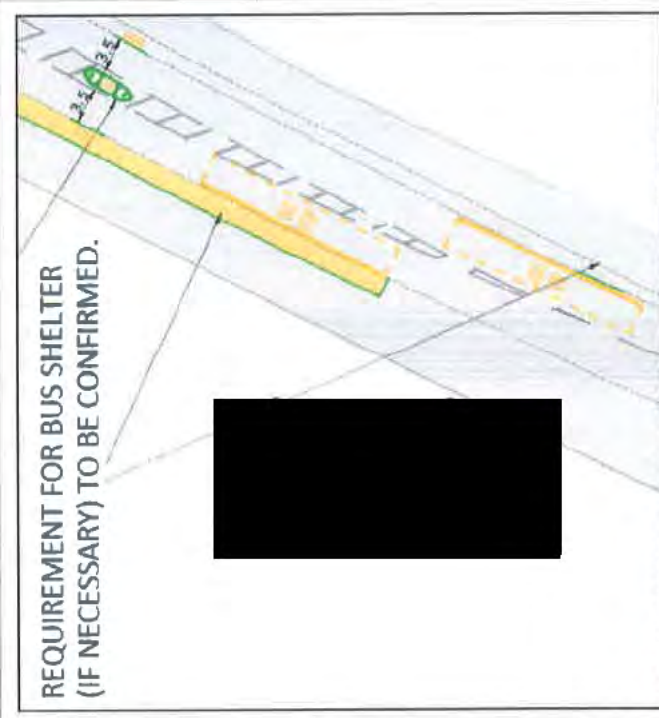
AutoCAD SHX Text  
Cattle Grid



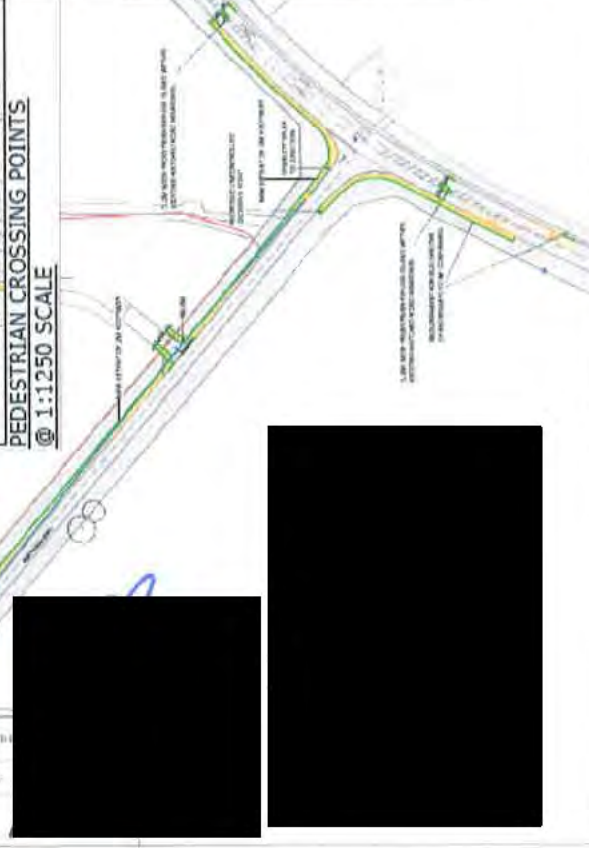
**NORTHERN EXTENT @ 1:1250 SCALE**



**SITE ACCESS JUNCTION @ 1:1250 SCALE**



**2M FOOTWAY/PED REFUGE WITH POTENTIAL BUS STOP @ 1:500 SCALE**



**PEDESTRIAN CROSSING POINTS @ 1:1250 SCALE**

**NOTES**  
THIS IS NOT A CONSTRUCTION DRAWING AND IS FOR INDICATIVE PURPOSES ONLY. IT IS SUBJECT TO FURTHER DESIGN ANALYSIS, TOPOGRAPHICAL MAPPING & HIGHWAY/THIRD PARTY LAND BOUNDARIES

- INDICATIVE SITE BOUNDARY
- DENOTES NEW KERBS
- EXISTING ADOPTED HIGHWAY (BASED ON OS)
- EXISTING DRIVEWAY
- NEW 2M FOOTWAY

COC 2018/4

| REV | DETAILS           | DATE     |
|-----|-------------------|----------|
| 1   | ISSUED FOR PERMIT | 15/09/17 |
| 2   | REVISIONS         | 15/09/17 |
| 3   | REVISIONS         | 15/09/17 |
| 4   | REVISIONS         | 15/09/17 |
| 5   | REVISIONS         | 15/09/17 |
| 6   | REVISIONS         | 15/09/17 |
| 7   | REVISIONS         | 15/09/17 |
| 8   | REVISIONS         | 15/09/17 |
| 9   | REVISIONS         | 15/09/17 |
| 10  | REVISIONS         | 15/09/17 |

**HOLLINS STRATEGIC LAND**

**BERRY HILL ROAD, ADDERBURY**

**PROPOSED HIGHWAY IMPROVEMENT PLAN (ON OS BASE)**

**1:2000 @ A3**

DATE: SEP 17

Croft Transport Planning & Design  
340 Deansgate  
Manchester  
M3 4LY  
Email: info@crofts.co.uk  
Tel: 0161 877 7380  
Web: www.crofts.co.uk

**CROFT**  
1899-F01 J



**SEVENTH SCHEDULE**  
**DISTRICT COUNCIL'S COVENANTS WITH THE OWNER**

**1. REPAYMENT OF CONTRIBUTIONS**

- 1.1 The District Council covenants with the Owner to use all sums received from the Owner under the terms of the Fourth Schedule for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree.
- 1.2 If pursuant to Clause 8.8 above the Planning Permission and/or any Qualifying Permission is quashed the District Council covenants on request to repay to the person who made the relevant payment the balance (if any) of any payment made by that person to the District Council after the grant of the Planning Permission or Qualifying Permission as the case may be that has not at that time been expended or committed
- 1.3 If pursuant to paragraph 3.3.2 of the Fourth Schedule the amount of the Contributions has decreased the District Council covenants with the Owner to return to the person who made the relevant payment so much of the sum so calculated as has not at that time been expended or committed.
- 1.4 The District Council covenants with the Owner that following written request from the person who made the relevant payment the District Council will repay to that person the balance (if any) of any payment made by that person to the District Council under the terms of the Fourth Schedule in accordance with the provisions of this Deed which has not been expended or committed at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of ten years of the date of receipt by the District Council of such payment. Any contribution or part of a contribution which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the District Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph AND FURTHER PROVIDED THAT the District Council shall not be

obliged pursuant to this paragraph to return monies that do not relate to District Council functions or have been passed to persons/bodies other than the District Council.

- 1.5 Any payment or part thereof which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been committed by the District Council prior to that date
- 1.6 The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of the Fourth Schedule upon a written request by the Owner such request not to be made more than once in any year.

## 2. **DISCHARGE OF OBLIGATIONS**

At the written request of the Owner, the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

**EIGHTH SCHEDULE**  
**COUNTY COUNCIL'S COVENANTS WITH THE OWNER**

**1. APPLICATION OF MONIES RECEIVED**

- 1.1 The County Council shall not apply any of the contributions referred to in the Fifth Schedule for any purpose other than as set out in the definition of each contribution therein in such form and at such time as the County Council shall in its discretion decide

**2. REPAYMENT**

- 2.1 Following written request from the person who made the relevant contribution the County Council will repay to that person the balance (if any) of such contribution which at the date of the receipt of such written request has not been expended together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request shall be made prior to the expiry of 10 years from the Due Date or the date of receipt by the County Council (whichever is the later) of the last instalment of any such contribution.
- 2.2 If pursuant to Clause 8.8 above the Planning Permission and/or any Qualifying Permission is quashed the County Council covenants on request to repay to the person who made the relevant payment the balance (if any) of any payment made by that person to the County Council after the grant of the Planning Permission or Qualifying Permission as the case may be that has not at that time been expended or committed
- 2.3 Any contribution or part of a contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date



**NINTH SCHEDULE**  
**DISPUTES**

1. A dispute in the context of this agreement arises where any Party requires or seeks the approval or consent of another Party pursuant to the provisions of this Deed referred to in Clause 20 and that approval or consent is refused or is not given within 20 Working Days but:
  - 1.1. disputes relating to the construction, interpretation and/or the application of this Agreement shall only be determined by an Expert with the express further agreement of all other Parties and in the absence of such agreement can only be determined by a Court of competent jurisdiction;
  - 1.2. any dispute relating to a refusal or failure to determine any application (whether pursuant to Sec 106A of the Act or otherwise) to modify or discharge any provision hereof shall not constitute a dispute to be determined pursuant to this Schedule but in accordance with Section 106B of the Act or Section 84A of the Law of Property Act 1925 or otherwise as appropriate
2. Any Party may by serving notice on all the other Parties (the Notice) require a dispute to be referred to an Expert (as hereinafter defined) for determination.
3. The Notice must:
  - 3.1. specify the nature, basis and brief description of the dispute;
  - 3.2. identify the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
  - 3.3. propose a person to determine the dispute ('the Expert').
4. The Expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Notice is issued pursuant to paragraph 1 either Party may request that the following nominate the Expert at their joint expense:
  - 4.1. if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

- 4.2. if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the Expert;
- 4.3. if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;
- 4.4. if such dispute relates to Affordable Housing the Expert shall be nominated by the President of the Royal Town Planning Institute; and
- 4.5. in all other cases, the President of the Law Society to nominate the Expert as he thinks appropriate
5. The Parties may agree to appoint joint Experts or (in default of agreement) invite joint Experts to be nominated pursuant to paragraph 4 and in which case 'Expert' shall mean both or all of them.
6. If an Expert (including one or more jointly nominated experts) nominated or appointed pursuant to this Schedule shall die or decline to act another Expert may be appointed in his place in accordance with the provisions of paragraph 4.
7. The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of the notice of his appointment given pursuant to paragraph 8.
8. Notice in writing of the appointment of an Expert pursuant to this Schedule shall be given by the Expert to the Parties and he shall invite each of the Parties to submit to him within ten Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
9. The Expert shall act as an expert and not as an arbitrator but shall consider any written representation submitted to him within the period specified in this Schedule although



he shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.

10. The Expert shall give notice of his decision in writing
11. If the Expert consists of more than one person the decision shall be a joint decision approved by all such persons and the decision will (in the absence of manifest error) be final and binding on the Parties hereto.
12. If for any reason the Expert fails to make a decision and give notice thereof in accordance with this Schedule the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
13. The Expert's costs shall be in the Expert's award or in the event that no determination as to costs is made, such costs will be borne by the parties to the Dispute in equal shares.
14. Nothing in this Schedule shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.



**EXECUTION**

**THE COMMON SEAL** of **CHERWELL DISTRICT COUNCIL** was affixed in the presence of:-



Authorised Signatory



CDC 20484

**THE COMMON SEAL** of **OXFORDSHIRE COUNTY COUNCIL** was affixed in the presence of:-



Director of Law and Governance  
(the officer appointed for this purpose)



874/21

**SIGNED AND DELIVERED** as a **DEED** by **FREDERICK CARROLL WRIGHT** in the presence of

Witness

Signature .....

Witness name .....

(BLOCK CAPS) **Andrew Woods** .....

**Solicitor** .....

**Spratt Endicott** .....

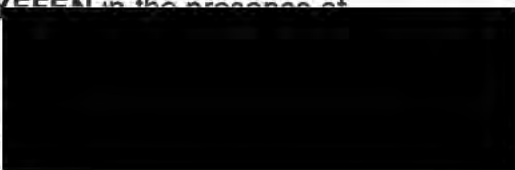
**52-54 The Green** .....

**Banbury** .....

**Oxon OX16 9AB** .....

Occupation .....

SIGNED AND DELIVERED as a DEED by  
OWEN KYFFEN in the presence of

Witness  
Signature 

Witness name  
(BLOCK CAPS) PAUL O'SHEA

Address 8 BRETT STREET  
MANCHESTER M22 4EX

Occupation TOWN PLANNER



EXECUTED as a DEED by HOLLINS  
STRATEGIC LAND LLP acting by a  
designated Member in the presence of



Name (print) STEPHEN GOODMAN

Witness  
Signature 

Witness name  
(BLOCK CAPS) PAUL O'SHEA

Address 8 BRETT STREET  
MANCHESTER M22 4EX

Occupation TOWN PLANNER