

DATED.....5th JULY.....2022

CHERWELL DISTRICT COUNCIL

-and-

OXFORDSHIRE COUNTY COUNCIL

-and-

NURSERY GROUND LIMITED

PLANNING OBLIGATION BY DEED OF AGREEMENT

under Section 106 of the Town and Country Planning Act 1990

relating to land north of Railway House, Station Road, Hook Norton

Shahin Ismail
Assistant Director of Law, Governance
and Democratic Services and Interim
Monitoring Officer
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DISTRICT COUNCIL
NORTH OXFORDSHIRE

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THIS AGREEMENT is dated

5th JULY

2022

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**") and
- (3) **NURSERY GROUND LIMITED** (Co Regn No 08898200) whose registered office is situated at The Old Coach House, Horse Fair, Rugeley, Staffordshire, WS15 2EL ("**Owner**")

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 free from encumbrances as the Owner hereby warrants.
- (D) The Application has been submitted to the District Council by Greystoke Land Limited ("**the Applicant**")
- (E) The District Council refused the Application on 17th June 2021
- (F) An appeal to the Secretary of State against the refusal of the Application was submitted by the Applicant on 7th July 2021
- (G) The Owner, the District Council and the County Council 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 herein save for any that are considered not to be compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) by the Inspector in his Decision Letter.

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:

Expression	Meaning
“Act”	the Town and Country Planning Act 1990 (as amended);
“Appeal”	The appeal submitted by the Applicant against the District Council's refusal of the Application and allocated reference number APP/C3105/W/21/3278536;
“Approval (Initial)”	means the approval of a Qualifying Application which first establishes the Composition of the Development
“Approval (Variation)”	means any Qualifying Permission which alters the Composition of the Development as established further to the Planning Permission or as applicable a preceding Approval (Variation);
“Application”	the application for outline planning permission submitted to the District Council and validated on 16 th February 2021 for the Development and allocated reference number 21/00500/OUT;
“Bedroom”	means any room in a Dwelling designed and intended to be used as sleeping accommodation whether or not it is intended to be used for other purposes as well;

Expression

Meaning

“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;

“Construction”

the construction of any building forming part of the Development including footings or foundations and **“Construct”** and **“Constructed”** shall be construed accordingly;

Expression	Meaning
“Decision Letter”	a letter issued by the Secretary of State or an Inspector determining the Appeal;
“Development”	the development of the Site with the erection of up to 43 new homes with access from Station Road and associated works including attenuation pond as set out in the Application and as may be permitted by any Qualifying Permission;
“Due Date”	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 but otherwise is the date hereof
“Dwelling”	<p>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</p> <ul style="list-style-type: none"> • Affordable Housing Dwellings are those Dwellings provided and whose occupancy and ownership is restricted as set out in the Second Schedule; • Market Dwellings are those Dwellings that are not Affordable Housing Dwellings
“Inspector”	a planning inspector appointed by the Secretary of State to consider the Appeal under delegated powers;
“Interest”	Interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time;
“Approval (Variation)”	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;

Expression	Meaning
"NPPF"	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;
"Occupation"	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 "Occupied" and "Occupy" shall be construed accordingly;
"Plan"	the plan attached to this Deed at the Annex to the First Schedule;
"Planning Permission"	the outline planning permission subject to conditions as may be granted by the Secretary of State pursuant to the Application and the Appeal which where the context admits shall include each and every Qualifying Permission;
"Qualifying Applications"	an application for approval of Reserved Matters 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 and/or 96A of the Act;
"Qualifying Permissions"	any approval of Reserved Matters or approval to a non-material change pursuant to Section 96A of the Act as the case may be issued pursuant to a Qualifying Application;
"Reserved Matters"	details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval;

Expression	Meaning
“Site”	the land against which this Deed may be enforced as described in the First Schedule and shown edged red on the Plan;
“Secretary of State”	the Government minister appointed to determine any application pursuant to Section 77 of the Act or pursuant to Section 79 of the Act to determine any appeal brought pursuant to Section 78 of the Act;
“Trigger Event”	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.
“Working Days”	Mondays to Fridays (excluding bank and other public holidays and any day which is on or between 27 th and 31 st 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 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 by the Secretary of State or his Inspector as a result of the Appeal; and

4.1.2 the Commencement of the Development,

4.2 The provisions of this Clause and Clauses 1, 2, 3, 4.4, 8.1.1, 8.1.3, 12, 16, 17 and 18 (definitions, construction, legal basis, legal costs, monitoring and administering, notifications, jurisdiction delivery and data protection) shall come into effect immediately upon completion of this Deed.

4.3 The provisions of sub-paragraph 2.2 of the Second Schedule, paragraph 2 of the Third Schedule and sub-paragraphs 2.2 and 2.3 of the Fourth 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 do not meet the Secretary of State's policy tests as set out in the NPPF and/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 and the Third Schedule;
and the Fourth Schedule

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 Sixth Schedule.

7. THE COUNTY COUNCIL'S COVENANTS

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

8. MISCELLANEOUS

8.1 The Owner shall pay or secure the payment:

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

8.1.3 on completion of this Deed or the Secretary of State allowing the Appeal (whichever is the latter) pay

(a) to the District Council the sum of **ONE THOUSAND FIVE HUNDRED POUNDS ONLY** (£1,500-00); and

(b) to the County Council the sum of **FIVE HUNDRED POUNDS ONLY** (£500-00)

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

PROVIDED THAT if any such contribution has been returned to the Owner pursuant to the provisions of paragraph 1.2 of the Sixth Schedule and/or

paragraph 2.1 of the Seventh Schedule and the Secretary of State's decision to dismiss the Appeal is quashed by any court of competent jurisdiction the contribution(s) shall be again paid to the District Council and/or County Council immediately on the quashing of that decision to dismiss the Appeal.

- 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 (as confirmed in writing) 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 shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development.

8.9 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.

8.10 Except for any provision hereof that restricts or prevents any Dwelling being occupied (including, for the avoidance of doubt, the Affordable Housing Provisions in the Second Schedule) or prevents a number of Dwellings being occupied until another provision hereof is complied with this Deed shall not be enforceable

8.10.1 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;

8.10.2 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

8.11 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.

8.12 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 FIFTY PERCENT (50%) of the Market Dwellings;

12.1.4 Occupation of SEVENTY PERCENT (70%) of the Dwellings; and

12.1.5 Occupation of SEVENTY FIVE PER CENT (75%) 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 each of the usual quarter days (25 March, 24 June, 29 September and 25 December) of the number of Dwellings on the Development which have been Occupied or are ready for immediate Occupation 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 (reference 21/00500/OUT) 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 to the Owner shall be sent to the Owner at the registered office and addressed to the Company Secretary or to such other person at such address as the Owner 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. 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:

18.1 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

18.2 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

19. DISPUTES

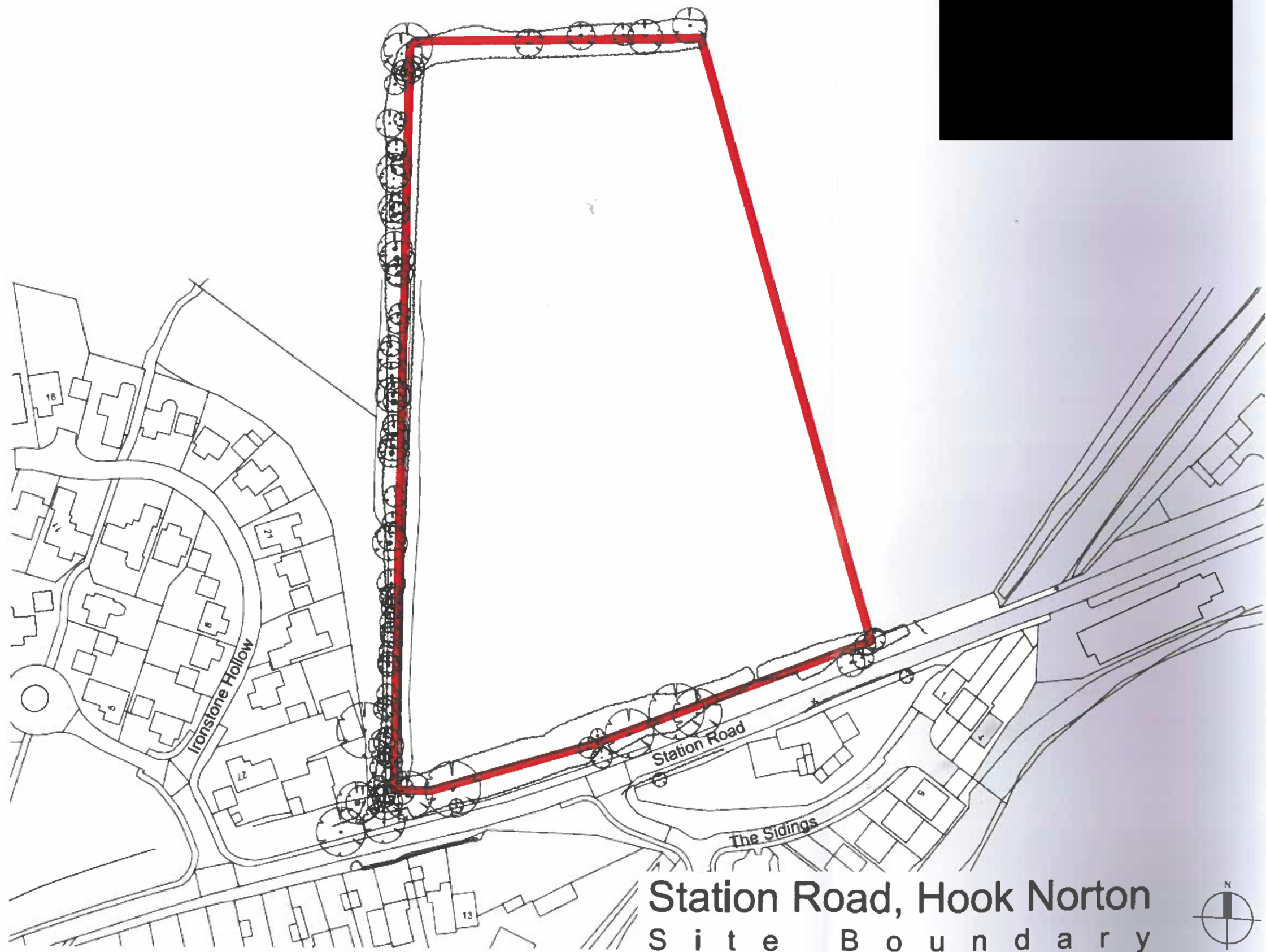
19.1 The provisions of the Eighth Schedule shall apply to any dispute arising between the District Council and the Owner (or any party deriving title to the Site through or under the Owner) in respect of the provisions hereof and in the Second Schedule, the Third Schedule, the Fourth Schedule and the Sixth Schedule

19.2 For the avoidance of doubt the Eighth Schedule shall not apply to any dispute that may arise between the County Council and any other party hereto or anyone deriving title to the Site through or under that party

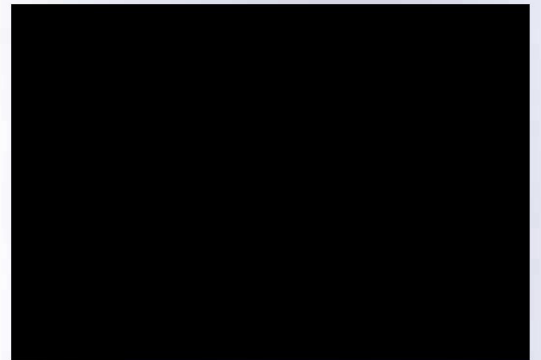
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE
DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE SITE

ALLTHAT land being land lying to the north of Station Road, Hook Norton, Banbury as shown edged red on the Plan the freehold title to which is registered at the Land Registry under Title Absolute number ON314230



Station Road, Hook Norton
S i t e B o u n d a r y



ANNEX
THE PLAN
Notes

- 1) Do not scale directly from this drawing.
- 2) This drawing is to be read in conjunction with all other relevant drawings and information supplied by other consultants.
- 3) Hatch patterns displayed on this drawing are indicative only and do not represent actual paving units or material sizes.
- 4) All tree planting in proximity to buildings to be checked by engineers to ensure foundation detailing is appropriate.

Rev	Date	Drawn	Checked
Revisions:			
Project: Station Road, Hook Norton			
Client: Greystone Land			
Title: Site Boundary			
Drawing number: 20147.211			Rev:
Status: FOR PLANNING			
Drawn By: DSAL	Checked By: PSH	Date: 31-03-22	Scale @ A3: 1:1250



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**SECOND SCHEDULE
AFFORDABLE HOUSING**

COVENANTS WITH THE DISTRICT COUNCIL - AFFORDABLE HOUSING

1. DEFINITIONS

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

Expression	Meaning
Affordable Housing	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 the NPPF
Affordable Housing Scheme	a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which demonstrates that no less than 35% of the Dwellings shall be provided as Affordable Housing and 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.
Affordable Housing Site	that part or parts of the Site or any building or any buildings on the Site upon or within which there will be or have been provided Affordable Housing Dwellings together with the Infrastructure serving that part of the Site
Affordable Housing Standards	the design criteria with which the Affordable Housing shall comply, namely:

Expression

Meaning

- (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;
- shall be located in clusters of no more than 10 Affordable Housing Dwellings with no more than 8 units of Affordable Rented Housing or Social Rented Housing in any one cluster;
- shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Dwellings; and
- 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 Dwellings 2-bedroom 4-person Dwellings 3-bedroom 5-person Dwellings and 4-bedroom 7-person dwellings

Affordable Housing Tenure Mix

the mix of tenure and dwelling types of the Affordable Housing Dwellings at least 70% (seventy per cent) of which shall be provided as Affordable Rented Housing or Social Rented Housing and the remainder (if any) shall be Intermediate Housing or such alternative mix of tenure as at any time may be approved by the District Council

Expression**Meaning****Affordable Rented Housing**

rented housing provided by Registered Providers to Qualifying Persons which is not subject to the national rent regime but shall be in line with HCA's Rent Standard Guidance for Affordable Rent and in accordance 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

Allocations Scheme

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)

Chargee

any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) or any persons or bodies deriving title through such mortgagee or chargee or Receiver

Help to Buy Agent

that organisation which is appointed by the Regulator or other such successor body to assess eligibility for and market low cost home ownership products

Infrastructure

in relation to the Affordable Housing Site:

Expression

Meaning

- roads and footpaths to serve the Affordable Housing Site
- temporary services for contractors and a haul road for the use of contractors;
- 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)

Expression**Meaning**

- 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);

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 any Affordable Housing Dwellings

Intermediate Housing

Affordable Housing at prices and rents above those for social rented housing but below their value as Market Dwellings which meet the criteria set out in the NPPF 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 being delivered as Shared Ownership Housing unless otherwise approved by the District Council

Local Connection

a person has a Local Connection if such person complies with the local connection criteria provisions set out in the Neighbourhood Plan AND has a local connection (as defined in the Allocation Scheme or agreed in the Nominations Agreement) to the administrative area of the District Council

Long Leasehold

means a lease of at least 125 years

Mortgage Land

the Affordable Housing Site or any part of it which is or may be mortgaged or charged to the Chargee

Expression

Meaning

Neighbourhood Plan

the Hook Norton Neighbourhood Plan 2014 – 2031 made and adopted by the District Council pursuant to the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act 2011 on 19 October 2015 and shall include any subsequent revision, amendment, addition to or deletion from it or any replacement thereof

Nominations Agreement

an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Housing Dwellings on the Site and which shall guide in conjunction with the Neighbourhood Plan and Allocations Scheme those Qualifying Persons eligible to be nominated to the Affordable Housing Dwellings

Expression

Meaning

Qualifying Persons

those persons who:

1. in respect of potential occupiers of the Affordable Rented Housing or Social Rented Housing are;
 - a. assessed by the District Council as in need of Affordable Housing under its current Allocation Scheme (as amended from time to time); and
 - b. (subject to paragraphs 4.3 and 4.4 below) have a Local Connection; and
 - c. have been nominated to the Affordable Rented Housing or Social Rented Housing by the District Council in accordance with the Allocation Scheme and the Nominations Agreement; and
2. in respect of potential occupiers of the Shared Ownership Housing or any other affordable home Ownership product:
 - a. those persons who have been assessed by the Help to Buy Agent as being eligible under the criteria set out in the Help to Buy Agent's published policy; and
 - b. (subject to paragraphs 4.3 and 4.4 below) have a Local Connection

SAVE always that if at any time the Owner proposes to provide more Shared Ownership Housing Units than are required by this Schedule and those Shared Ownership Housing Units are to be wholly or partly funded by a grant provided by Homes England (or any successor body) and that a requirement for a Qualifying Purchaser to have a Local Connection would be contrary to the terms of (or preclude) such grant funding then paragraph (b) shall not apply

Expression**Meaning****Registered Provider**

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

Shared Ownership Housing

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 Staircasing

Social Rented Housing

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 NPPF

Expression**Meaning****Staircasing**

the exercise by the Owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the interest in the Shared Ownership 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

The Regulator

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 and Affordable Housing Standards to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme;
- 2.2 will not Commence or cause or permit the Commencement 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 fifty per cent (50%) 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 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;

2.5 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;

2.6 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

2.7 will provide the Affordable Housing Dwellings in accordance with the Affordable Housing Scheme 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 paragraphs 2.5 and 2.6 above will not be binding on a Chargee or a bona fide purchaser for value from a Chargee or the successors in title of such purchaser if the Chargee:

3.1.1 shall first give written notice to the Council of its intention to dispose of the Mortgage Land (which in this context includes any part thereof) and

3.1.2 shall have used reasonable endeavours over a period of three months from the date of the written notice referred to in paragraph 3.1.1 above to complete a disposal of the Mortgage Land to another Registered Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and;

3.1.3 If such disposal has not completed within the three month period

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

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 Subject to sub-paragraphs 4.3.1 and 4.3.2 below the Affordable Rented Housing or Social 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 Subject to sub-paragraph 4.3.3 below 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 and who is a Qualifying Person shall be considered for the Shared Ownership Housing; or

4.3 On any Affordable Housing Dwelling becoming available for occupation if:

4.3.1 within three weeks of any Affordable Rented Housing or Social Rented Housing; or eight weeks of any Shared Ownership Housing becoming available any such vacancy arising cannot be filled by a Qualifying Person then a person who has a Local Connection to any neighbouring parishes of Sibford, Wigginton, and Milcombe may be permitted to Occupy that Affordable Housing Dwelling; or

4.3.2 If any such vacancy arising cannot be filled by a person meeting the criterion in 4.3.1 above after five weeks in the case of Affordable Rented Housing or Social Rented Housing; or twelve weeks in the case of any Shared Ownership Housing becoming available then a person who has a Local Connection (as defined in the Nominations Agreement) to the administrative area of the District Council may be permitted to Occupy that Affordable Housing Dwelling; or

4.3.3 If in the case of any such vacancy arising in a Shared Ownership Housing unit that vacancy cannot be filled by a person meeting either of the criterion in 4.3.1 or 4.3.2 above after six calendar months, then any person who has been assessed by the Help to Buy Agent as being eligible under the Help to Buy Agent's published policy, to purchase shared Ownership property and who will Occupy the Shared Ownership Housing as their sole and main residence may be permitted to Occupy that Affordable Housing Dwelling

or

4.4 As may be agreed between the Owner and the District Council (acting reasonably and without delay).

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 INCLUDING LAP AND SUDS**

1. DEFINITIONS

1.1 In this Schedule and the Sixth 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):

Expression	Meaning
"BS5837"	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 and Hedgerows that could be affected during the carrying out of the Development
"Final Completion Certificate"	means a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space, the LAP 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
"Hedgerow"	means any hedgerow whether existing or to be planted identified in the Open Space Scheme
"Hedgerows Commuted Sum"	means Twenty-Six Pounds and Sixty Pence (£26.60) per linear metre of Hedgerow
"Index"	means 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

Expression	Meaning
"Index Linked"	means adjusted according to the increase (if any) in the Index between the date hereof and the Due Date
"Informal Open Space"	means areas of informal open space to be provided on the Development as identified within any Qualifying Permission and/or the Open Space Scheme but excluding any area accommodating the LAP
"Informal Open Space Commuted Sum"	means Twelve Pounds and Sixty Five Pence (£12.65) per square metre of Informal Open Space as shown in the Open Space Scheme
"LAP"	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 ² and located a minimum of 5m from the nearest Dwelling boundary
"LAP Commuted Sum"	means the sum of FORTY-ONE THOUSAND SEVEN HUNDRED AND THIRTY-THREE POUNDS AND EIGHTY-TWO PENCE (£41,733.82). Index Linked
"LAP Scheme"	means a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the LAP to be submitted to the District Council for approval in accordance with paragraph 2.1 below
"LEMP"	means once approved by the District Council the landscape and ecology management plan submitted to the District Council pursuant to paragraph 2.1.3 being a written scheme for the detailed ongoing management and maintenance of the Open Space and LAP (including the maintenance of any balancing ponds or other aspects of the SUDS within the Informal Open Space) which shall detail the frequency and standard of maintenance of the facilities that are the subject of the scheme together with

Expression**Meaning**

measures to replace any equipment or infrastructure that becomes damaged or planting that may die or become diseased following implementation of the scheme and which may be varied from time to time with the written agreement of the District Council

"Maintenance Period"

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 any defects identified in the Open Space and/or LAP and/or SUDS have been rectified or if the Open Space and/or LAP and/or SUDS have not been maintained in accordance with the LEMP during that period

"Management Company"

a body established or appointed by the Owner to carry out the long term management and maintenance of the Open Space which is to be managed by it in accordance with the provisions of this Agreement and whose objectives shall include (but not be limited to):-

- Setting the level of charges for funding the running of the body and collecting such Service Charges from residents (such term to include but is not limited to Owners occupiers lessees and tenants of the Dwellings) Index Linked from the start of the first quarter after Final Completion of the Open Space
- Ensuring that the level of any charges levied against any Affordable Housing Dwellings that are not owned outright by Registered Providers shall not materially affect the ability of these Dwellings to remain as Affordable Housing;
- Ensuring accountability to residents of the Development; and

Expression

Meaning

- Allowing the ability of residents to require the transfer of the maintenance and management responsibilities of the Open Space from the Management Company to the District Council (or its nominee) in the circumstances set out in the Management Company Structure Scheme such petition to be on grounds of dissatisfaction with the maintenance and management responsibilities of the Management Company only and in such circumstance to allow for any accrued Service Charges to be transferred to the District Council or its nominee that will assume management and maintenance

"Management Company Default Deposit"

the sum equal to one fifteenth of the Open Space Commuted Sum plus 10% of the LAP Commuted Sum to cover repairs thereof (Three Thousand Nine Hundred and Fifty Two Pounds and Eighty One Pence (£3,952.81)) Index Linked to be utilised in accordance with paragraph 9 below

"Management Company Forward Funding Deposit"

the sum equal to one fifteenth of the Open Space Commuted Sum divided by two Index Linked to be utilised as set out in the definition of ManCo Maintenance Escrow Account

"Management Company Monitoring Payment"

the sum of FIFTEEN THOUSAND POUNDS (£15,000) index linked towards the District Council's costs of monitoring the land and facilities transferred to the Management Company pursuant to the terms of this Schedule twice a year for 15 years

"Management Company Structure Scheme"

a scheme that addresses the following in relation to the Management Company:

Expression

Meaning

- details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;
- proposed banking arrangements for the Management Company;
- procedures and justification that the Management Company will follow for drawing down monies by the Management Company from the ManCo Maintenance Escrow Account
- details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of the open space against those risks as are reasonable to insure against in the circumstances then prevailing;
- details of the mechanism together with suitable documentation to ensure the transfer of ownership (if the District Council so elects) and responsibility for management and maintenance of the open space that are in the ownership of the Management Company to the District Council or its nominee on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered (likely to be written petition by at least 66% of households occupying the development) settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer)

"ManCo Default Escrow Account"

means an escrow account set up by the Owner in respect of which the following shall apply:

- it shall hold the Management Company Default Deposit;

Expression

Meaning

- monies can be drawn against by the District Council in the circumstances set out in paragraph 10.2 of this Schedule;
 - the Management Company Default Deposit and any interest thereon shall be capable of being drawn against by the District Council for the maintenance of the open space in the circumstances set out in paragraph 9 below of this Schedule; and
- shall be opened and closed in accordance with the provisions of this schedule.

"ManCo Maintenance Escrow Account"

an escrow account set up by the Owner in respect of which the following shall apply:

- it shall hold all payments of the Management Company Forward Funding Deposit;
- monies can be drawn against by the Management Company towards the costs of the maintenance of the open space where such costs are not otherwise met by the receipts of the Service Charge;
- it shall be set up to allow the Management Company to draw down such costs every quarter for the costs to be incurred in the following quarter;
- the Management Company Forward Funding Sum and any interest thereon shall be capable of being drawn against by the Management Company for the maintenance of the open space that are transferred to the Management Company;
- monies can be drawn against by the District Council and

shall be opened and closed in accordance with the provisions of this schedule.

Expression	Meaning
"Mature Trees"	means those trees identified as such in the Open Space Scheme
"Mature Trees Commuted Sum"	means Two Hundred and Eighty Pounds and Four Pence (£280.04) per Mature Tree
"New Woodland"	means the areas within the Site as identified within any Qualifying Permission and/or the Open Space Scheme to be provided for woodland and which is to be retained and maintained to serve the Development in accordance with the provisions of this Schedule
"New Woodland Commuted Sum"	means Thirty Five Pounds and Two Pence (£35.02) per square metre of New Woodland as set out in the Open Space Scheme
"Open Space Commuted Sum"	<p>means the sum calculated as follows:</p> <p>the Informal Open Space Commuted Sum</p> <p>PLUS</p> <p>the Hedgerows Commuted Sum</p> <p>PLUS</p> <p>the Mature Trees Commuted Sum</p> <p>PLUS</p> <p>the SUDS Commuted Sum</p> <p>PLUS</p> <p>the LAP Commuted Sum</p> <p>PLUS</p> <p>The New Woodland Commuted Sum</p> <p>the resultant sum being Index Linked</p>
"Open Space"	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

Expression**Meaning**

which shall include the Informal Open Space, the LAP, Hedgerows, New Woodland and Mature Trees;

"Open Space Scheme"

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 2.1.1 which shall include:

- i.) details of the locations of Informal Open Space, the LAP, Hedgerows, Mature Trees (and their number) and New Woodland to which the scheme relates; and
- ii.) a timetable for carrying out the works and the planting comprised in the laying out landscaping of the Open Space to which the scheme relates

"Practical Completion Certificate"

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

"RoSPA Inspection Report"

a report prepared by an inspector accredited and certified by the Register of Play Inspectors International (RPII) as a play area inspector that certifies that the LAP is fit for purpose in accordance with the appropriate standards set by the Royal Society for the Prevention of Accidents

"Service Charge"

the charge set by the Management Company as a relevant proportion of the costs of managing and maintaining the Open Space transferred to it payable by the occupiers of each Dwelling and which charge may vary depending on the size of each Dwelling

Expression**Meaning****"SUDS"**

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 SUDS Scheme and to be provided on the Development as determined by Qualifying Permissions

"SUDS Commuted Sum"

means the sum of

- Sixty Six Pounds and Five Pence (£66.05) per square metre of the area of balancing ponds comprised in the SUDS; and
- One Hundred and Twenty Pounds and Thirty Two Pence (£120.32) per linear metre of ditches, watercourses swales and similar features

"SUDS Scheme"

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 2.1.2 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

"Transfer"

to transfer the freehold of the Open Space from the Owner to the Management Company or from the Management Company to the District Council (or such other person or body as the District Council may direct) the terms of which shall:

- a) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency; and

Expression

Meaning

- b) not include any terms which would directly or indirectly affect the construction servicing or occupation of the part of the Site that is retained by the Owner; and
- c) include any reasonable reservation of rights of access and services over the Open Space (excluding the LAP) for the benefit of any other part of the Site for the purpose of managing maintaining replacing renewing cleaning and repairing services including but not limited to as applicable sustainable urban drainage measures, water, gas, sewerage, drainage or electricity; and
- d) include for the benefit of the Open Space and SUDS the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the area being transferred over any adjoining land for its intended purpose as set out in this Schedule; and
- e) be a transfer of the entire freehold interest of the Open Space and SUDS with full title guarantee and vacant possession on completion;
- f) be free from any pre-emption or option agreement and free from any mortgage charge or lien or other encumbrance which restricts the use of the land for its intended purpose other than those which exist at the date of this Agreement and/or are agreed in the Transfer;
- g) may contain a restrictive covenant that the land transferred shall not be used for any purpose other than for a publicly accessible games recreation relaxation

Expression**Meaning**

and play area and publicly accessible free at the point of use recreational facilities

2. PRE-COMMENCEMENT

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

2.1.1 Open Space Scheme;

2.1.2 SUDS scheme; and

2.1.3 LEMP;

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

3. OPEN SPACE

3.1 The Open Space shall be provided in accordance with the Open Space Scheme

3.2 Save as set out in the Open Space Scheme and/or SUDS Scheme and/or the LEMP and/or BS5387 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the Open Space Scheme or the efficient implementation of the LEMP or that the Council considers materially affects the costs associated with the maintenance and operation of the Open Space and in particular:

3.2.1 no materials or equipment shall be stored on the LAP or Tree and Hedgerow Root Protection Areas (as provided for in BS5378);

3.2.2 no services shall be run over, under or through the LAP or Tree and Hedgerow Root Protection Areas (as provided for in BS5378);

3.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on the LAP or Tree and Hedgerow Root Protection Areas ;

3.2.4 no parking area or temporary roadway shall be created or designated on the LAP or Tree and Hedgerow Root Protection Areas (as provided for in BS5378)

3.2.5 no structure or erection that is intended to remain after the Maintenance Period but is not shown in the Open Space Scheme the LEMP and/or the SUDS Scheme shall be erected or set up on the LAP or the Tree and Hedgerow Root Protection Areas (as provided for in BS5378)

shall be located on any part of the Site that is to accommodate the Open Space unless the express prior written permission of the District Council has been requested and given.

3.3 All trees and/or hedgerows currently on the Site shall be protected as set out in BS5837 unless shown in the Open Space Scheme or the LEMP as being removed and shall only be disturbed in accordance therewith

3.4 The District Council shall be entitled on reasonable written notice but no less than one Working Days' written 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 PROVIDED THAT the District Council shall not be entitled to take action under this paragraph nor recover reimbursement unless the District Council before taking action to enforce any of the terms of this Schedule shall have given the Owner a reasonable time period for remedying the breach and shall afford the Owner a reasonable opportunity to remedy the breach in accordance with the steps and time period in the written notice

3.5 The Open Space shall be equipped 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;

4. SUDS

4.1 The SUDS shall be provided in accordance with the SUDS Scheme

4.2 Save as set out in the Open Space Scheme and/or the SUDS Scheme and/or the LEMP and/or with BS5387 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 LEMP or that the Council considers materially affects the costs associated with the maintenance and operation of the SUDS and in particular:

- 4.2.1 no materials or equipment shall be stored on;
- 4.2.2 no services other than particular to the SUDs, 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;
- 4.2.5 no structure or erection that is intended to remain after the Maintenance Period but is not shown in the Open Space Scheme and/or the SUDS Scheme shall be erected or set up on;

any part of the Site that is to accommodate the SUDS or any part of it (Save as set out in the SUDS Scheme) 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 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;

4.4 The SUDS shall not be used for any purpose that may prejudice its function as

4.4.1 part of the drainage for the Site: or

4.4.2 subject to 4.4.1 above 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 the subsoil of the SUDS may accommodate services provided such services do not prejudice the maintenance and function of the SUDS;

4.5 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 Owners

5. COMPLETION OF OPEN SPACE LAP AND SUDS

5.1 No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued for the Open Space and SUDS;

5.2 Upon completion of the Open Space and SUDS the District Council shall be notified and invited to inspect the Open Space and SUDS within 15 Working Days with a view to either

5.2.1 issuing a Practical Completion Certificate that certifies that the Open Space and SUDS have been provided in accordance with the Open Space Scheme and the SUDS Scheme to the satisfaction of the District Council; OR

5.2.2 issuing a notice or notices (Defects Notice) which state that the Open Space or the SUDS (as the case may be) has not been provided in accordance with the Open Space Scheme and/or 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 Open Space Scheme or 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.

5.3 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 and/or the SUDS with a view to securing the issue of the Practical Completion Certificate.

5.4 If the Council fails to carry out its inspection within 21 Working Days of being invited to do so pursuant to paragraph 5.2 of this Schedule or fails to issue a Defects Notice

or a Practical Completion Certificate within 21 Working Days of such inspection then a Dispute shall be deemed to have arisen which shall then be dealt with in accordance with Clause 19 and the Eighth Schedule hereto.

5.5 In addition to the above the Owners shall produce a RoSPA Inspection Report that certifies that the LAP has been completed to an appropriate safety standard and the District Council shall not be obliged to issue a Practical Completion Certificate until that report has been supplied to it.

5.6 Once the Practical Completion Certificate is issued the Maintenance Period shall begin and the Owners shall then comply with any Defects Notices that the District Council are satisfied may be complied with during the Maintenance Period as soon as reasonably practical and implement the LEMP.

5.7 Upon completion of the Maintenance Period

5.7.1 the Owners shall produce a RoSPA Inspection Report that certifies that the LAP continues to meet an appropriate safety standard and the District Council shall not be obliged to issue a Final Completion Certificate until that report has been supplied to it

5.7.2 The District Council

(a) if satisfied that the Open Space and the SUDS have both been maintained throughout the Maintenance Period in accordance with the LEMP and the LAP has been maintained as evidenced by the supply of a satisfactory further RoSPA Report and that any minor defects set out in the Practical Completion Certificate have been remedied it shall issue a Final Completion Certificate; or

(b) if not so satisfied it shall issue a Defects Notice and the provisions of paragraphs 5.2 and 5.3 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

5.8 If the Council fails to issue a Defects Notice or a Practical Completion Certificate within 21 Working Days of receipt of the RoSPA Inspection Report pursuant to Paragraph

5.7.1 of this Schedule then a Dispute shall be deemed to have arisen which shall then be dealt with in accordance with Clause 19 and the Eighth Schedule hereto

5.9 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 and SUDS upon the District Council first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site.

6. ELECTION

6.1 Before any Dwelling is Occupied the Owners shall elect by written notice whether on the issue of a Final Completion Certificate they wish

6.1.1 to secure the maintenance and management of the Open Space and SUDS as one entity through a Management Company.

OR

6.1.2 the District Council to acquire the Open Space and SUDS

6.2 In the event that no such written notice is served in the time specified in paragraph 6.1 above (time being of the essence) the Owners shall be deemed to have elected to require the District Council to acquire the Open Space and SUDS.

6.3 If the Owners shall elect to secure the maintenance and management of the Open Space and SUDS through a Management Company (sub-paragraph 6.1.1 above) the provisions of paragraphs 7 to 10 below shall apply

6.4 If the Owners shall elect (or shall be deemed to have elected) for the District Council to acquire the Open Space and SUDS (sub paragraphs 6.1.2 and 6.2 above) the provisions of paragraph 11 below shall apply

7. MANAGEMENT COMPANY

The Owners covenant with the District Council as follows:

7.1 that they shall:

7.1.1 before any Dwelling is Occupied submit a draft Management Company Structure Scheme to the District Council for its approval;

7.1.2 not Occupy or cause or permit the Occupation of more than 5 Dwellings until

(a) the District Council shall have approved the submitted Management Company Structure Scheme; and

(b) the Management Company has been established in accordance with the approved Management Company Structure Scheme and evidence thereof has been submitted to the District Council that it has been so established

7.2 not to dispose of an interest in any Dwelling without putting in place in the plot documentation for each of the Dwellings a covenant whereby the Owner/occupiers of each Dwelling (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge which shall be collected and ring-fenced by the Management Company as successor in title to the Owner for application for the management and maintenance of the Open Space and SUDS

7.3 to put in place in the sale documentation for each of the Dwellings a covenant whereby each of the residents (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge prior to Occupation of the relevant Dwelling

7.4 prior to the Occupation of any Dwelling pay to the District Council the Management Company Monitoring Payment and shall not Occupy or cause or permit the Occupation of any Dwelling until the Management Company Monitoring Payment has been paid in full

8. TRANSFER

8.1 The Owner shall secure the Transfer of the Open Space and the SUDS to the Management Company within 28 days of the issue of the Final Completion Certificates for both; but

8.2 The Owner shall remain liable to maintain the Open Space and SUDS in accordance with the LEMP until the completion of the Transfer thereof to the Management

Company and thereafter the Management Company shall maintain the Open Space and SUDS in accordance with the LEMP

9. FINANCIAL PROVISIONS

9.1 On or before the Transfer to the Management Company of the Open Space and SUDS and in accordance with this Schedule, the Owner shall:

9.1.1 set up the ManCo Default Escrow Account and provide evidence to the District Council that the account has been set up;

9.1.2 set up the ManCo Maintenance Escrow Account and provide evidence to the District Council that the account has been set up;

9.1.3 pay the Management Company Default Deposit into ManCo Default Escrow Account and provide evidence to the District Council that such payment has been made; and

9.1.4 pay the first Management Company Forward Funding Deposit into the ManCo Maintenance Escrow Account and provide evidence to the District Council that such payment has been made

9.2 On each anniversary of the first payment of the Management Company Forward Funding Deposit into the ManCo Maintenance Escrow Account to make a further payment of the Management Company Forward Funding Deposit less any sums which remain unspent from the immediately preceding payment of the Management Company Forward Funding Deposit until the earlier of

9.2.1 the fourteenth anniversary of the date of the first payment of the Management Company Forward Funding Deposit and

9.2.2 the date that all of the Dwellings (as approved by a Qualifying Application) have been Occupied

and for the avoidance of doubt each such Management Company Forward Funding Deposit shall be Index Linked

9.3 The ManCo Default Escrow Account shall be retained for a period expiring 15 (fifteen) years after the date the ManCo Default Escrow Account is first opened and the ManCo

Default Escrow Account shall be closed at this point (or earlier if the Management Company is wound up prior to the expiration of the said 15 years) and any monies whether capital or interest sums remaining in the ManCo Default Escrow Account at that time shall be released to the person who made the payments or to such other person or body as the District Council at the request of the Management Company shall permit

9.4 The ManCo Maintenance Escrow Account shall be retained for a period expiring

9.4.1 once all of the Dwellings (as approved by a Qualifying Application) have been Occupied; or

9.4.2 fifteen years after the ManCo Maintenance Escrow Account is first opened

and then shall be closed and any monies whether capital or interest sums remaining in the ManCo Maintenance Escrow Account at that time shall be released to the person who made the payments or to such other person or body as the District Council at the request of the Management Company shall permit

10. **DEFAULT BY MANAGEMENT COMPANY**

10.1 In the event that

10.1.1 the Management Company fails to maintain any part or aspect of the Open Space or SUDS in accordance with the approved Management Scheme; or

10.1.2 the Management Company

- (a) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (b) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for

the sole purpose of a scheme for a solvent amalgamation of it with one or more other companies or its solvent reconstruction

- (c) is wound up or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Management Company (other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction),
- (d) has an administrator appointed or an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given;
- (e) has an administrative receiver appointed or the holder of a qualifying floating charge over the assets of it has become entitled to appoint an administrative receiver;
- (f) a receiver is appointed over all or any of its assets or a person becomes entitled to appoint a receiver over all or any of those assets;
- (g) has a creditor or encumbrancer of it attach or take possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any of its assets, and such attachment or process is not discharged within ten Working Days
- (h) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (whether or not that part of the business involves maintaining the Open Space and SUDS)

the District Council may enter on to the relevant area of the Open Space and/or SUDS together with relevant personnel and equipment to ensure the performance of the obligations contained in this Schedule and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage or reinstate the relevant area of the Open Space or SUDS ('Works in Default') and shall be entitled to full reimbursement by the Management Company of all costs and expenses incurred in performing the said obligations

10.2 In the event that the Management Company

10.2.1 shall have failed to maintain the Open Space or SUDS in accordance with the approved Management Scheme the District Council will not exercise the right in paragraph 10.1.1 above to carry out Works in Default before having given written notice to the Management Company stating the nature of the failure, the steps required to remedy the failure, and a reasonable time period for remedying it and shall afford the Management Company the opportunity to remedy the failure in accordance with the steps and time period in the written notice

10.2.2 shall have failed for whatever reason to reimburse the costs and expenses incurred by District Council in carrying out any Works in Default within 14 days of a written demand therefor, the District Council shall be entitled to recover such costs and expenses from the ManCo Default Escrow Account

the District Council shall be entitled to draw down from the ManCo Default Escrow Account all sums then credited to that account.

10.3 In the event that

10.3.1 the District Council shall have served notice on the Management Company requiring it to remedy any failure to maintain the Open Space or SUDS in accordance with the approved Management Scheme; and

(a) the Management Company have failed to remedy that failure within the time given in the notice; but

(b) at that point in time there are no funds in the ManCo Default Escrow Account or the funds in the ManCo Default Escrow Account are insufficient to defray the costs of the Works in Default

10.3.2 the Management Company shall have failed to make any payment of the Management Company Forward Funding Deposit into the ManCo Maintenance Escrow Account within 14 days of such payment being due

10.3.3 any of the circumstances set out in paragraph 10.1.2 above shall occur or the Management Company otherwise ceases to be able to carry out its obligations in the Management Scheme

then the provisions of paragraph 10.4 below shall apply

10.4 the Management Company (or such other person or body as shall then have control over the Management Company's assets) as successor in title to the Owner shall, at the election of the District Council either

10.4.1 Transfer all its interest in the Open Space and SUDS to the District Council or its nominee together with all responsibilities for management and maintenance of the same; or

10.4.2 Transfer the responsibility for management and maintenance of the Open Space and SUDS to the District Council or its nominee and

10.4.3 pay any accrued Service Charges to the District Council or its nominee and assign

(a) its right to collect and receive payments of the Service Charge: and

(b) any rights it has to draw down funds from the ManCo Default Escrow Account and/or the ManCo Maintenance Escrow Account

11. TRANSFER TO THE DISTRICT COUNCIL

11.1 The Owners shall not Transfer the Open Space or the SUDS¹ to any person or body other than the District Council or such other person or body as the District Council shall nominate in writing but subject to compliance with the terms hereof the District Council covenants to accept a Transfer of the Open Space and SUDS

11.2 Before the issue of a Practical Completion Certificate for the Open Space and SUDS the Open Space Commuted Sum shall be paid to the District Council

¹ Please note the District Council must take all the Open Space and SuDS. It will not accept a very late offer/piecemeal approach

11.3 Upon completion of the Maintenance Period and issue of the Final Completion Certificate the Owner shall offer to Transfer the freehold interest in the Open Space and SUDS to the District Council or such other body as the District Council may direct on the following terms:

11.4 Save as is inconsistent herewith the Transfer:

11.4.1 shall be on the Law Society's Standard Conditions of Sale applicable at the time of the issue of the Final Completion Certificate

11.4.2 consideration therefor shall be no more than One pound (£1-00);

11.4.3 shall be with

(a) full title guarantee, and

(b) vacant possession on completion

11.4.4 shall include such rights as may be necessary for the District Council to access the Open Space and SUDS for purposes of maintenance repair improvement and replacement of any aspect of the Open Space and/or the SUDS

11.5 The Transfer may contain a covenant not to use or permit the Open Space, the LAP and SUDS to be used for anything other than the purposes that they were provided for and not to use them for any income generating use without the consent of the transferor (such consent not to be unreasonably withheld or delayed); and

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

11.7 Notwithstanding the issue of a Final Completion Certificate the Open Space and SUDS shall continue to be maintained in accordance with the LEMP until its transfer in accordance with paragraph 11.3 above

11.8 If at the end of the Maintenance Period the Council shall not issue a Final Completion Certificate but shall issue a Defects Notice the Owner shall deposit with the District Council a further sum equal to the Open Space Commuted Sum and

11.8.1 Subject to paragraph 11.8.2 below, when the requirements of the Defects Notice are complied with that sum shall be returned to the person or body that deposited it; but

11.8.2 if the Defects Notice is not complied with within 12 months of the end of the Maintenance Period the said deposit shall be forfeit and the District Council shall use the sum deposited to remedy any defects as set out in the Defects Notice so as to bring the Open Space and SUDS to a condition deemed to be satisfactory by the District Council

and thereupon the District Council covenants to issue the Final Completion Certificate and accept the Transfer of the Open Space and SUDS

**FOURTH SCHEDULE COVENANTS WITH THE DISTRICT COUNCIL –
CONTRIBUTIONS**

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):

Expression	Meaning
Community Hall Contribution	a sum calculated in accordance with the formula set out in paragraph 2 of the Appendix to this Schedule Index Linked to be used towards the delivery of improvements and/or enhancements at Hook Norton Memorial Hall
Index Linked	increased according to the fluctuations between 21 st March 2021 (Date of initial calculation of contributions) and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in one Tender Index
Off-site Indoor Sports Facilities Contribution	a sum calculated in accordance with the formula set out in paragraph 3 of the Appendix to this Schedule Index Linked to be used towards improvements at Hook Norton Memorial Hall to provide an increase in capacity for the provision of indoor sport activity

Expression**Off-site Outdoor Sports Facilities Contribution****Meaning**

a sum calculated in accordance with the following:

Number. of Dwellings in the Composition of the Development multiplied by TWO-THOUSAND AND SEVENTEEN POUNDS AND THREE PENCE (£2017.03) Index Linked to be used towards the enhancement of offsite outdoor sports facilities at Hook Norton Sport and Social Club

Public Art and Public Realm Contribution

a sum calculated in accordance with the following:

Number of Dwellings in the Composition of the Development multiplied by TWO HUNDRED POUNDS ONLY (£200-00)

PLUS

seven percent (7%) of that sum for maintenance ; and five percent (5%) of that sum as a management fee the resultant sum being Index Linked towards the provision of public art in the vicinity of the development to respond to the unique features of the location and engage with the local community

Refuse Contribution

£106.00 (one hundred and six pounds) Index Linked for each of the Dwellings in the Composition of the Development for the provision of waste bins and recycling facilities

2. THE CONTRIBUTIONS

The Owner covenants with the District Council as follows:

- 2.1 To pay the Community Hall Contribution to the District Council prior to the First Occupation of any Dwelling on the Site and not to Occupy any Dwelling until the Community Hall Contribution has been paid in full

2.2 To pay the Off-site Indoor Sports Facilities Contribution and the On-site Outdoor Sports Facilities Contribution to the District Council in the following instalments:-

2.2.1 50% prior to the first Occupation of any Dwelling;

2.2.2 the remainder prior to the first Occupation of 50% of the Dwellings;

and not to Occupy any Dwelling or more than 50% of the Dwellings as appropriate until the relevant instalment of the Off-site Indoor Sports Facilities Contribution and the On-site Outdoor Sports Facilities Contribution have been paid in full including any sum due pursuant to paragraph 3 below

2.3 To pay

2.3.1 50% of the Refuse Contribution to the District Council prior to Commencement and not to cause or permit Commencement until 50% of the Refuse Contribution has been paid to the District Council.

2.3.2 to pay the balance of the Refuse Contribution to the District Council prior to the first Occupation of 50% of the Dwellings on the Development and not to Occupy more than 50% of the Dwellings until the balance of the Refuse Contribution has been paid to the District Council in full including any sum due pursuant to paragraph 3 below

3. VARIATION IN THE COMPOSITION OF THE DEVELOPMENT

3.1 If an Approval (Variation) is issued and the relevant Approval (Variation) results in the Composition of the Development changing then the resultant Composition of the Development shall be used to calculate the Contributions

3.2 If as a result of an Approval (Variation) the Contributions increase the Owner covenants to pay to the District Council:

3.2.1 If the Contribution has already been paid the difference between the sum already paid and that calculated as a result of the Approval (Variation) Index Linked within 10 Working Days of the grant of the Approval (Variation)

3.2.2 If any part of the Contribution has not then been paid and has not at that time fallen due (as set out in paragraph 2 above) the difference between the sum already paid and that calculated as a result of the Approval (Variation) Index Linked shall be paid together with the next instalment or that Contribution

3.3 If as a result of an Approval (Variation) the Contributions decrease before an instalment falls due then the resultant decrease shall result in an appropriate reduction in the next instalment when due²

² See Sixth Schedule for when Contributions already paid

**ANNEX TO THE FOURTH SCHEDULE
CALCULATION OF CONTRIBUTIONS**

1. OCCUPANCY RATES

1.1 In this Schedule each type of Dwelling as defined by the number of bedrooms shall be deemed to result in occupation by the number of residents in Column 2 below

Column 1	Column 2
Dwelling Type <i>Dwellings with:</i>	Occupancy
One bedroom	1.25
Two bedrooms	1.85
Three bedrooms	2.88
Four or more bedrooms	3.96

and in this Schedule 'Occupancy Rate' means the figure in column 2 above for the dwelling type in Column 1

2. COMMUNITY HALL

TWO THOUSAND FOUR HUNDRED AND EIGHTY-TWO POUNDS ONLY (£2,482) (cost per m² for all community facilities) multiplied by 0.185 (0.185m² community space per resident) the resultant figure multiplied by the figure derived from Occupancy Rate of each Dwelling in the Composition of the Development

3. OFF-SITE INDOOR SPORTS FACILITIES CONTRIBUTION

THREE HUNDRED AND THIRTY FIVE POUNDS THIRTY TWO PENCE (£335.32) (combination of the cost per resident of providing sports halls and swimming pools³)

³ £335.32 includes the cost per person for sports hall provision (£121.56) and the cost per person for swimming pool provision (£213.76). It is a combined contribution figure which is a standard approach for indoor sport across all developments. The swimming pool figures were calculated from the cost of construction of a new build swimming pool, using the average 25m commercial product and RICS Building cost information service construction costs, plus land costs and VAT at 2010. The sports hall figure is based on the construction cost of a four court hall plus circulation, reception and changing, plus land costs and VAT at 2016

multiplied by the figure derived from the Occupancy Rate of each Dwelling in the Composition of the Development

**FIFTH SCHEDULE
COVENANTS TO THE COUNTY COUNCIL**

1. DEFINITIONS

In this Schedule the following additional definitions shall apply (and for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated to it in the main body of this Deed) and where a word is defined in the main body of this Deed and also in this paragraph the meaning given in this paragraph shall be applied for the purposes of this Schedule

Expression	Meaning
“Bus Services Contribution”	means the sum calculated as follows: one thousand and fifty one pounds (£1,051) 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 toward the provision of bus services serving Hook Norton
“Index Linked”	means in relation to the Bus Services Contribution adjusted according to any increase occurring between December 2020 and the date when the relevant payment is made in the All Items Retail Price Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics
“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
“Revised Bus Services Contribution”	means the sum calculated by multiplying one thousand and fifty one pounds (£1,051) by the number of Dwellings in the Composition of the Development as identified in a Notification (Variation) where this is higher than the Bus Services Contribution or in the event that there is more than one Approval (Variation) the Revised Bus Services Contribution means the sum calculated by multiplying one thousand and fifty one pounds (£1,051) 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 Bus Services Contribution will be Index Linked

2. OWNER'S COVENANTS

2.1 The Owner covenants with the County Council as follows:-

2.1.1 to give to the County Council the Notification (Initial) within 10 Working Days of the issue of the Approval (Initial)

2.1.2 not to cause or permit Commencement of the Development until the Notification (Initial) has been given to the County Council

2.1.3 to give to the County Council a Notification (Variation) within 10 Working Days of the issue of each Approval (Variation)

2.1.4 where a Notification (Variation) has been given (or is required to be given further to clause 2.1.3) and the relevant Approval (Variation) results in the establishment of a Revised Bus Services Contribution then

(a) for the purposes of calculating any Bus Services Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Bus Services Contribution shall be applied in place of the Bus Services Contribution

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

2.2 Not to cause or permit any Dwelling to be Occupied until it has paid the Bus Services Contribution to the County Council and to pay the Bus Services Contribution to the County Council before any Dwelling is Occupied

2.3 To pay to the County Council any sum calculated further to paragraphs 2.1.4 (b) Index Linked within 10 working days of the grant of the relevant Approval (Variation)

SIXTH 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 Third Schedule and 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 Subject to the proviso to clause 8.1.3 if the Appeal is dismissed the District Council covenants to return the monitoring fee paid pursuant to clause 8.1.3(a) to the party or person who paid it
- 1.3 The District Council covenants with the Owner
- 1.3.1 to return to the person who paid it the deposit paid pursuant to paragraph 11.8.1 of the Third Schedule if the Defects Notice is complied with within 12 months of the issue thereof; and
- 1.3.2 if the Defects Notice is not complied with within 12 months to return to the person who paid it so much of that deposit as has not been expended or committed by the District Council in bringing the Open Space and/or SUDS to a satisfactory standard
- 1.4 If as a result of an Approval (Variation) the Contributions as required by the Fourth Schedule above reduce after they have been paid in full the District Council will return to the person who made the relevant payment the difference between the Contributions as calculated after the Approval (Variation) and the sums actually paid
- 1.5 The District Council covenants with the Owner that following written request from the person who made the relevant Contribution the District Council will repay to that person the balance (if any) of any Contribution made by that person to the District Council under the terms of the Fourth Schedule above 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 the whole of the Contribution.

- 1.6 Any Contribution or part of a Contribution which the District Council has contracted to expend prior to the date of receipt of a request pursuant to paragraph 1.5 above shall be deemed to have been expended by the District Council prior to that date.
- 1.7 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 paragraph 1.5 above to return monies that do not relate to District Council functions or have been passed to persons/bodies other than the District Council.
- 1.8 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.

SEVENTH SCHEDULE
COUNTY COUNCIL'S COVENANTS WITH THE OWNER

1. APPLICATION OF MONIES RECEIVED

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 Subject to the proviso to clause 8.1.3 if the Appeal is dismissed the County Council covenants to return the monitoring fee paid pursuant to sub-clause (b) to the party or person who paid it
- 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

EIGHTH SCHEDULE
DISPUTES

1. DEFINITION OF A DISPUTE

A dispute in the context of this agreement arises where any Party requires or seeks the approval or consent of the District Council pursuant to any provision of this Deed and that approval or consent is refused or is not given within 20 Working Days but FOR THE AVOIDANCE OF DOUBT:

- 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. NOTICE

- 2.1 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.
- 2.2 The Notice must:
 - 2.2.1 specify the nature, basis and brief description of the dispute;
 - 2.2.2 identify the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
 - 2.2.3 propose a person to determine the dispute ('the Expert').

3. THE EXPERT

- 3.1 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:
- 3.2 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;
- 3.3 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;
- 3.4 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;
- 3.5 if such dispute relates to Affordable Housing the Expert shall be nominated by the President of the Royal Town Planning Institute; and
- 3.6 in all other cases, the President of the Law Society to nominate the Expert as he thinks appropriate

4. JOINT EXPERTS

The Parties may agree to appoint joint Experts or (in default of agreement) invite joint Experts to be nominated pursuant to paragraph 3 and in which case 'Expert' shall mean both or all of them.

5. EXPERT CEASING TO ACT

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 3.

6. APPOINTMENT OF EXPERT AND DUTIES

- 6.1 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 6.2.
- 6.2 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.
- 6.3 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.

7. DETERMINATION AND DECISION

- 7.1 The Expert shall give notice of his decision in writing
- 7.2 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.
- 7.3 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).

8. COSTS

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.

9. **COURT**

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:-



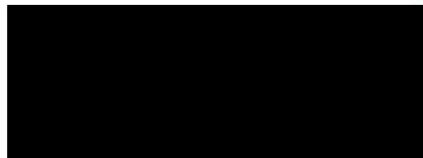
HELEN LUCAS



COC 20807

Authorised Signatory

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



Authorised Officer



317/22

EXECUTED as a DEED by NURSERY
GROUND LIMITED acting by one director
in the presence of

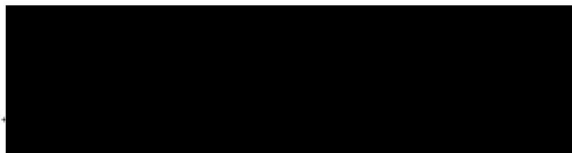


Director

BENEDIKT PETER JAMUEL BROWN

Name in full

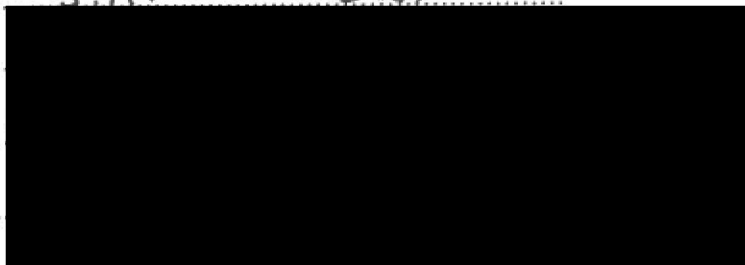
Witness
Signature



Witness Name
(Block caps)

S.K.V. HANDLEY

Address



Occupation