

**DATED**

**2023**

**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**FIRETHORN BICESTER LIMITED**

**-and-**

**SGR (BICESTER 2) LIMITED**

**-and-**

**A2DOMINION SOUTH LIMITED**

**-and-**

**ELMSBROOK (CREST A2D) LLP**

**-and-**

**CREST NICHOLSON OPERATIONS LIMITED and A2DOMINION DEVELOPMENTS  
LIMITED**

**DRAFT PLANNING OBLIGATION BY DEED OF AGREEMENT**

**under section 106 of the Town and Country Planning Act 1990 (as amended) and  
section 111 of the Local Government Act 1972 and section 2 of the Local  
Government Act 2000**

**relating to land at North West Bicester, Charlotte Avenue, Bicester, Oxfordshire**

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Commented [TL1]: To be updated

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**DATE**

**2023**

**PARTIES**

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA ("the District Council")
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall, New Road, Oxford OX1 1ND ("the County Council")
- (3) **FIRETHORN BICESTER LIMITED** (Company Registration Number 12270072) of 3rd Floor 265 Tottenham Court Road, London, England, W1T 7RQ ("the First Owner")
- (4) **SGR (BICESTER 2) LIMITED** (Company Registration Number 7691602) of 3rd Floor 265 Tottenham Court Road, London, England, W1T 7RQ ("the Second Owner")
- (5) **A2DOMINION SOUTH LIMITED** (Registered Society Number 28641R) of The Point, 37 North Wharf Road, London W2 1BD ("the Third Owner")
- (6) **ELMSBROOK (CREST A2D) LLP** (LLP Registration Number OC418100) of The Point, 37 North Wharf Road, London, England, W2 1BD ("the Fourth Owner")
- (7) **CREST NICHOLSON OPERATIONS LIMITED** (Company Registration Number 01168311) of 500 Dashwood Lang Road,    Bourne Business Park,    Addlestone,    Surrey KT15 2HJ and **A2DOMINION DEVELOPMENTS LIMITED** (Company Registration Number 05585321) of The Point, 37 North Wharf Road, London, W2 1BD (together "the Mortgagee").

In this Deed the First Owner, Second Owner, Third Owner and Fourth Owner are together known as the "**Owner**" or individually known as an "**Individual Owner**".

**INTRODUCTION**

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The County Council is the county planning authority for the purposes of the Act and has for the area in which the Site is situated sundry powers and duties in respect of education, the provision of library facilities and the management of waste and in respect of highways transport and the regulation of traffic.

3. The First Owner is the freehold owner of the part of the Site registered with freehold title absolute under title numbers ON358239, ON365961 and ON366803.
4. The Second Owner is the freehold owner of the part of the Site registered with freehold title absolute under title numbers ON299239 and ON318062. Following completion of a transfer dated 3 November 2020, applications have been lodged with the Land Registry for the Second Owner's freehold ownership of title numbers ON299239 and ON318062 to be transferred to the First Owner but as these applications have not yet completed the Second Owner has agreed to enter this Deed.
5. The Third Owner is the freehold owner of the part of the Site registered with freehold title absolute under title numbers ON335607, ON324173 and ON350377.
6. The Fourth Owner is the freehold owner of the part of the Site registered with freehold title absolute under title number ON339195.
7. The First Owner has submitted the Application to the District Council and has subsequently made the Appeal to the Planning Inspectorate following the failure of the District Council to determine the Application within the statutory time period or within any agreed extension of time.
8. The Mortgagee has a registered charge over title number ON339195. The Mortgagee hereby consents to the Owner entering into this Deed with the District Council and the County Council in accordance with the provisions of clause 8.9(b).
9. In the event the Secretary of State allows the Appeal the obligations in this Deed will become binding and enforceable by the Council and/or the County Council (as the case may be).
10. The parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council and/or the County Council (as the case may be) against the Owner and their successors in title.
11. For the avoidance of doubt this Deed may not be enforced against the land within the Application Site that is registered with freehold title absolute under title number ON290221 (such land shown shaded green on the Application Site Plan).

**Commented [TL2]:** -25 October 2022 is the date of the LR application (re-submitted after a cancellation) but the transfer was made on 3 November 2020

## **NOW THIS DEED WITNESSES AS FOLLOWS**

### **OPERATIVE PART**

## 1. DEFINITIONS

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

|                         |  |
|-------------------------|--|
| "Act"                   | means the Town and Country Planning Act 1990 as amended;   |
| "Application"           | means the application for outline planning permission validated by the District Council on 6 May 2021 for the Development and allocated reference number 21/01630/OUT;   |
| "Application Site"      | means the area shown edged red on the Application Site Plan;   |
| "Application Site Plan" | means the plan attached to this Deed at the First Schedule labelled Application Site Plan;   |
| "Appeal"                | means the appeal submitted to the Planning Inspectorate in respect of the failure by the District Council to determine the Application <u>within the statutory time period</u> and given the Planning Inspectorate appeal reference APP/C3105/W/23/3315849;  |
| "County Monitoring Fee" | means the <u>sum payable by the Owner to the County Council and applied by the County Council towards its costs of monitoring the obligations in this Deed, such</u> sum calculated in accordance with the spreadsheet attached at Appendix 1 where the contribution secured is the aggregate of the financial contributions payable to the County Council payable in accordance with the Third Schedule |

disregarding Index Linking and any Supplemental Payments, Primary Expansion Supplemental Payments and Primary Land Supplemental Payments as defined in the Third Schedule;

"Development"

means the ~~Development-development~~ of the Application Site with residential development for up to 530 residential dwellings (within Use Class C3), open space provision, access, drainage and all associated works and operations including but not limited to demolition, earthworks, and engineering operations, with the details of appearance, landscaping, layout and scale reserved for later determination as set out in the Application;

"Dwelling"

means a building (including a house flat or maisonette) to be constructed upon the Site as part of the Development or part of such building designed for residential occupation by a single household pursuant to the Planning Permission and including Affordable Housing (as defined in the Seventh Schedule);

"First Occupation"

means the first time a Dwelling is Occupied;

"Implementation"

means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part 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 “Implement” “Implemented” and “Implementing” shall be construed accordingly;

“Index-Linked (RPIX)” “Interest”

means interest at 4% per annum above the base rate of Lloyds TSB Bank plc from time to time;

“North West Bicester Development”

means development at North West Bicester which has been allocated for a mixed use development including up to 6000 homes pursuant to Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and of which the Site forms part;

“Occupation” and “Occupied”

means 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;

“Phase”

means a phase of the Development to be identified and agreed in the approved Phasing Plan and “Phases” shall be construed accordingly;

“Phasing Plan”

means a phasing plan to be submitted pursuant to a condition of the Planning



|                          |  |
|--------------------------|--|
|                          | Permission setting out the Phases of the Development;  |
| "the Plan"               | means the plan attached to this Deed at the First Schedule labelled Section 106 Plan;  |
| "Planning Permission"    | means the outline planning permission granted by the Inspector or the Secretary of State pursuant to the Appeal subject to any conditions;   |
| "Practical Completion"   | means the date that a certificate of practical completion for the Development or such part as may be specified is issued by the architect, engineer or other certifying officer as the case may be under the relevant building contract; |
| "Qualifying Application" | an application for Reserved Matters approval pursuant to the Planning Permission or any application under <del>Section-section</del> 73 of the Act relating to the Planning Permission;  |
| "Qualifying Permission"  | a Reserved Matters approval or planning permission issued pursuant to a Qualifying Application as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the Act;                       |
| "Reserved Matters"       | means details of any one or more of appearance, landscaping, layout and scale reserved under the terms of the Planning Permission or as applicable   |

Qualifying Permission in respect of the Development for subsequent approval;

“the Site”

means the land against which this Deed may be enforced as shown (for identification purposes only) edged red on the Plan and for the avoidance of doubt this excludes the area of the Application Site within registered title ON290221 as shown shaded green on the Application Site Plan;

“VAT”

means Value Added Tax as referred to in Section 1 of the Value Added Tax Act 1994 or any tax of a similar nature which may be substituted for or levied in addition to it;

“Working Days”

means Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27 and 31 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 interchangeable in that manner.

- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 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 Reference to any party to this Deed shall include the successors in title to that party and to any 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.

### 3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 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 and are enforceable by the District Council and the County Council as planning authorities against the Owner.

### 4. **CONDITIONALITY**

- 4.1 This Deed is conditional upon:
- (i) the grant of the Planning Permission; and
  - (ii) Implementation

save for the provisions of Clauses 1 to 4 (inclusive), and Clauses 8.1.1, 8.1.2, 11, 16 and 17 (legal costs, change of ownership, jurisdiction and delivery) which shall come into effect immediately upon completion of this Deed; and ~~Clauses 8.1.3 and 8.1.4, paragraph 1.1.1 of the Second Schedule, paragraphs 1.1 and 1.2 of the Third Schedule, paragraph 1.2 of the Seventh Schedule and paragraph 2.4 of the Ninth Schedule ;~~

**Commented [TL3]:** -Inserted all prior to implementation obligations

(iii) Clauses 8.1.3 and 8.1.4; and

(iv) paragraphs 1.1.1 and 1.9 of the Second Schedule, paragraphs 1.1 and 1.2 of the Third Schedule, paragraphs 1.1, 14 and 28 of the Fourth Schedule, paragraph 1 of the Fifth Schedule, paragraphs 1.1 and 1.2 of the Sixth Schedule, paragraphs 1.2, 1.3 and 2.2 of Part 1 of the Seventh Schedule and paragraphs 2.2, 2.4 and 2.5 of the Ninth Schedule

which shall come into effect immediately upon grant of Planning Permission.

- 4.2 If the Inspector or the Secretary of State determines that any obligation (or any part of an obligation) contained within this Deed is not an obligation to which regard should be had for the purposes of regulation 122 of the CIL Regulations 2010 or otherwise, or which should not carry weight in the determination of the Application and the Inspector or the Secretary of State so states in their decision, then the relevant obligation shall immediately (without any further act by the parties) cease to have any effect to the extent determined by the Inspector or Secretary of State in their decision and the Owner shall be under no obligation to comply with the obligation but the remainder of the obligations in this Deed (if any) shall remain legally effective and binding.
- 4.3 For the avoidance of doubt, none of the planning obligations in this Deed will be legally effective and binding on the parties if either (a) the Inspector or the Secretary of State dismisses the Appeal such that Planning Permission is not granted or (b) the Inspector or the Secretary of State concludes that none of the planning obligations contained within this Deed are obligations to which regard should be had for the purposes of regulation 122 of the CIL Regulations 2010 or otherwise, which should carry any weight in the determination of the Appeal and so states in the decision letter.
- 4.4 In the event that the Inspector or Secretary of State imposes a condition upon the Planning Permission as a replacement for one or more of the obligations in this Deed

and this is specified within the decision letter, then the said provisions of this Deed shall thereafter have no legal effect to the extent determined by the Inspector or Secretary of State in the Appeal decision.

**5. OWNER'S COVENANTS**

- 5.1 The Owner covenants with the District Council as set out in the Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Schedules.
- 5.2 The Owner covenants with the County Council as set out in the Third and Tenth Schedules.

**6. DISTRICT COUNCIL'S COVENANTS**

- 6.1 The District Council covenants with the Owner as set out in the Eleventh Schedule.

**7. COUNTY COUNCIL'S COVENANTS**

- 7.1 The County Council covenants with the Owner as set out in the Twelfth Schedule.

**8. MISCELLANEOUS**

- 8.1 The Owner will:

- 8.1.1 on completion of this Deed pay to the District Council and the County Council their respective reasonable legal costs ~~of and in~~ in connection with the preparation of this Deed;
- 8.1.2 reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with the enforcement of any of the provisions hereof should the need for enforcement arise in the reasonable opinion of the District Council and/or the County Council;
- 8.1.3 within 5 Working Days of the grant of Planning Permission pay to the District Council the sum of ~~Pounds~~ £10,000 as a contribution towards the cost of monitoring and administration of this Deed;
- 8.1.4 within 5 Working Days of the grant of Planning Permission pay to the County Council the County Monitoring Fee as a contribution towards the cost of monitoring and administration of this Deed.

- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the parties and their successors in title and assigns and any successor to the District Council's or the County Council's functions.)
- 8.3 This Deed shall be registrable as a local land charge by the District Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction of any party is required under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.5 Following the District Council and the County Council being notified in writing and the Council and the County Council being satisfied of the performance and satisfaction of all the obligations contained in this Deed the District Council shall note this in the Register of Local Land Charges in respect of this Deed.
- 8.6 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.
- 8.7 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 Implementation PROVIDED ALWAYS that the Planning Permission and any Qualifying Permission has not been Implemented.
- 8.8 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.
- 8.9 This Deed shall not be enforceable against:
- (a) Any owner-occupiers or tenants of Market Dwellings (as defined in the Seventh Schedule) constructed pursuant to the Planning Permission nor against those deriving title from them PROVIDED ALWAYS THAT this clause shall not apply to any provisions placing a restriction on First Occupation of any Market Dwellings.

(b) Except for the requirements of paragraph 7 of Part 1 the Seventh Schedule any owner-occupiers or tenants of Affordable Housing Dwellings (as defined in the Seventh Schedule) constructed pursuant to the Planning Permission nor against those deriving title from them PROVIDED ALWAYS THAT this clause shall not apply to any provisions placing a restriction on First Occupation of any Affordable Housing Dwellings.

(b)(c) the The Mortgagee unless and until the Mortgagee has entered into possession of the Site or part thereof to which such obligation relates.

(c)(d) any Any future chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Site, or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee or receiver unless and until such chargee, mortgagee, receiver or person deriving title has entered into possession of the Site or part thereof to which such obligation relates.

(d)(e) any Any statutory undertaker who acquires an interest in the Site for the purpose of providing services to the Site.

Commented [TL4]: -

Commented [JC5]: Awaiting instructions

8.10 Nothing 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 granted (whether or not on appeal) after the date of this Deed.

## 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 the County Council:

- 11.1 otherwise than in relation to transfers to utility companies and the sale, lease, transfer, mortgage or other disposal of an individual Dwelling, to give the District Council and the County Council immediate written notice of any change in ownership of any of its interests in the Site 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.
- 11.2 to notify the District Council and the County Council in writing within fourteen (14) days of following the occurrence of each of the following events and to specify in the notification the date on which it occurred:
- 11.2.1 the date of Implementation of the Planning Permission;
  - 11.2.2 First Occupation of the first Dwelling to be Occupied on the Site;
  - 11.2.3 First Occupation of the forty ninth Dwelling to be Occupied on the Site;
  - 11.2.4 First Occupation of the ninety ninth Dwelling to be Occupied on the Site;
  - 11.2.5 First Occupation of the one hundred and forty ninth Dwelling to be Occupied on the Site;
  - 11.2.6 First Occupation of the one hundred and seventy fourth Dwelling to be Occupied on the Site;
  - 11.2.7 First Occupation of the one hundred and ninety ninth Dwelling to be Occupied on the Site;
  - 11.2.8 First Occupation of the two hundred and forty ninth Dwelling to be Occupied on the Site;
  - 11.2.9 First Occupation of the two hundred and ninety ninth Dwelling to be Occupied on the Site;
  - 11.2.10 First Occupation of the four hundred and forty ninth Dwelling to be Occupied on the Site.

**Commented [JC6]:** To be reviewed with final check of cross-referencing etc.



## 12. INTEREST

- 12.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of full payment.
- 12.2 Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the date the payment is due.

## 13. VAT

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

## 14. NOTICE

Any notice or notification to be given under this Deed shall be sent:

- 14.1 to the District Council to the Assistant Director for Planning and Development of the District Council (Reference 21/01630/OUT) at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall from time to time direct; and
- 14.2 to the County Council to ~~The~~the Director for Environment and Place of the County Council County Hall, New Road Oxford OX1 1ND or to such other person at such other address as the County Council shall direct from time to time; and
- 14.3 to the Owner as follows:
- 14.3.1 to the First Owner and Second Owner to 3rd Floor, 265 Tottenham Court Road, London, England W1T 7RQ
- 14.3.2 to the Third Owner and Fourth Owner to The Point, 37 North Wharf Road, London, W2 1BD

or to such other address as an Individual Owner shall direct from time to time; and

- 14.4 to the Mortgagee as follows:

- 14.4.1 to Crest Nicholson Operations Limited to 500 Dashwood Lang Road,

Bourne Business Park, Addlestone, Surrey, KT15 2HJ

14.4.2 to A2Dominion Developments Limited to The Point, 37 North Wharf Road, London, W2 1BD.

14.5 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

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

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

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

14.6 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.

14.7 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.

14.8 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.

## 15. **DISPUTE RESOLUTION**

15.1 The parties agree that the provisions of this Clause 15 shall not apply to:

(a) any dispute between any of the parties and the County Council; and

(b) any dispute relating to any of the financial contributions payable by the Owner pursuant to the Second Schedule of this Deed.

15.2 If there is any dispute between any of the parties in respect of any of the matters to be agreed pursuant to this Deed (other than the matters specified in Clause 15.1 or a dispute or difference concerning the meaning or construction of this Deed or a matter of law) which cannot be resolved by prior agreement between the parties in dispute, such dispute shall be determined in accordance with this Clause 15 and any party to the dispute may at any time require by notice in writing to the other ~~(s)~~ an independent expert to be appointed to resolve the dispute.

- 15.3 The expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Deed.
- 15.4 The expert shall be appointed jointly by the parties in dispute and, in the absence of such agreement within one (1) month of service of the notice pursuant to clause 15.2, be appointed by the President for the time being of the Royal Institution of Chartered Surveyors within one (1) month of an application being made by one of the parties.
- 15.5 The expert shall invite written representations (and, if the expert determines, further written representations by way of rebuttal) from each of the parties to the dispute and shall make his final determination within one (1) month of his appointment PROVIDED THAT if the expert fails to do so, then any of the parties in dispute may apply to the President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in which case the same procedure shall be repeated.
- 15.6 The findings of the expert shall be final and binding on the parties in dispute except in the case of manifest, material error.
- 15.7 The expert shall act as an expert and not as an arbitrator.
- 15.8 The costs of the dispute shall be payable by the parties in dispute in such proportion as may be determined by the expert and failing such determination to be borne in equal shares by the parties in dispute.
- 15.9 Nothing in this Clause 15 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

## 16. JURISDICTION

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

## 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.

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

**FIRST SCHEDULE**

**THE PLAN  
AND THE APPLICATION SITE PLAN**

Land at North West Bicester, Charlotte Avenue, Bicester, Oxfordshire

## SECOND SCHEDULE

### DISTRICT COUNCIL CONTRIBUTIONS

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

|  |  |
|--|--|
| "Bicester Leisure Centre Contribution"           | <u>means</u> the sum of £339,989.02 Index Linked (BCIS) to be paid by the Owner to the District Council to be used by the District Council towards the improvement of swimming pool provision at Bicester Leisure Centre                   |
| "Burial Ground Contribution"                     | <u>means</u> the sum of £6,425.95 Index Linked (BCIS) to be paid by the Owner to the District Council to be used by the District Council towards provision of a burial site as part of the North West Bicester Development                 |
| "Community Building Contribution"                | <u>means</u> the sum of £560,046.84 Index Linked (BCIS) to be paid by the Owner to the District Council to be used by the District Council towards community hall provision elsewhere in the North West Bicester Development               |
| "Community Facility Maintenance Contribution"    | <u>means</u> the sum of £87,943.09 Index Linked (BCIS) to be paid by the Owner to the District Council to be used by the District Council towards the maintenance of community facilities elsewhere in the North West Bicester Development |
| "Community Management Organisation Contribution" | <u>means</u> the sum of £301,902.44 Index Linked (BCIS) to be paid by the Owner to the District Council to be used by the  |

District Council towards the establishment of an organisation to enable community governance across the North West Bicester Development

"Healthcare Contribution"

means the sum of £190,080 Index Linked (BCIS) to be paid by the Owner to the District Council to be applied towards the provision of local healthcare services alterations of the annex accommodation at Bicester Health Centre

**Commented [TL7]:** -The Inspector asked for this to refer to specific practice to be extended - please can you add this?

"Index Linked (BCIS)"

means adjusted according to any increase occurring between Q2 2023 and the date of payment of the relevant contribution to the District Council in the BCIS (all items) Index made available through the Royal Institution of Chartered Surveyors;

"Neighbourhood Policing Contribution"

means the sum of £84,508 Index Linked (BCIS) to be paid by the Owner to the District Council and to be applied towards the provision of neighbourhood policing

"Sports Pitches Contribution"

means the sum of £1,288,402.55 Index Linked (BCIS) to be paid by the Owner to the District Council to be used by the District Council towards the provision and maintenance of outdoor sports facilities elsewhere in the North West Bicester Development

1. The Owner shall pay the following to the District Council:
  - 1.1 the Bicester Leisure Centre Contribution as follows:
    - 1.1.1 50% prior to Implementation of the Development.

- 1.1.2 the remaining 50% prior to Occupation of any more than 100 of the Dwellings.
- 1.2 the Burial Ground Contribution prior to First Occupation of any of the Dwellings.
- 1.3 the Community Building Contribution as follows:
  - 1.3.1 25% prior to First Occupation of any of the Dwellings
  - 1.3.2 a further 25% prior to Occupation of any more than 150 of the Dwellings.
  - 1.3.3 a further 25% prior to Occupation of any more than 300 of the Dwellings.
  - 1.3.4 the balance prior to Occupation of any more than 450 of the Dwellings.
- 1.4 the Community Facility Maintenance Contribution as follows:
  - 1.4.1 25% prior to First Occupation of any of the Dwellings
  - 1.4.2 a further 25% prior to Occupation of any more than 150 of the Dwellings.
  - 1.4.3 a further 25% prior to Occupation of any more than 300 of the Dwellings.
  - 1.4.4 the balance prior to Occupation of any more than 450 of the Dwellings.
- 1.5 the Community Management Organisation Contribution as follows:
  - 1.5.1 50% prior to First Occupation of any of the Dwellings.
  - 1.5.2 The remaining 50% prior to Occupation of any more than 300 of the Dwellings.
- 1.6 the Healthcare Contribution as follows:
  - 1.6.1 50% prior to Occupation of any more than 150 of the Dwellings.
  - 1.6.2 the remaining 50% prior to Occupation of any more than 300 of the Dwellings.
- 1.7 the Neighbourhood Policing Contribution as follows:
  - 1.7.1 50% prior to Occupation of any more than 150 of the Dwellings.
  - 1.7.2 the remaining 50% prior to Occupation of any more than 300 of the

Dwellings.

- 1.8 the Sports Pitches Contribution as follows:
- 1.8.1 25% prior to First Occupation of any of the Dwellings.
  - 1.8.2 25% prior to Occupation of any more than 150 of the Dwellings.
  - 1.8.3 25% prior to Occupation of any more than 300 of the Dwellings.
  - 1.8.4 the balance prior to Occupation of any more than 450 of the Dwellings.
- 1.9 The Owner shall not Implement or cause or permit Implementation unless and until 50% of the Bicester Leisure Centre Contribution has been paid to the District Council.
- 1.10 The Owner shall not Occupy or cause or permit the Occupation of any of the Dwellings unless and until:
- 1.10.1 the Burial Ground Contribution has been paid to the District Council;
  - 1.10.2 25% of the Community Building Contribution has been paid to the District Council;
  - 1.10.3 25% of the Community Facility Maintenance Contribution has been paid to the District Council;
  - 1.10.4 50% of the Community Management Organisation Contribution has been paid to the District Council; and
  - 1.10.5 25% of the Sports Pitches Contribution has been paid to the District Council.
- 1.11 The Owner shall not Occupy or cause or permit the Occupation of any more than 100 of the Dwellings unless and until the remaining 50% of the Bicester Leisure Centre Contribution has been paid to the District Council.
- 1.12 The Owner shall not Occupy or cause or permit the Occupation of any more than 150 of the Dwellings unless and until:
- 1.12.1 a further 25% of the Community Building Contribution has been paid to the District Council;
  - 1.12.2 a further 25% of the Community Facility Maintenance Contribution has



been paid to the District Council;

1.12.3 50% of the Healthcare Contribution has been paid to the District Council;

1.12.4 50% of the Neighbourhood Policing Contribution has been paid to the District Council; and

1.12.5 a further 25% of the Sports Pitches Contribution has been paid to the District Council.

1.13 The Owner shall not Occupy or cause or permit the Occupation of any more than 300 of the Dwellings unless and until:

1.13.1 a further 25% of the Community Building Contribution has been paid to the District Council;

1.13.2 a further 25% of the Community Facility Maintenance Contribution has been paid to the District Council;

1.13.3 the remaining 50% of the Community Management Organisation Contribution has been paid to the District Council;

1.13.31.13.4 the remaining 50% of the Healthcare Contribution has been paid to the District Council;

1.13.41.13.5 the remaining 50% of the Neighbourhood Policing Contribution has been paid to the District Council; and

1.13.51.13.6 a further 25% of the Sports Pitches Contribution has been paid to the District Council.

1.14 The Owner shall not Occupy or cause or permit the Occupation of any more than 450 of the Dwellings unless and until:

1.14.1 the remaining 25% of the Community Building Contribution has been paid to the District Council;

1.14.2 the remaining 25% of the Community Facility Maintenance Contribution has been paid to the District Council; and

1.14.3 the remaining 25% of the Sports Pitches Contribution has been paid to the District Council.



### THIRD SCHEDULE

#### FINANCIAL CONTRIBUTIONS PAYABLE TO THE COUNTY COUNCIL

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

|   |   |
|---|---|
| <u>"Affordable Housing DwellingDwellings"</u> | has the same meaning as in the Seventh Schedule but also includes Additional Affordable Housing Dwellings as defined in the Seventh Schedule  |
| <u>"Bedroom"</u>                              | <p>means a room in a Dwelling (whether an Affordable Housing Dwelling or a Market Dwelling) designed as a bedroom or study/ bedroom and</p> <ul style="list-style-type: none"><li>• 1 Bed Dwelling means a Dwelling with 1 Bedroom</li><li>• 2 Bed Dwelling means a Dwelling with 2 Bedrooms</li><li>• 3 Bed Dwelling means a Dwelling with 3 Bedrooms</li><li>• 4 Bed Dwelling means a Dwelling with 4 or more Bedrooms</li></ul>    |
| <u>"Bus Service Contribution"</u>             | <p>means the sum of Seven Hundred and Fifty Two Thousand Four Hundred and Twelve Pounds (£752,412) towards the provision and improvement of bus services serving the Site payable in three instalments (each Index Linked) as follows:</p> <ul style="list-style-type: none"><li>• <u>"Bus Payment 1-"</u> being £252,412</li><li>• <u>"Bus Payment 2-"</u> being £250,000</li><li>• <u>"Bus Payment 3-"</u> being £250,000</li></ul> |
| <u>"Education Contribution"</u>               | means together the Primary Contribution (Gagle Brook School) and the Primary Expansion Contribution and the   |

Secondary Education Contribution and the SEND Contribution

"Highway Works Contribution"

means the sum of Forty Seven Thousand Two Hundred and Eighty Nine Pounds (£47,289) towards improvements to the junction of the B4100 and Charlotte Avenue payable in 3 instalments (each Index Linked) as follows:

- "Highway Works Payment 1" of £11,822
- "Highway Works Payment 2" of £11,822
- "Highway Works Payment 3" of £23,645

"Household Waste Recycling Contribution"

means the sum of Forty Nine Thousand Seven Hundred and Ninety Nine Pounds (£49,799) Index Linked towards expansion and efficiency of Household Waste Recycling Centres serving the area of the Site

"Index Linked"

means in relation to

- the ~~Public Right of Way~~ PROW Contribution adjusted according to any increase occurring between July 2021 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-  
Index 1 Labour & Supervision 25%  
Index 2 Plant & Road Vehicles 25%  
Index 3 Aggregates 30%  
Index 9 Coated Macadam & Bituminous Products 20%;

- the Strategic Highway Contribution and Local Road Improvement Contribution adjusted according to any increase occurring between September 2021 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

|  |      |
|--|------|
| Index 1 Labour & Supervision                 | 25%  |
| Index 2 Plant & Road Vehicles                | 25%  |
| Index 3 Aggregates                           | 30%  |
| Index 9 Coated Macadam & Bituminous Products | 20%; |
- the Pedestrian/cycle Bridge Contribution adjusted according to any increase occurring between November 2021 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

|  |      |
|--|------|
| Index 1 Labour & Supervision                 | 25%  |
| Index 2 Plant & Road Vehicles                | 25%  |
| Index 3 Aggregates                           | 30%  |
| Index 9 Coated Macadam & Bituminous Products | 20%; |
- the Highway Works Contribution and the Pedestrian/cycle Infrastructure Contribution adjusted according to any increase occurring

between December 2020 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

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

- the Travel Plan Monitoring Contribution adjusted according to any increase occurring between December 2020 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics; and
- the Bus Service Contribution adjusted according to any increase occurring between February 2022 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics; and
- the Primary Land Contribution and the Secondary Land Contribution and any Primary Expansion Supplemental Payment and any Primary Land Supplemental Payment adjusted according to any increase occurring between April 2023 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index

excluding mortgage interest payments (RPIX) published by the Office of National Statistics.; and

- the Household Waste Recycling Contribution and the Library Contribution and Education Contribution and any Supplemental Payments adjusted according to any increase occurring between index value 327 and the index value for the quarter period in which the contribution is paid in the BCIS All in-Tender Price Index published by the Royal Institution of Chartered Surveyors

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

"Library Contribution"

means the sum of Twenty Eight Thousand and Seventy Three (£28,073) Index Linked towards Bicester Library including book stock

"Local Road Improvement Contribution"

means the sum of One Hundred and Ninety Nine Thousand Nine Hundred and Ninety Five Pounds (£199,995) towards improvements to the Elmsbrook ~~spine road~~ (Spine Road (as defined in the Tenth Schedule)) which consists of Charlotte Avenue and Braeburn Avenue) which will not result in the direct or indirect loss of any existing trees, payable in 2 instalments (each Index Linked) as follows:

- "Local Roads Payment 1-" being £100,000
- "Local Roads Payment 2-" being £99,995

Market Dwellings

~~has the same meaning as in the Seventh Schedule and for the avoidance of doubt does not include Additional Affordable Housing Dwellings as defined in the Seventh Schedule~~

"Matrix"

means the formula:

$$\begin{aligned} &£(A \times W) + (B \times X) + (C \times Y) + (D \times Z) + (E \times Q) + (F \times R) \\ &+ (G \times S) + (H \times T) \end{aligned}$$

When in respect of Market Dwellings

A means the number of 1 Bed Dwellings

B means the number of 2 Bed Dwellings

C means the number of 3 Bed Dwellings

D means the number of 4 Bed Dwellings and

when in respect of Affordable Housing Dwellings

E means the number of 1 Bed Dwellings

F means the number of 2 Bed Dwellings

G means the number of 3 Bed Dwellings

H means the number of 4 Bed Dwellings

Q, R, S T, W, X, Y and Z are as set out in [Part 2-Annex 1](#) to this [Third](#) Schedule

"Pedestrian/cycle Bridge Contribution"

means the sum of Fifteen Thousand Pounds (£15,000) towards a pedestrian/cycle bridge over the Gagle Brook linking the Site with the adjacent land parcel to the southwest payable in 2 instalments (each Index Linked) as follows:

- "Ped/cycle Bridge Payment 1" being £7,500
- "Ped/cycle Bridge Payment 2" being £7,500

"Pedestrian/cycle Infrastructure Contribution"

means the sum of Three Hundred and Sixty Two Thousand Four Hundred and Sixty Five Pounds (£362,465) towards improvements to pedestrian and



cycle infrastructure between the Site and Bicester town centre payable in three instalments (each Index Linked) as follows:

- “Pedestrian/cycle Payment 1-” being £36,247
- “Pedestrian/cycle Payment 2-” being £326,218

“Primary Contribution  
(Gagle Brook School)”

means the sum of Three Million and Ninety Two Thousand and Eight Hundred and Seventeen Pounds (£3,092,817) towards the funding of the Gagle Brook Primary School which provides education serving the Site payable in 2 instalments (each Index Linked) as follows:

- “Gagle Brook Payment 1-” being 30% of the Primary Contribution (Gagle Brook School)
- “Gagle Brook Payment 2-” being 70% of the Primary Contribution (Gagle Brook School)

“Primary Expansion  
Contribution”

means the sum of One Million and Thirty Eight Thousand and Two Hundred and Ninety Pounds (£1,038,290) Index Linked towards primary and nursery education capacity serving the Site

“Primary Land  
Contribution”

~~Means means~~ the sum of One Hundred and Six Thousand and Two Hundred and Sixty Pounds (£106,260) Index Linked towards the purchase of land for primary education serving the Site

“Primary Pupil Count  
(Affordable)”

means the number of pupils arising from the Development on the Site in relation to the Affordable Housing Dwellings only calculated according to the following formula:

$$(E \times 0) + (F \times 0.50) + (G \times 0.64) + (H \times 0.67)$$

When in respect of Affordable Housing Dwellings

E means the number of 1 Bed Dwellings

F means the number of 2 Bed Dwellings

G means the number of 3 Bed Dwellings

H means the number of 4 Bed Dwellings

“Primary Pupil Count  
(Market)”

means the number of pupils arising from the Development on the Site in relation to the Market Dwellings only calculated according to the following formula:

$$(A \times 0) + (B \times 0.22) + (C \times 0.29) + (D \times 0.30)$$

When in respect of the Market Dwellings

A means the number of 1 Bed Dwellings

B means the number of 2 Bed Dwellings

C means the number of 3 Bed Dwellings

D means the number of 4 Bed Dwellings

“Primary Expansion  
Supplemental Payment”

means the sum calculated as follows:

$$£(PPC-146) \times 18,878 \text{ less } Q \text{ Index Linked}$$

Where PPC is the aggregate of the Primary Pupil Count (Affordable) and the Primary Pupil Count (Market) and Q is the aggregate of any Primary Expansion Supplemental Payments made under paragraph [3.2.1-2.2 of this Third Schedule](#) below (but disregarding adjustments for Index Linking)

“Primary Land  
Supplemental Payment”

means the sum calculated as follows:

$$£(PPC-146) \times 1,932 \text{ less } R \text{ Index Linked}$$

Where PPC is the aggregate of the Primary Pupil Count (Affordable) and the Primary Pupil Count (Market) and R

is the aggregate of any Primary Land Supplemental Payments made under paragraph 3.2.2 below 2.3 of this Third Schedule (but disregarding adjustments for Index Linking)

"PROW Contribution"

means the sum of Fifty Thousand Pounds (£50,000) Index Linked towards improvements to the public rights of way network in the vicinity of the Site payable in 2 instalments as follows:

- "PROW Payment 1-" being £25,000
- "PROW Payment 2-" being £25,000

"Return"

means a written return made by the Owner to the County Council specifying

1. The total number of Dwellings First Occupied during the Return Period and separately the total number of 1 Bed Dwellings, 2 Bed Dwellings, 3 Bed Dwellings and 4 Bed Dwellings so First Occupied;
2. The aggregate number of Dwellings within the Development which have been Occupied at the end of the Return Period and separately the aggregate number of 1 Bed Dwellings, 2 Bed Dwellings, 3 Bed Dwellings and 4 Bed Dwellings comprised therein
3. The total number of Market Dwellings First Occupied during the Return Period and separately the total number of 1 Bed Market Dwellings, 2 Bed Market Dwellings, 3 Bed Market Dwellings and 4 Bed Market Dwellings so First Occupied;
4. The aggregate number of Market Dwellings within the Development which have been Occupied at the end of the Return Period and separately the aggregate number of 1 Bed Market Dwellings, 2 Bed Market Dwellings, 3 Bed

Market Dwellings and 4 Bed Market Dwellings comprised therein

5. The total number of Affordable Housing Dwellings First Occupied during the Return Period and separately the total number of 1 Bed Affordable Housing Dwellings, 2 Bed Affordable Housing Dwellings, 3 Bed Affordable Housing Dwellings and 4 Bed Affordable Housing Dwellings so First Occupied;

6. The aggregate number of Affordable Housing Dwellings within the Development which have been Occupied at the end of the Return Period and separately the aggregate number of 1 Bed Affordable Housing Dwellings, 2 Bed Affordable Housing Dwellings, 3 Bed Affordable Housing Dwellings and 4 Bed Affordable Housing Dwellings comprised therein

“Return ~~Dates~~Date”

means

- at all times prior to the ~~first-First~~ Occupation of 400 Dwellings the first day of January in each year occurring after the Occupation of the first Dwelling~~;~~ and
- following a Return which reports the aggregate number of Dwellings within the Development which have been First Occupied as being or exceeding 400 Dwellings means the quarter days being the first day of January, first day of April, first day of July and first day of October in each year occurring after the Occupation of the 400<sup>th</sup> Dwelling to be First Occupied~~;~~

until Returns have been made pursuant to paragraph 4-3 of this Third Schedule reporting the Occupation of all the Dwellings comprised in the Development

“Return Period”

means the period of 12 months or 3 months in accordance with the relevant Return Date ending on the day before a Return Date but so that the first Return Period will be the period commencing on the Occupation of the first Dwelling and ending on the day before the following Return Date and the final Return Period will be the Return Period ending on the day before the Return Date next following the First Occupation of the final Dwelling comprised in the Development

“Secondary Education Contribution”

means the sum of Two Million Nine Hundred and Twenty Four Thousand and Eight Hundred and Fifty Six Pounds (£2,924,856) towards secondary education capacity serving the Site payable in 4 instalments (each Index Linked) as follows:

- “Secondary Payment 1—” being 20% of the Secondary Education Contribution
- “Secondary Payment 2—” being 30% of the Secondary Education Contribution
- “Secondary Payment 3—” being 25% of the Secondary Education Contribution
- “Secondary Payment 4—” being 25% of the Secondary Education Contribution

“Secondary Land Contribution”

means the sum of Two Hundred and Sixty Five Thousand Three Hundred and Twenty Pounds (£265,320) Index Linked towards the purchase of land for secondary education purposes serving the Site

“SEND Contribution”

means the sum of Two Hundred and Sixty Thousand Two Hundred and Forty Nine Pounds (£260,249) towards special educational needs capacity serving the Site payable in 2 instalments (each Index Linked) as follows:

- “SEND Payment 1-” being 30% of the SEND Contribution
- “SEND Payment 2-” being 70% of the SEND Contribution

“Strategic Highway Contribution”

means the sum of Three Million and Twenty Three Thousand Three Hundred and Two Pounds (£3,023,302) towards highway infrastructure forming a realignment of the A4095 between the junction of Howes Lane/Middleton Stoney Road and Lords Lane north of Purslane Drive, and associated adjustments and connections to the existing highway network; together with underbridge to connect the road under the railway and an active travel underbridge to the north payable in 4 instalments (each Index Linked) as follows:

- “Strategic Highway Payment 1-” being £755,825
- “Strategic Highway Payment 2-” being £755,825
- “Strategic Highway Payment 3-” being £755,825
- “Strategic Highway Payment 4-” being £755,826

“Supplemental Payment”

means the sum calculated as follows:-

$\pounds(M - P)$  Index Linked

Where M is the sum calculated by applying the Matrix to the total number and type of Dwellings Occupied within the Development as at the relevant Return Date

P is the total of the payments made as at the relevant Return Date in respect of the Secondary Education Contribution, the Secondary Land Contribution and the SEND Contribution and any Supplemental Payments made under paragraph 3.4-2.1 below (but disregarding adjustments for Index Linking)

"Supplemental Payment Return Date" means a Return Date where, by applying the total number and type of Dwellings Occupied within the Development as a whole as set out in the Return for the Return Period ending on the day before the Return Date, the Matrix Sum exceeds £3,450,425

"Travel Plan Monitoring Contribution" means the sum of Two Thousand Eight Hundred and ~~thirty~~ Thirty Two (£2,832) Index Linked towards the cost of monitoring the travel plan for the Development

## 1. COVENANTS

The Owner covenants with the County Council as follows:

- 1.1 to pay the Gagle Brook Payment 1 and the Secondary Land Contribution to the County Council prior to the Implementation of the Development; and
- 1.2 not to cause or permit the Implementation of the Development until it has paid the Gagle Brook Payment 1 and the Secondary Land Contribution to the County Council-.
- 1.3 to pay the Bus Payment 1 and Secondary Payment 1 and Strategic Highway Payment 1 and Pedestrian/cycle Payment 1 and the Travel Plan Monitoring Contribution to the County Council prior to First Occupation of any Dwelling; and
- 1.4 not to cause or permit the First Occupation of any Dwelling until it has paid Bus Payment 1 and Secondary Payment 1 and Strategic Highway Payment 1 and Pedestrian/cycle Payment 1 and the Travel Plan Monitoring Contribution to the County Council-.
- 1.5 to pay Highway Works Payment 1 and Pedestrian/cycle Payment 2 and Ped/cycle Bridge Payment 1 and PROW Payment 1 and Strategic Highway Payment 2 to the County Council prior to First Occupation of more than 50 Dwellings; and
- 1.6 not to cause or permit the First Occupation of more than 50 Dwellings until it has paid Highway Works Payment 1 and Pedestrian/cycle Payment 2 and Ped/cycle Bridge Payment 1 and PROW Payment 1 and Strategic Highway Payment 2 to the County Council.
- 1.7 to pay Gagle Brook Payment 2 and Highway Works Payment 2 and Local Roads Payment 1 and Ped/cycle Bridge Payment 2 and the Primary Land Contribution and Secondary Payment 2 and SEND Payment 1 and PROW Payment 2 and Strategic

Highway Payment 3 to the County Council prior to First Occupation of more than 100 Dwellings; and

- 1.8 not to cause or permit the First Occupation of more than 100 Dwellings until it has paid Gagle Brook Payment 2 and Highway Works Payment 2 and Local Roads Payment 1 and Ped/cycle Bridge Payment 2 and the Primary Land Contribution and Secondary Payment 2 and SEND Payment 1 and PROW Payment 2 and Strategic Highway Payment 3 to the County Council; ~~and~~
- 1.9 to pay Highway Works Payment 3 and Household Waste Recycling Contribution and the Library Contribution and Primary Expansion Contribution and Secondary Payment 3 and Strategic Highway Payment 4 to the County Council prior to First Occupation of more than 175 Dwellings; and
- 1.10 not to cause or permit the First Occupation of more than 175 Dwellings until it has paid Highway Works Payment 3 and Household Waste Recycling Contribution and the Library Contribution and Primary Expansion Contribution and Secondary Payment 3 and Strategic Highway Payment 4 to the County Council;
- 1.11 to pay and Local Roads Payment 2 and Secondary Payment 4 and SEND Payment 2 to the County Council prior to First Occupation of more than 250 Dwellings; and
- 1.12 not to cause or permit the First Occupation of more than 250 Dwellings until it has paid Local Roads Payment 2 and Secondary Payment 4 and SEND Payment 2 to the County Council;
- 1.13 to pay the remaining ~~Public Transport Payments payments~~ to the County Council in the following instalments:-
  - 1.13.1 Bus Payment 2 on the first anniversary of the ~~Due Date due date~~ for the payment of Bus Payment 1 in accordance with paragraph ~~2.3 1.3~~ above or prior to First Occupation of more than 99 Dwellings on the Site ~~or above~~ whichever is the earliest
  - 1.13.2 Bus Payment 3 on the second anniversary of the ~~Due Date due date~~ for the payment of Bus Payment 1 in accordance with paragraph ~~2.3 1.3~~ above or prior to First Occupation of more than 199 Dwellings on the Site whichever is the earliest.

**Commented [TL8]:** -County Council to review District Council amendments



## 2. SUPPLEMENTAL PAYMENTS COVENANTS

- 2.1 The Owner covenants to pay to the County Council within 28 days ~~of following~~ each Supplemental Payment Return Date a Supplemental Payment calculated by applying the total number and type of Dwellings Occupied within the Development as a whole as set out in the Return for the Return Period ending on the day before that Return Date
- 2.2 The Owner covenants to pay to the County Council within 28 days ~~of following~~ each Return Date a Primary Expansion Supplemental Payment (if any) calculated by applying the total number and type of Dwellings Occupied within the Development as a whole as set out in the Return for the Return Period ending on the day before that Return Date
- 2.3 The Owner covenants to pay to the County Council within 28 days ~~of following~~ each Return Date a Primary Land Supplemental Payment (if any) calculated by applying the total number and type of Dwellings Occupied within the Development as a whole as set out in the Return for the Return Period ending on the day before that Return Date.

## 3. COVENANTS (NOTIFICATION AND PROVISION OF INFORMATION)

- 3.1 The Owner covenants with the County Council that within 21 days of each Return Date it will make a Return to the County Council
- 3.2 In the event that the Owner fails to give notification in accordance with clause 11.2 of this Deed of an event taking place in accordance with paragraph ~~2-1~~ of this Schedule or if the Owner fails to make a Return within 21 days of any Return Date:-
- 3.2.1 The County Council may investigate whether the event has taken place and/or prepare its own Return in respect of the relevant Return Date as applicable and the Owner will pay to the County Council the sum of £450 in respect of the costs of each such investigation or Return; and
- 3.2.2 The due date for any payment due at or before a relevant event specified in paragraph 1 ~~of this Schedule~~ takes place will be such date as the County Council reasonably selects; and
- 3.2.3 The due date for any Supplemental Payment due pursuant to paragraph 2 shall be within 28 days of a request by the County Council-; and
- 3.2.4 The provisions of this paragraph 3.2 shall be without prejudice to any other right or remedy of the County Council.



## Annex 1

### MARKET DWELLINGS

|                     | <u>1 Bed</u>    | <u>2 Bed</u>       | <u>3 Bed</u>       | <u>4 + Bed</u>     |
|---------------------|-----------------|--------------------|--------------------|--------------------|
| Secondary Education | 0.00            | 4142.64            | 5720.79            | 6312.59            |
| Secondary Land      | 0.00            | 375.79             | 518.94             | 572.63             |
| SEND                | 0.00            | 381.78             | 514.23             | 553.19             |
| <b>TOTALS</b>       | <b>W= £0.00</b> | <b>X=£4,900.21</b> | <b>Y=£6,753.96</b> | <b>Z=£7,438.41</b> |

### AFFORDABLE HOUSING DWELLINGS

|                     | <u>1 Bed</u>    | <u>2 Bed</u>        | <u>3 Bed</u>        | <u>4 + Bed</u>      |
|---------------------|-----------------|---------------------|---------------------|---------------------|
| Secondary Education | 0.0             | 10595.48            | 14631.85            | 16145.49            |
| Secondary Land      | 0.0             | 961.14              | 1327.29             | 1464.59             |
| SEND                | 0.0             | 909.29              | 1224.75             | 1317.54             |
| <b>TOTALS</b>       | <b>Q= £0.00</b> | <b>R=£12,465.91</b> | <b>S=£17,183.89</b> | <b>T=£18,927.62</b> |

## FOURTH SCHEDULE

### GREEN SPACE AND PLAY AREAS

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

"Allotment Plot" means an individual allotment plot to be provided within the Allotments each allotment plot to measure 10 poles (approximately 250 square metres) or half plots (measuring 125 square metres) and "Allotment Plots" shall be construed accordingly

"Allotments" means 0.49 hectares of allotment space to be provided ~~on-as part of~~ the Development as identified within the Planning Permission or any Qualifying Permission

"Allotments Commuted Sum" means the sum to be calculated in accordance with the formula  $m^2 \times £7.16/m^2 \times \text{Index}$  to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the Allotments

"Allotments Specification" ~~the provision of~~ means a specification for the Allotments ~~on the Development which shall conform-conforming~~ with the National Society of Allotment and Leisure Gardeners (NSALG) guidelines and ~~meet~~ the following requirements:

- each Allotment Plot to measure 10 poles (approximately 250 square metres) but allowing half plots (measuring 125 square metres) if required to help reduce waiting list

time or because prospective tenants have specifically requested a smaller plot.

- secure fence and gates to the Allotment perimeter with a boundary hedge (mixed native or single species hedge)
- not overshadowed by larger trees and hedges
- Allotment Plots to be provided on prepared ground with good quality (uncontaminated) topsoil cultivated to a depth of 450 mm
- potable water supplied to every Allotment Plot
- necessary approvals obtained from the relevant authorities for building foundations and connection to services
- grass paths provided between the Allotment Plots
- concrete haulage ways (3 metres wide) to serve each Allotment Plot
- all paths to be macadam with kerb edging and measure no less than 1.5 metres wide (preferably measuring 1.7 metres wide) to allow for a wheelchair user and ambulant person to travel side-by-side

- main gates to the Allotments must be wide enough to comfortably allow the large delivery vehicles used by hauliers today on to the site for the purpose of delivering manure to and removing green waste from the Allotments.
- one car parking space to be provided for every two Allotment Plots
- concrete hard standing for 'manure' delivery with unobstructed wheelbarrow access for Allotment Plot holders
- appropriate signage to be provided
- litter bins to be provided

"Certificate of Final Completion"

means a certificate issued by the District Council to the effect that a Facility is finally complete and all defects which have become manifest since the issue of the Certificate of Practical Completion and all outstanding works identified in the Certificate of Practical Completion have been made good and completed and (where appropriate) any trees shrubs plants or grass which have died or been removed or become seriously diseased or damaged have been replaced with others of a similar size or species and the Facility has been satisfactorily maintained for a period of 12 months

"Certificate of Practical Completion"

means a certificate issued by the District Council to the effect that a Facility is

practically complete save for such minor outstanding works as the District Council may agree

"Defects Notice"

means a notice or notices served by the District Council which states the Facility has not been provided in accordance with the requirements of this Deed to the District Council's reasonable satisfaction and which sets out the details of the work required to reach the standards required by this Deed

"Design Code"

means the design code to be submitted and agreed by the District Council pursuant to a condition of the Planning Permission

"Existing Woodland"

means the existing woodland identified as such in any Green Space Scheme

"Existing Woodland Commuted Sum"

means the sum to be calculated in accordance with the formula  $m^2 \times £46.97/m^2 \times \text{Index}$  to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the Existing Woodland

"Facility"

means any of the Green Space or the Play Areas and "Facilities" shall be construed accordingly

"Guide"

means the District Council's 'Developer Contributions Supplementary Planning Document (SPD) adopted February 2018

"Green Space"

means the areas of Green Space within the Site to be provided by the Owner and which ~~is~~are to be retained and maintained as Green Space to serve the Development, the

location of which is as approved as part of the Planning Permission, a Qualifying Permission or the Design Code and which shall include:

- the Allotments which shall be provided in accordance with the Allotments Specification
- the LAP/LEAP Combined
- the NEAP ~~/~~ MUGA
- the Play Area Signage
- the Informal Open Space
- the Hedgerows
- the Mature Trees
- the Existing Woodland
- the ~~SUDs~~ SUDS
- the New Orchard
- the New Woodland

"Green Space Commuted Sum"

means a sum comprising any or all of the following sums (as the case may be):

- the Allotments Commuted Sum
- the LAP/LEAP Combined Commuted Sum
- the NEAP ~~/MUGA~~ /MUGA Commuted Sum
- the Play Area Signage Commuted Sum



- the Informal Open Space Commuted Sum
- the Hedgerows Commuted Sum
- the Mature Trees Commuted Sum
- the Existing Woodland Commuted Sum
- the ~~SUDs~~-SUDS Commuted Sum
- the New Orchard Commuted Sum
- the New Woodland Commuted Sum

and the resultant sum being Index Linked

“Green Space Scheme”

means a detailed scheme for the provision of the Green Space and Play Areas within a Phase of the Development which shall include: (1) confirmation of the type and location of the Green Space (2) a timetable for carrying out the works and the planting comprised in the laying out landscaping and equipping (where applicable) of the Green Space (3) detailed provision for the maintenance of the Green Space for a period of 12 (twelve months) following its completion, such maintenance to include regular inspection.

“Hedgerow”

means any hedgerow whether existing or to be planted as identified in any Green Space Scheme and "Hedgerows" shall be construed accordingly

“Hedgerows Commuted Sum”

means the sum to be calculated in accordance with the formula  $Im \times £26.60/Im$  x Index to be paid by the Owner to the District

|                                    |   |
|------------------------------------|---|
|                                    | <p><u>Council and applied by the District Council</u></p> <p>towards the future management and maintenance of the Hedgerows</p>   |
| "Index"                            | <p>means adjusted according to any increase occurring between Q2 2023 and the date of payment of the relevant contribution to the District Council in the BCIS (all items) Index made available through the Royal Institution of Chartered Surveyors and "Index Linked" shall be construed accordingly where used in this Schedule;</p>   |
| "Informal Open Space"              | <p><u>means</u> areas of informal open space to be provided on the Development as identified within the Planning Permission or any Qualifying Permission and/or Green Space Scheme but excluding any area accommodating the LAP/LEAP Combined</p>   |
| "Informal Open Space Commuted Sum" | <p><u>means</u> the sum to be calculated in accordance with the formula <math>m^2 \times \pounds 12.65/m^2</math> x Index <u>to be paid by the Owner to the District Council and applied by the District Council</u> towards the future management and maintenance of the Informal Open Space</p>   |
| "LAP/LEAP Combined"                | <p><u>means</u> a facility that provides on the Site a combined LAP and LEAP with an equipped activity zone of at least 500 square metres set within a non-equipped landscaped area of at least 3500 square metres designed to provide a safe area for alternative play for children aged 2 to 8 years. The size of the landscaped area (incorporating the equipped activity zone) will be informed by the development context (acknowledging activity zone buffer requirements) and local design</p> |

guidance. A minimum of 3 items of play equipment is required for the LAP element and 5 items of play equipment for the LEAP element (in combination with multi-play structures). The equipped activity zone within the landscaped area should be located a minimum of 10 metre from the nearest Dwelling boundary and a minimum of 20 metres from the nearest habitable room façade. The landscaped area around the equipped activity zone could be used to incorporate this buffer.

“LAP/LEAP Combined Commuted Sum”

means the sum to be calculated in accordance with the formula ~~£179,549.95x~~ 179,549.95 x Index in respect of each LAP/LEAP Combined to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of each LAP/LEAP Combined proposed in any Green Space Scheme

“LBMP”

means the landscape and biodiversity management plan approved pursuant to a condition of the Planning Permission detailing area inspections, cleansing and maintenance of Play Areas, NEAP, MUGA, hard surfaces and any watercourses, balancing ponds or other aspects of the SUDS within the Informal Open Space-, and which shall also detail the frequency and standard of maintenance of the facilities that are the subject of the scheme together with 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

"LBMP Monitoring Sum"

means the sum of Fifteen Thousand Pounds (£15,000) Index Linked to be paid by the Owner to the District Council and applied by the District Council towards the District Council's costs of ecological surveys and monitoring the land and ~~facilities~~ Facilities transferred to the Management Company in accordance with the LBMP twice a year for 15 years

"Maintenance Period"

means a period of twelve (12) months following the issue by the District Council of a Certificate of Practical Completion ~~Certificate~~ or such longer period as the District Council may determine if it is not satisfied that any defects identified in the ~~Green Space and/or LAP/LEAP Combined, NEAP/MUGA and/or SUDS have been rectified or if the Green Space and/or LAP/LEAP Combined, NEAP/MUGA and/or SUDS~~ Facilities have not been maintained in accordance with the LBMP during that period

"Management Company"

means a body corporate established or appointed by the Owner to carry out the long term management and maintenance of any or all of the Green Space or Play Areas to be managed by it in accordance with the provisions of this Schedule and whose objectives shall include (but not be limited to):

1. setting the level of the Service Charge for funding the running of the Management Company and collecting

such charges from residents of the Development;

2. ensuring that the level of any charges levied against any Affordable Housing Dwellings shall not materially affect the ability of these Dwellings to remain as Affordable Housing;
3. ensuring accountability to residents of the Development

“Management Company Default Sum”

means the sum calculated as follows:

- (i) the relevant Green Space Commuted Sum for the Facility being transferred to the Management Company ÷ 15

plus

- (ii) 10% of the capital cost of the Facility being transferred to the Management Company

payable towards the costs to the District Council of rectifying any maintenance defects and damage to the ~~Green Space and/or Play Areas Facilities~~ by employing a landscape contractor to carry out those rectification works

“Management Company Escrow Accounts”

means together the ManCo Default Escrow Account and the ManCo Maintenance Escrow Account

“Management Company Forward Funding Sum”

means the sum calculated as follows:

- (i) the relevant Green Space Commuted Sum for the Facility being transferred to the Management Company ÷ 15

plus

- (ii) 10% of the capital cost of the Facility being transferred to the Management Company

payable towards the costs to the Management Company of maintaining the Green Space and/or Play Areas Facilities to the appropriate standard in the event there is insufficient funding from surcharging residents on each Phase due to unoccupied residential units

"Management Company Structure Scheme"

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

1. details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;
2. proposed banking arrangements for the Management Company;
3. details of how the Management Company will be properly funded and able to undertake its management and maintenance obligations, including procedures and justification that the Management Company will follow for drawing down monies from the ManCo Maintenance Escrow Account;

4. details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any of the Facilities managed and maintained by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing;
5. details of the mechanism together with suitable documentation to ensure the transfer of ownership and responsibility for any Facilities (that are in the ownership of the Management Company) from the Management Company to the District Council on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered (either a written petition by at least 66% of households on the Development or a survey of residents carried out by the District Council that shows at least 66% of households on the Development are dissatisfied with the Management Company), settlement of outstanding management posts prior to transfer and liability for ~~Legal-legal~~ costs/expenses associated with the transfer)
6. details of the provisions that will be put in place for the Owner of the Green Space to appoint a new management company at the approval of the District Council in the event of default in

accordance with paragraph 9 of this Schedule.

7. details of how the Management Company will process and resolve complaints made by residents about the dissatisfaction of the Management Company's management and monitoring of the Green Space
8. a requirement that the Management Company shall at the end of its first financial year be obliged to employ certified auditors to assess the performance of the Management Company in terms of its financial performance and to review its annual statement of accounts and the Management Company shall submit the auditor's report to the District Council each year for a period of 15 years, ~~or until the Management Company no longer exists.~~

"Management Scheme"

means a written scheme for the detailed ongoing management and maintenance of any Facility as may be transferred to the Management Company prepared in accordance with the LBMP ~~Technical Specification~~ which shall detail the frequency and standard of maintenance of each Facility transferred to the Management Company together with measures to replace any trees shrubs or turf that may die or become diseased following transfer to the Management Company



“ManCo Default Escrow Account”

means an escrow account set up by the Owner:

- (a) to contain the Management Company Default Sums;
- (b) within which monies ~~within the escrow account~~ can be drawn against by the District Council in the circumstances set out in paragraph 9 of this Schedule; and
- (c) which shall be opened and closed in accordance with the provisions of this Schedule

“ManCo Maintenance Escrow Account”

means an escrow account set up by the Owner:

- (a) to contain the Management Company Forward Funding Sums;
- (b) within which monies ~~within the escrow account~~ can be drawn against by the Management Company towards the costs of the management and maintenance of any Facilities that are transferred to the Management Company where such costs are not otherwise met by the receipts of the Service Charge;~~(e)~~
- ~~(b)~~(c) to allow the Management Company to draw down such costs every quarter for the costs to be incurred in the following quarter: and

(c)(d) which shall be opened and closed in accordance with the provisions of this Schedule

"Mature Trees" means those mature trees identified as such in any Green Space Scheme

"Mature Trees Commuted Sum" means the sum to be calculated in accordance with the formula  $\text{nr} \times \text{£}280.04/\text{nr} \times \text{Index}$  to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the Mature Trees

"NEAP/MUGA" means a minimum 2000 square metres equipped activity zone comprising an area of play equipment and structures and a hard surfaced area of at least 465 sq. m, set within a landscaped area designed to provide a safe area for alternative play for children aged 8 to 16 years. The size of the equipped activity zone should be a minimum of 31.6m x 31.6m in respect of the NEAP element and 40m x 20m in respect of the MUGA element. The size of the landscaped area (incorporating the equipped activity zone) will be informed by the development context (acknowledging activity zone buffer requirements) and local design guidance. A minimum of 8 items of play equipment for the NEAP element is required (in combination with multi-play structures).

The equipped activity zone within the landscaped area should be located a minimum of 30 meters from the nearest dwelling boundary in respect of the NEAP and MUGA elements. The landscaped area

around the equipped activity zone could be used to incorporate this buffer.

"NEAP/MUGA Commuted Sum"

means the sum of £461,491.42 (being £388,276.31 for the NEAP element + £73,215.11 for the MUGA element) x Index to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the NEAP/MUGA

"New Woodland"

means new woodland to be provided within the Development as identified in any Green Space Scheme and as required by the relevant condition imposed on the Planning Permission

"New Woodland Commuted Sum"

means the sum to be calculated in accordance with the formula  $m^2 \times £35.02/m^2$  x Index to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the New Woodland

"New Orchard"

means the new orchard to be provided within the Development as identified in any Green Space Scheme and as required by the relevant condition imposed on the Planning Permission

"New Orchard Commuted Sum"

means the sum to be calculated in accordance with the formula  $m^2 \times £35.02/m^2$  x Index to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the New Orchard

"Phasing Plan"

~~means a plan submitted and approved by the District Council as required by the Planning Permission setting out the phases of the Development~~

"Play Areas"

means together the 3 (three) LAP/LEAP Combined and the 1 (one) NEAP/MUGA to be provided within the Development or any of them

"Play Area Commuted Sum"

means a LAP/LEAP Combined Sum or the NEAP/MUGA Commuted Sum as the context admits

"Play Area Scheme"

means a detailed scheme for the provision of Play Area(s) within a Phase in accordance with the Guide and the Design Code and which shall include: (1) confirmation of the number, type and location of the Play Area(s) (2) a timetable for carrying out the works and the planting comprised in the laying out landscaping and equipping of the Play Area(s) (3) provision to ensure that the Play Area(s) are suitable for disabled users and (4) detailed provision for the maintenance of the Play Area(s) for a period of twelve months following their completion, such maintenance to include regular inspection

"Play ~~Areas~~ Area Signage"

means the play area signage identified in any Green Space Scheme

"Play Area Signage Commuted Sum"

means the sum of £750 Index Linked per sign towards the District Council's costs of procuring two signs per Play Area to be erected at each entrance

"RoSPA"

means the Royal Society for the Prevention of Accidents

"RoSPA Inspection Report"

means 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 any LAP/LEAP Combined and NEAP/MUGA is fit for purpose in accordance with the appropriate standards set by the RoSPA.

"Service Charge"

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

"SUDS"

means any balancing ponds, attenuation basins, ditches, watercourse, 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 to be paid by the Owner to the District Council and applied by the District Council for the purposes here listed, of:

- (i) the sum to be calculated in accordance with the formula  $m^2 \times £66.05/m^2 \times \text{Index}$  towards the future management and maintenance of the

balancing pond or attenuation ponds comprised in the SUDS Scheme; and

- (ii) the sum to be calculated in accordance with the formula  $lm \times \pounds 120.32 / m$  x Index towards the future management and maintenance of the ditches, swales and similar features comprised in the SUDS Scheme; and
- (iii) the sum to be calculated in accordance with the formula  $m^2 \times \pounds 151.81 / m^2$  x Index towards the future management and maintenance of watercourses and similar features comprised in the SUDS Scheme.

"SUDS Scheme"

means the scheme to be submitted and agreed by the District Council pursuant to a condition of the Planning Permission

"Transfer"

~~to means the~~ transfer ~~of~~ the unencumbered freehold of the ~~Green Space Facilities~~ from the Owner to the District Council (or its nominee) or Management Company or from the Management Company to the District Council (or such other person or body as the District Council may reasonably direct) the terms of which shall:

- (i) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency and for 1 day a year to prevent public or private rights from coming into being by

means of prescription or other process of law; and

- (ii) 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
- (iii) include any reasonable reservation of rights of access and services over the Green Space (excluding the LAP/LEAP Combined and NEAP/MUGA) 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
- (iv) include for the benefit of the Green Space 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
- (v) be a transfer of the entire freehold interest of the Green Space with full title guarantee and vacant possession on completion;

- (vi) be free from any pre-emption or option agreement and free from any mortgage charge or lien or other encumbrance which restrict the use of the land for its intended purpose other than those which exist at the date of this Deed and/or are agreed in the Transfer;
- (vii) must contain a restrictive covenant that the land transferred shall not be used for any purpose other than for a publicly accessible recreation relaxation and play area and publicly accessible free at the point of use recreational facilities in perpetuity.

#### Management Company

1. The Owner covenants with the District Council that:
  - 1.1 Prior to Implementation of a Phase of the Development the Owner ~~will~~shall:
    - 1.1.1 elect whether to Transfer all or none (but for the avoidance of doubt not part only) of the Play Areas and Green Space for that Phase to the District Council (or its nominee) OR the Management Company; and
    - 1.1.2 provide written confirmation of such election to the District Council;
  - 1.2 in the event that the Owner elects to Transfer all the Play Areas and Green Space for a Phase to the District Council (or its nominee), and the District Council (or its nominee) declines to accept the proposed transfer within 20 (twenty) Working Days of any such notification by the Owner, the Owner shall then arrange for the Play Areas and Green Space for that Phase to be Transferred to the Management Company.
2. Where the Play Areas and Green Space for a Phase are to be Transferred to the Management Company, the Owner ~~will~~shall:



2.1 prior to the First Occupation of any Dwelling within that Phase, submit for approval to the District Council and gain written approval from the District Council ~~approval to of~~ the Management Company Structure Scheme;

2.2 upon approval of the Management Company Structure Scheme and prior to the First Occupation of any Dwelling within that Phase, the Owner ~~will~~shall establish or appoint the Management Company in accordance with the approved Management Company Structure Scheme;

2.3 Transfer the Play Areas and Green Space for that Phase to the Management Company in accordance with the terms of this Schedule;

and

2.4 ~~upon~~ completion of the first Transfer of Green Space for the Development to the Management Company pay the LBMP Monitoring Sum to the District Council.

**Commented [TL9]:** -We think this should apply only to Green Space and should only be paid once for the Development, not per Phase.

3. Prior to the first transfer of any ~~the~~ Play Areas and Green Space for a Phase to the Management Company, the Owner will submit for approval to the District Council and gain written approval from the District Council to the Management Scheme.

4. The Owner will procure that the Play Areas and Green Space for a Phase transferred to the Management Company is managed and maintained in accordance with the approved Management Scheme.

5. Prior to the first Transfer of the Play Areas and Green Space for a Phase to the Management Company, the Owner will set up the ManCo Default Escrow Account and the ManCo Maintenance Escrow Account for that Phase and provide evidence to the District Council that both accounts have been set up.

6. The ManCo Default Escrow Account and the ManCo Maintenance Escrow Account shall both be retained for a period expiring 15 (fifteen) years after the date of the final transfer of the last Play Areas and Green Space for a Phase to the Management Company.

7. The ManCo Default Escrow Account and the ManCo Maintenance Escrow Account shall both be closed 15 (fifteen) years after the date of the final transfer of the last ~~the~~ Play Areas and Green Space for a Phase to the Management Company and any monies whether capital or interest sums remaining in either account shall be released to the Management Company to be used towards the management and maintenance

of any ~~of~~ the Play Areas and Green Space for that Phase owned by the Management Company.

8. The Management Company shall be entitled to draw down money from the ManCo Maintenance Escrow Account in accordance with the financial arrangements approved as part of the Management Company Structure Scheme.
9. In the event that the Management Company fails to maintain any of the Play Areas and Green Space for a Phase that are transferred to it in accordance with the Management Scheme or the Management Company becomes insolvent or otherwise ceases to exist where a replacement Management Company is not immediately put in place, the District Council may enter on to the Site and the relevant Play Areas and Green Space for that Phase together with relevant personnel and equipment to ensure the performance of the management and maintenance obligations contained in the Management Scheme and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage or reinstate the relevant ~~the~~ Play Areas and Green Space for a Phase (that has been Transferred to the Management Company) and the District Council shall be entitled to full reimbursement by the Management Company of all costs and expenses incurred in performing the said obligations. In the event the Management Company ceases to exist or does not have adequate funds to cover these works in default, the District Council shall be entitled to recover such costs and expenses from the ManCo Default Escrow Account. The District Council shall not be entitled to take action under this paragraph nor recover reimbursement unless the District Council before taking action has given written notice to the Management Company (of not less than 10 Working Days) stating the nature of the breach, the steps required to remedy the breach, and a reasonable time period for remedying the breach and shall afford the Management Company the opportunity to remedy the breach in accordance with the steps and time period in the written notice.

#### **Approval of Facilities**

10. On completion of the provision of each Facility, the Owner shall secure the approval of the District Council in respect of the relevant Facility as follows:
  - 10.1 the Owner shall invite the District Council in writing to inspect the Facility with a view to issuing a Certificate of Practical Completion;

- 10.2 the District Council shall inspect the Facility within 15 Working Days of receipt of the invitation in paragraph ~~10.110.1~~ 10.1 and shall within 15 Working Days of such inspection either issue a Certificate of Practical Completion or issue a Defects Notice
- 10.3 if the Owner receives a Defects Notice in respect of a Facility, they shall use reasonable endeavours to complete the works specified in the Defects Notice as soon as reasonably practicable and in any event no longer than 8 weeks (unless otherwise agreed in writing by the District Council) from receipt of a Defects Notice and shall then invite the District Council to re-inspect the Facility;
- 10.4 the procedure set out in ~~paragraphs 10.1~~ paragraphs 10.1 to 10.3 shall be repeated in respect of each Facility until such time as the District Council either:
- 10.4.1 issues a Certificate of Practical Completion in relation to the Facility; or
- 10.4.2 fails to inspect the Facility within 15 Working Days of receipt of the invitation in paragraph ~~10.110.1~~ 10.1 in which case a Certificate of Practical Completion shall be deemed to have been issued in respect of the Facility 15 Working Days after the District Council's receipt of the relevant invitation; or
- 10.4.3 fails to serve within 15 Working Days of their inspection a Defects Notice in which case a Certificate of Practical Completion shall be deemed to have been issued in respect of the Facility 15 ~~Working~~ Days following the relevant inspection;
- 10.5 the Owner shall maintain each Facility in accordance with the relevant Green Space Scheme for the Maintenance Period to the reasonable satisfaction of the District Council, rectifying any defects arising and (where relevant) replacing any trees shrubs plants or grass which have died or been removed or become seriously diseased or damaged with others of a similar size and species.
11. Upon completion of the Maintenance Period specified in paragraph 10.5, the Owner shall secure the final approval of the District Council for each Facility by inviting the District Council in writing to inspect the Facility with a view to issuing a Certificate of Final Completion and the provisions of paragraphs 10.1 to 10.4 shall apply mutatis mutandis and the Owner shall continue to maintain each Facility ~~-, notwithstanding the end of the Maintenance Period,~~ in accordance with paragraph 10.5 until its transfer to the District Council or the Management Company in accordance with the provisions of this Schedule.

12. The Owner will at all times prior to the issuing or deemed issue of any Certificate of Practical Completion referred to in paragraph 10 upon reasonable notice permit the District Council's officers servants and agents to enter on to any necessary part of the Site and the Facilities or any of it and will afford them access to do so for the purpose of inspecting the laying out of the Facilities.

#### **Play Areas**

13. The Owner covenants with the District Council that they will provide 3 (three) LAP/LEAP Combined onsite and 1 (one) NEAP/MUGA as part of the Development the locations for which will be agreed via the Design Code and Phasing Plan.
14. The Owner shall not Implement or allow Implementation of any Phase of the Development containing a Play Area unless and until the Play Area Scheme for that Phase has been submitted to and approved in writing by the District Council.
15. Once each of the Play Areas have been constructed the Owner covenants with the District Council that they will not at any time use the Play Areas or cause or permit the Play Areas to be used for any purpose other than as a children's play area (and the words "any other purpose" shall include using the Play Areas or the sites thereof for the storage of materials, the parking of cars and/or any other vehicles or as a site compound or for any other purpose detrimental to the structure of the soil or existing vegetation).
16. The Owner shall not lay any services through, under or over any Play Area without the prior written consent of the District Council (such consent not to be unreasonably withheld or delayed) and shall prior to the issue of a Certificate of Practical Completion notify the District Council of any existing known services laid through, under or over that Play Area.
17. The Owner shall not grant or cause or permit to be granted any rights or easements over any of the Play Areas without the prior written consent of the District Council (such consent not to be unreasonably withheld or delayed) whether by way of conditions pursuant to the Planning Permission or Qualifying Permission or otherwise.
18. The Owner shall lay out, equip and landscape the Play Areas in accordance with any conditions of any relevant Qualifying Permission and in accordance with the relevant Play Areas Scheme.

19. The Owner shall not, without the prior written consent of the District Council, cause or permit the Occupation of more than 50% of the Dwellings on any Phase containing a Play Area until that Play Area has been completed as evidenced by the issue of a Certificate of Practical Completion in accordance with paragraph 10 above.
20. Upon completion of the laying out and landscaping of each Play Area, the Owner shall seek a Certificate of Practical Completion from the District Council in accordance with paragraph 10 above.
21. Prior to the issue of a Certificate of Practical Completion for each Play Area, the Owner ~~will shall~~ provide a RoSPA post installation report and risk assessment for that Play Area ~~to the District Council~~ which must confirm that the relevant Play Area has passed the post installation report to the District Council and thereafter the Owner ~~will shall~~ provide ~~the~~ RoSPA Inspection Report confirming that the relevant Play Area has passed the RoSPA Inspection in respect of every Play Area annually until the date of Transfer in paragraph ~~25-24~~ below and none of which RoSPA Inspection Reports shall be more than eleven months old at the date they are provided to the District Council.
22. The Owner will provide an unrestricted right of access for the general public to the Play Areas at all reasonable times following the issue of a Certificate of Practical Completion save as required to carry out works of maintenance or in the interests of health and safety.
23. On the expiry of each respective twelve month Maintenance Period referred to in paragraph 10.5 above, the Owner shall seek a Certificate of Final Completion from the District Council in accordance with paragraph 11 above.
24. Within 10 Working Days of the issue of a Certificate of Final Completion for each Play Area, the Owner will (at their absolute discretion) EITHER:
  - 24.1 offer to Transfer the unencumbered freehold of that Play Area to the District Council (or as the District Council may reasonably direct) in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) ~~to~~ and subject to no other contribution such transfer to be with full title guarantee, vacant possession on completion and free and unrestricted rights of access for the general public at all reasonable times and pay to the District Council (or as the District Council may direct) the respective Play Area Commuted Sum on completion of the transfer;

OR

- 24.2 Transfer the unencumbered freehold of that Play Area to the Management Company in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) ~~to~~ and subject to no other contribution such transfer to be with full title guarantee, vacant possession on completion and free and unrestricted rights of access for the general public at all reasonable times and pay both the Management Company Default Sum and Management Company Forward Funding Sum for the Play Area into the respective Management Company Escrow Accounts (providing documentary evidence to the District Council of such payments) on completion of the transfer. For the avoidance of doubt, the respective Play Area Commuted Sum is not payable if the Play Area is transferred to the Management Company.
25. The Owner shall not cause or permit the Occupation of more than 75% of the Dwellings ~~on~~within any Phase containing a Play Area until the completion of the relevant Transfer in paragraph 24 above for that Play Area.
26. The Owner ~~will~~shall continue to maintain all the Play Areas to their original completed standard and to the reasonable satisfaction of the District Council until the date of completion of the Transfers referred to in paragraph 24 above.
27. The Owner ~~will~~shall on completion of the Transfers referred to in paragraph 24 above hand over to the District Council or the Management Company (as appropriate) all contract documents and documents of guarantee relating to any play equipment and its installation on the Play Areas.

### **Green Space**

28. The Owner shall not Implement or allow Implementation of any Phase of the Development until the Green Space Scheme for that Phase as identified in the Design Code and Phasing Plan has been submitted to and approved in writing by the District Council.
29. The Owner shall lay out and landscape the Green Space in accordance with any conditions on the relevant Qualifying Permission, ~~and~~ and in accordance with the relevant approved Green Space Scheme.
30. The Owner shall not, without the prior written consent of the District Council, cause or permit the Occupation of more than 75% of the Dwellings on any Phase until the Green Space on that Phase has been completed as evidenced by the issue of a Certificate of Practical Completion in accordance with paragraph 10 above.

31. The Owner shall not lay any services through, under or over the Green Space without the written consent of the District Council (such consent not to be unreasonably withheld or delayed) and shall prior to the issue of a Certificate of Practical Completion notify the District Council of any existing known services laid through, under or over that Green Space.
32. Upon completion of the laying out and landscaping of any Green Space, the Owner shall seek a Certificate of Practical Completion from the District Council in accordance with paragraph 10 above.
33. The Owner shall not grant or cause or permit to be granted any rights or easements over any of the Green Space or any part of them without the prior written consent of the District Council (such consent not to be unreasonably withheld or delayed) whether by way of conditions pursuant to the Planning Permission or Qualifying Permission or otherwise.
34. On the expiry of each respective twelve month Maintenance Period referred to in paragraph 10.5 above, the Owner shall seek a Certificate of Final Completion from the District Council in accordance with paragraph 10 above.
35. Within 10 Working Days of the issue of a Certificate of Final Completion for each area of Green Space, the Owner will (at their absolute discretion) EITHER:
- 35.1 offer to Transfer the unencumbered freehold of that Green Space to the District Council (or as the District Council may direct) in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) ~~to~~ and subject to no other contribution such transfer to be with full title guarantee, vacant possession on completion and free and unrestricted rights of access for the general public at all reasonable times and pay to the District Council (or as the District Council may direct) the respective Green Space Commuted Sum on completion of the Transfer;
- OR
- 35.2 Transfer the unencumbered freehold of that Green Space to the Management Company in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) ~~to~~ and subject to no other contribution such transfer to be with full title guarantee, vacant possession on completion and free and unrestricted rights of access for the general public at all reasonable times and pay both the Management Company Default Sum and Management Company Forward Funding Sum for that Green Space into the

respective Management Company Escrow Accounts (providing documentary evidence to the District Council of such payments) on completion of the transfer. For the avoidance of doubt, the respective Green Space Commuted Sum is not payable if the Green Space are transferred to the Management Company.

36. The Owner shall not cause or permit the First Occupation of the final Dwelling ~~on to be~~ Occupied within any Phase until the completion of the Transfers in paragraph 35 above for all the Green Space on that Phase.
37. The Owner will continue to maintain any Green Space to their original completed standard and to the reasonable satisfaction of the District Council until the date of completion of the Transfers referred to in paragraph 35 above.

#### **Other covenants**

38. In providing the Green Space and Play Areas, the Owner shall permit the District Council's officers on reasonable notice to inspect such areas during construction.



## FIFTH SCHEDULE

### CULTURAL WELLBEING AND PUBLIC ART

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

- “Cultural Wellbeing Statement” means a statement of cultural wellbeing for residents of the Development which shall cover the Development and detail the Owner’s proposals for the cultural enrichment of the Development and will be in conformity with the North West Bicester Cultural Wellbeing Strategy comprising Appendix V of the North West Bicester SPD Supplementary Planning Document (2016) and include as a minimum:
- (a) the strategic approach (that will inform the content of applications for Reserved Matters) to ensure cultural distinctive elements are integrated into the form and function of the Development to achieve high quality distinctive design of buildings, townscape, landscape (but not confined to these)
  - (b) the strategic approach (that will inform the content of applications for Reserved Matters) to promote community engagement through cultural events

(c) details of the involvement of a public artist in drawing up and implementing the proposals

(d) ~~(d)~~ a programme to indicate how and when the detailed proposals will be implemented.

and including any changes to the statement as may be agreed in writing between the Owner and the District Council from time to time.

1. The Owner covenants with the District Council as follows:

1.1. no later than the date of submission of the first application for Reserved Matters

~~Approval~~ approval for any part of the Development to submit to the District Council the Cultural Wellbeing Statement;

1.2. not to Implement the Development unless and until the Cultural Wellbeing Statement has been submitted to the District Council; and

1.3. to implement the Cultural Wellbeing Statement as approved pursuant to this ~~Fifth~~ Schedule.

## SIXTH SCHEDULE

### SKILLS AND TRAINING

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

“TEMP”

means a training and employment plan which shall (as a minimum) include the arrangements by which the Owner will use reasonable endeavours to provide a minimum of 27 (twenty seven) construction (and related trades) apprenticeships starts during the construction of the Development in accordance with the following:

- the apprenticeships may be delivered through an accredited Apprenticeship Training Agency-apprenticeship training agency or other equivalent approach
- all apprenticeship opportunities arising shall be initially advertised to people within the administrative area of the District Council and if there are no suitable applicants identified as a result of such advertisements the opportunities shall be advertised to people residing in the administrative area of the County Council and then the surrounding locality (e.g. Milton Keynes, Aylesbury, Northamptonshire)
- how the Owner and its appointed contractor will work directly with local employment/training agencies including Job Centre Plus and Bicester Job Club

or any successor initiatives to identify employment opportunities related to the construction of the Development and skills and training to assist local people residing in Bicester and within 5 miles thereof to access job opportunities

- how the Owner will deliver local supply chain events to promote opportunities for companies local to Bicester and how such opportunities shall be advertised
- how the owner will promote and market home working at the Development; and
- details of the annual monitoring report to be provided by the Owner to the Council and how it will measure the outputs of the plan and demonstrate the progress towards achieving the targets set out therein.

and including any changes to the plan as may be agreed in writing by the Owner and the District Council from time to time.

1. The Owner covenants with the District Council as follows:
  - 1.1. no later than the Implementation of the Development to submit and secure the written approval of the District Council for ~~a~~the TEMP.
  - 1.2. not to Implement the Development unless and until the District Council has approved the TEMP in writing.
  - 1.3. from the date of its approval to implement and comply fully with the TEMP as approved.
  - 1.4. on each anniversary of the date of Implementation of the Development until the final Occupation of the Development to submit to the District Council a report which demonstrates the progress made towards achieving the outputs identified in the TEMP

including the provision of at least the minimum number of apprenticeships identified therein over the construction phase.

## SEVENTH SCHEDULE

### AFFORDABLE HOUSING

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

“Additional Affordable Housing Dwellings” means additional Market Dwellings required to be provided as Affordable Housing within the Development pursuant to a Mid Stage Review and/or Late Stage Review as applicable.

“Additional Affordable Housing Formulae (Late Stage)” means the following formulae to calculate the Additional Affordable Housing Dwellings requirement by number of habitable rooms:

Affordable Rented Housing requirement 'X'

$$X = ((E * F) \div (A - B)) \div D$$

Intermediate Housing requirement 'Y'

$$Y = ((E * G) \div (A - C)) \div D$$

where

A = average Gross Development Value of Market Dwellings per m2 (£)

B = average Gross Development Value of Dwellings provided as Affordable Rented Housing per m2 (£)

C = average Gross Development Value of Dwellings provided as Intermediate Housing per m2 (£)

D = average habitable room size for the Development (m2)

E = Late Stage Review Contribution

“Additional Affordable Housing Formulae (Mid Stage)”

F = percentage of Late Stage Review Contribution to be converted to Affordable Rented Housing (%)

G = percentage of Late Stage Review Contribution to be converted to Intermediate Housing (%)

means the following formulae to calculate the Additional Affordable Housing Dwellings requirement by number of habitable rooms:

Affordable Rented Housing requirement 'X'

$$X = ((E * F) \div (A - B)) \div D$$

Intermediate Housing requirement 'Y'

$$Y = ((E * G) \div (A - C)) \div D$$

where

A = average Gross Development Value of Market Dwellings per m2 (£)

B = average Gross Development Value of Dwellings provided as Affordable Rented Housing per m2 (£)

C = average Gross Development Value of Dwellings provided as Intermediate Housing per m2 (£)

D = average habitable room size for the Development (m2)

E = Surplus (Mid Stage)

F = percentage of Surplus (Mid Stage) to be converted to Affordable Rented Housing (%)

G = percentage of Surplus (Mid Stage) to be converted to Intermediate Housing (%)

“Affordable Housing”

means Dwellings 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 the National Planning Policy Framework.

"Affordable Housing Maximum"

means the maximum quantum of Affordable Housing that is required to be provided by the Development, whether by way of Affordable Housing Dwellings on the Site and/or Additional Affordable Housing Dwellings, which shall be equivalent to no more than 30% of the total number of Dwellings being provided (i.e. 30% of the anticipated 530 Dwellings).

"Affordable Housing Dwellings"

means those Dwellings in the Development that are to be provided as Affordable Housing in accordance with paragraph 1.1 of Part 1 of this Schedule (which for the avoidance of doubt does not include any Additional Affordable Housing Dwellings).

"Affordable Housing Framework Scheme"

means a scheme submitted to the District Council pursuant to paragraph 1.2 of Part 1 of this Schedule that identifies as at the date of submission of such scheme:

- (a) the total number of Dwellings that are expected to form part of the Development;
- (b) the number of Dwellings that are to be provided as Affordable Housing, having regard to paragraph 1.1 of Part 1 of this Schedule;
- (c) the number of Affordable Housing Dwellings proposed to be provided in each Phase.

and any amendment to such scheme as may be agreed by the District Council from time to time.

"Affordable Housing Phase Scheme"

means a scheme submitted to the District Council with a Reserved Matters application which shall accord with



the approved Affordable Housing Framework Scheme and which shall include in relation to a Phase:

- (a) plans and details identifying the parcels of land within the relevant Phase that are capable of being developed to provide the Affordable Housing Dwellings in accordance with this Schedule and (if any) Additional Affordable Housing Dwellings approved or determined as being required to be provided pursuant to ~~one or more Review~~the Mid Stage Review or the Late Stage Review, it being agreed that the percentage of Affordable Housing Dwellings within a Phase need not be equal to the percentage of Affordable Housing Dwellings required within the Development as a whole, being the percentage set out in paragraph 1.1 ~~in~~ Part 1 of this Schedule;
- (b) details of the precise tenure mix and type/size mix of the dwellings identified in (a) above;
- (c) details of which dwellings in that Phase identified in (a) above will meet optional requirement M4(2) (accessible and adaptable dwellings) and M4(3) (wheelchair user dwellings) in Part M of Schedule 1 to the Building Regulations 2010; and
- (d) confirmation of the arrangements for how the ~~dwellings—Affordable Housing Dwellings~~ will comply with the Owner's obligation under paragraph 1.4 of Part 1 of this Seventh Schedule.

"Affordable Housing Tenure Mix"

means the mix and proportion of tenure types in accordance with which the Affordable Housing Dwellings shall be provided, which shall be as follows:

- (a) approximately 70% (seventy per cent) (the number of Dwellings to be rounded up to the

nearest whole number of Dwellings) shall be Affordable Rented Housing; and

(b) approximately 30% (thirty per cent) shall be Intermediate Housing,

or such alternative mix and proportion of tenure as at any time may be submitted to and approved by the District Council in writing (and where such alternative mix and proportion has been submitted in writing it shall be deemed approved where there is no response from the District Council within 8 weeks (or such longer period as agreed in writing by the parties) of receipt of the scheme by the District Council).

**Commented [JC10]:** The Council considers 8 weeks is reasonable and commensurate with the period that would apply to planning conditions.

**Commented [TL11]:** This is accepted

"Affordable Rented Housing"

means rented housing provided at rents that are no more than 80% of 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 lower,

and "Affordable Rent" shall be construed accordingly.

"Allocate"

means any procedure whereby there are conferred or transferred rights of residential occupation in respect of an Affordable Housing Dwelling which could for the avoidance of doubt include the first occasion on which an Affordable Housing Dwelling is Occupied and "Allocating" "Allocated" and "Allocations" shall be construed accordingly.

"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 (as amended by the Localism Act 2011 and any amendment, re-enactment or successor provision).

“Base Build Costs”

means:

(a) £153,994,398 comprising the following assumed costs:

|   |                     |
|---|---------------------|
| <del>Construction Costs</del> <u>construction costs</u>                                 | £91,034,398         |
| <del>Infrastructure Costs</del> <u>infrastructure costs</u>                             | £19,915,000         |
| <del>Infrastructure Contingency</del> <u>infrastructure contingency</u> (10%)           | £1,991,500          |
| <del>Developer i.e. Contingency</del> <u>developer contingency</u> on construction (5%) | £4,551,720          |
| <del>Professional Fees</del> <u>professional fees</u> (8%)                              | £9,399,409          |
| <del>Disposal Fees</del> <u>disposal fees</u>   | £5,380,471          |
| <del>S.106 Costs</del> <u>section 106 costs</u>   | £19,036,573         |
| <del>Finance</del> <u>finance costs</u>   | £2,685,327          |
| <b>Total</b>  | <b>£153,994,398</b> |

**Commented [JC12]:** -Increased by £2 to reflect the table below.

**Commented [TL13]:** -Noted thank you

(b) ~~plus any of the following actual costs as paid or payable by the Owner under this Deed:~~

- ~~(i) Supplemental Payments, Primary Expansion Supplemental Payments and Primary Land Supplemental Payments as defined in the Third Schedule;~~
- ~~(ii) Green Space Commuted Sums as defined in the Fourth Schedule;~~

**Commented [JC14]:** -We consider that these costs should be included under (f) within the definition of "Build Costs"

**Commented [TL15]:** -We are happy with how you have set this out

~~(iii) Shortfall Contribution as defined in the Eighth Schedule.~~

“Build Costs”

means the actual and projected build costs of the Development comprising:

- (a) construction costs;
- (b) infrastructure costs;
- (c) contingencies;
- (d) professional fees;
- (e) disposal fees;
- (f) section 106 costs; which for the avoidance of doubt include the following actual costs as paid or payable by the Owner under this Deed:

(i) Supplemental Payments, Primary Expansion Supplemental Payments and Primary Land Supplemental Payments as defined in the Third Schedule;

(ii) Green Space Commuted Sums as defined in the Fourth Schedule;

(iii) Shortfall Contribution as defined in the Eighth Schedule;

- (g) finance costs;

supported by evidence of these costs to the Council's reasonable satisfaction including but not limited to:

~~(e)~~(a) details of payments made or agreed to be paid in the relevant building contract;

~~(d)(b)~~ ~~(b)~~ receipted invoices;

~~(e)(c)~~ costs certified by the Owner's quantity surveyor, cost consultant or agent;

but for the avoidance of doubt build costs exclude:

all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses; and

any costs arising from fraudulent transactions.

"Chargee"

any mortgagee or chargee of a Registered Provider of the Affordable Housing Dwellings or any part thereof to include any receiver (including an administrative receiver), manager or administrator (including a housing administrator appointed under the provisions of the Housing and Planning Act 2016) howsoever appointed.

"Developer Profit"

means 20% on Gross Development Value in respect of Market Dwellings and 6% on Gross Development Value in respect of Affordable Housing Dwellings and Additional Affordable Housing Dwellings.

"Gross Development Value"

means the estimated Market Value of the Development based on completed sales, detailed comparable evidence and on the assumption that the Development's value will be assessed on the basis that the Development is fully built out.

"Homes England"

means the body known as Homes England constituted pursuant to the Housing and Regeneration Act 2008 and any successor or successors for the time being and any similar future authority carrying on substantially the same grant making functions.

|                                  |   |
|----------------------------------|---|
| "Help to Buy Agent"              | means that organisation which is appointed by the RSH or Homes England to assess eligibility for and market low-cost home ownership products.   |
| "Intermediate Housing"           | means housing to be provided for sale and/or rent at a cost below open market levels, which housing shall include Shared Ownership Housing or other types of shared equity housing, other low cost homes for sale and intermediate rent and other approved affordable home ownership products, as in each case may be agreed between the District Council, the Owner and the Registered Provider where a need for such tenures has been identified. |
| "Late Stage Review"              | means a viability appraisal submitted in accordance with paragraph 2 of Part 2 of this Schedule to establish whether any surplus arises from the Development that can be applied to Additional Affordable Housing Dwellings.  |
| "Late Stage Review Date"         | means the date of the <u>submission by the Owner to the Council of the</u> Late Stage Review.   |
| "Late Stage Review Contribution" | means 60% of the Surplus (Late Stage).  |
| "Local Housing Allowance Rate"   | means the relevant rental allowance rate calculated by reference to the local housing allowance tables maintained by the Valuation Office Agency (or such equivalent means of calculation that may vary or replace it) as updated from time to time.  |
| "Market Dwellings"               | means those Dwellings which are general market housing for sale on the open market and which are not Affordable Housing.  |
| "Market Value"                   | means the definition in the RICS Valuation – Global Standards ('Red Book Global Standards') (effective from 31 January 2022) namely the estimated amount  |

Commented [TL16]: I don't think the defined term is helpful here

for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

"Mid Stage Review"

means a viability appraisal submitted in accordance with paragraph 1 of Part 2 of this Schedule to establish whether any surplus arises from the Development that can be applied to Additional Affordable Housing Dwellings.

Commented [TL17]: -As-above

"Mid Stage Review Date"

means the date of-on which the Mid Stage Review is submitted by the Owner to the Council

"National Planning Policy Framework"

means the document published by the government setting out its planning policies for England and how these are expected to be applied dated July 2021 (or as may be amended from time to time).

"Nominations Agreement"

an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to Affordable Housing Dwellings and which shall guide in conjunction with the Allocations Scheme those persons eligible to be nominated to occupy the Affordable Housing Dwellings.

"Qualifying Persons"

those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to an Affordable Housing Dwelling in accordance with the Allocations Scheme and the Nominations Agreement.

"Registered Provider"

means a private provider of Affordable Housing which is designated in the register maintained by the RSH 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 sub-sections 115(1)(a) or 278(2) of the 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 EITHER 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 has been approved in writing by the District Council.

"RSH"

means the Regulator of Social Housing, an executive non-departmental public body, that regulates registered providers of social housing and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing.

"Shared Ownership Dwellings"

means those Dwellings in the Development that are to be provided as Shared Ownership Housing.

"Shared Ownership Housing"

means housing offered via the Registered Provider under the terms of a lease which accords with the Homes England Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 25% - 75% of the equity in an Affordable Housing Dwelling from the Registered Provider who retains the remainder and may charge ~~a~~ an annual rent of up to 2.75% on the unsold equity (or such higher figure as is set out in a review of the District Council's tenancy strategy from time to time).

"Surplus"

means the Surplus (Mid Stage) or the Surplus (Late Stage) as the case may be.

"Surplus (Late Stage)"

means

$$X = (A - B) - (C - D) - P$$



where

A = Gross Development Value at the Late Stage Review Date;

B = Gross Development Value at the Mid Stage Review Date;

C = Build Costs at the Late Stage Review Date; and

D = Build Costs at the Mid Stage Review Date;

P = Developer Profit on (A – B)

X = Surplus (Late Stage).

“Surplus (Mid Stage)”

means

$X = (A - B) - (C - D) - P$

where

A = Gross Development Value at the Mid Stage Review Date;

B = £189,184,500, being the agreed base Gross Development Value;

C = Build Costs at the Mid Stage Review Date; and

D = Base Build Costs;

P = Developer Profit on (A – B)

X = Surplus (Mid Stage).

## Part 1 – Affordable Housing Provision

### Delivery

1. The Owner covenants with the District Council that it will:

- 1.1 provide no less than 10% of the Dwellings provided pursuant to the Planning Permission as Affordable Housing in accordance with the Affordable Housing Tenure Mix, unless otherwise agreed with the District Council;
- 1.2 submit and secure the written approval of the District Council for the Affordable Housing Framework Scheme prior to Implementation of the Development;
- 1.3 not Implement or cause or permit the Implementation of the Development until the District Council has approved in writing the Affordable Housing Framework Scheme;
- 1.4 provide the Affordable Housing Dwellings:
  - (a) in clusters of no more than 15 Affordable Housing Dwellings (unless otherwise agreed with the District Council), with no more than 10 units of Affordable Rented Housing in any one cluster; and
  - (b) to the same external design as the Market Dwellings;
- 1.5 provide 50% of the Affordable Rented Housing in compliance with optional requirement M4(2) (accessible and adaptable dwellings) in Part M of Schedule 1 to the Building Regulations 2010.
- 1.6 provide 1 (one) of the Affordable Housing Dwellings in compliance with optional requirement M4(3) (wheelchair user dwellings) in Part M of Schedule 1 to the Building Regulations 2010.

#### **Affordable Housing Schemes**

2. The Owner covenants with the District Council that it will:
  - 2.1 update and resubmit the Affordable Housing Framework Scheme if a Qualifying Permission results in a change to the total number of Dwellings that are expected to form part of the Development pursuant to the Planning Permission;
  - 2.2 not Implement or cause or permit the Implementation of a Phase that includes Affordable Dwellings until an Affordable Housing Phase Scheme for that Phase has been submitted to and approved by the District Council in writing;
  - 2.3 not Occupy or cause or permit the Occupation of more than 30% of the Market Dwellings in a Phase containing Affordable Housing (or such other percentage as

approved by the District Council in writing) until a Registered Provider has exchanged a binding contract for the purchase of the Affordable Housing Dwellings in that Phase, such purchase to include:

- (a) all rights for infrastructure and other rights reasonably necessary for the beneficial enjoyment of the said Affordable Housing Dwellings;
- (b) good and marketable freehold or long leasehold title free from incumbrances; and
- (c) vacant possession of the said Affordable Housing Dwellings.

- 2.4 not Occupy or cause or permit the Occupation of more than 75% of the Market Dwellings in a Phase containing Affordable Housing unless and until the Owner has constructed the Affordable Housing Dwellings in that Phase and made the same ready for Occupation in accordance with the approved Affordable Housing Phase Scheme.

#### **Affordable Housing Covenants**

3. The Owner covenants with the District Council that it will:
- 3.1 not use or cause or permit the use of the Affordable Housing Dwellings other than as Affordable Housing; and
  - 3.2 subject to paragraphs 4, 5 and 6 below, will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Dwellings except to a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold or long leasehold interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings or any transaction referred to in paragraph 6 below.
4. For the avoidance of doubt paragraph 3 of this Part 1 is not binding on a Chargee or a bona fide purchaser for value from the Chargee exercising its power of sale (other than a purchaser which is a Registered Provider) or the successors in title to such purchasers or persons deriving title from them, provided that the provisions of paragraph ~~8-5~~ below have been complied with.
5. It is hereby agreed and declared that the proviso contained in paragraph 4 will only apply where the Chargee exercising its power of sale:

- 5.1 has first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, its mortgage, charge or other security; and
- 5.2 has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 5.1 above to dispose of the relevant Affordable Housing Dwellings (subject to any leases and tenancies then subsisting and to the terms of this Agreement) to a Registered Provider or the District Council PROVIDED THAT nothing herein shall require the Chargee to dispose of the Affordable Housing Dwellings at a price which is less than the greater of the open market value of the Affordable Housing Dwellings (subject to the restrictions contained within this Schedule) or all sums due under the terms of the Chargee's mortgage or charge together with costs and interest AND FURTHER PROVIDED THAT if no transfer of the said Affordable Housing Dwellings to either the District Council or a Registered Provider has completed within the said period of 3 months then the Chargee shall be able to sell the Affordable Housing Dwellings free from the requirements and restrictions in paragraph 3 above with the effect that they shall cease to bind the Affordable Housing Dwellings.
6. The provisions of paragraph 3 will not be binding on:
- 6.1 any purchaser of an Affordable Housing Dwelling that has purchased such dwelling pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or (in any such case) any successor in title or mortgagee or chargee of such purchaser or successor in title thereto; and
- 6.2 any persons that have acquired 100% of the equity in a Shared Ownership Dwelling or any mortgagee or chargee of the same or their successors in title.
7. The Owner will not Allocate or cause or permit to be Allocated any of the Affordable Housing Dwellings other than in accordance with the following:
- 7.1 the Affordable Housing Dwellings shall only be Allocated to Qualifying Persons in accordance with the Allocations Scheme and in accordance with the terms of a Nominations Agreement;
- 7.2 the Shared Ownership Housing or other Intermediate Housing (with the exception of any starter homes as defined in the National Planning Policy Framework) shall be marketed 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 (or if applicable such other appointed body) shall be considered for the Intermediate Housing; or

7.3 as agreed in writing by the District Council.

## Part 2 – Affordable Housing Review

### Mid Stage Review

1. The Owner and the District Council covenant with each other as follows:
  - 1.1 Up to 6 months in advance of, and no later than, the date of Practical Completion of 40% of the Dwellings permitted by the Planning Permission the Owner shall submit to the District Council for approval the Mid Stage Review.
  - 1.2 The Mid Stage Review shall identify:
    - (a) whether a Surplus arises; and
    - (b) if a Surplus does arise, the number and tenure of any Additional Affordable Housing Dwellings that can be provided by using the Additional Affordable Housing Formulae (Mid Stage) (having regard always to the Affordable Housing Maximum), and the timing for delivery of those Additional Affordable Housing Dwellings.

1.3 The Owner shall notify the District Council 30 Working Days before the date of submission of the Mid Stage Review.

4.31.4 The Provided notification was given by the Owner in accordance with paragraph 1.3. the District Council shall within 20-25 Working Days (or such longer period as the parties may agree in writing each acting reasonably) of receipt of the Mid Stage Review or of such further information as it has requested in accordance with paragraph 1.3(c); either:

(a) notify the Owner that no further information is required to enable the District Council to review the Mid Stage Review; or

(a) confirm in writing that the Mid Stage Review is approved;

**Commented [TL18]:** This addition is accepted but the initial period must be 20 Working Days.

**Commented [JC19]:** Not agreed – as discussed on today's Teams call. The Council will need sufficient time to instruct a consultant and for the consultant to complete their review.

**Commented [TL20]:** Not agreed. 2.5 months is not practicable and cannot be accepted by the Appellant. It would mean that it would be possible for determination of a review to take close to a year, which would not allow sufficient time for any Additional Affordable Housing to be planned and delivered in the remaining part of the Development. 20 Working Days is an appropriate period.

**Commented [TL21]:** Note to Inspector: this point remains in dispute between the Appellant and the District Council.

~~(b) confirm in writing that the Mid Stage Review is not approved, providing detailed reasons as to why it is not approved; or~~

~~(c)~~(b) if further information is reasonably required to enable the District Council to review the Mid Stage Review, request such information from the Owner.

4.41.5 If further information is requested by the District Council in accordance with paragraph 1.3~~(c)~~1.4(b) then the Owner shall provide that information to the Council's satisfaction within 20 Working Days ~~unless the information cannot be reasonably provided within 20 Working Days in which case it shall be provided within a reasonable time period (or such longer period as the parties may agree in writing each acting reasonably).~~

1.6 Within 20 Working Days of either:

(a) notification by the District Council in accordance with paragraph 1.4(a) that no further information is required; or

(b) provision by the Owner of further information in accordance with paragraph 1.5.

the District Council shall either confirm in writing that the Mid Stage Review is approved; or confirm in writing that the Mid Stage Review is not approved, providing detailed reasons as to why it is not approved.

4.51.7 If there is any dispute between the District Council and the Owner concerning the Mid Stage Review then both parties shall use reasonable endeavours to resolve that dispute within 20 Working Days (or such longer period as the parties may agree in writing each acting reasonably), after which time the dispute may be referred by either party to an expert for determination in accordance with the dispute resolution procedure in Clause 15 of this Deed.

Commented [TL22]: -As above

4.61.8 If the approved or determined Mid Stage Review requires Additional Affordable Housing Dwellings to be provided within the Development then, no later than 20 Working Days after the date on which the Mid Stage Review is agreed or determined, the Owner shall update and resubmit to the District Council:

- (a) the most recently approved Affordable Housing Framework Scheme; and
- (b) any relevant approved Affordable Housing Phase Scheme.

~~4.71.9~~ Within 5 Working Days of receipt of a written request thereof the Owner shall pay to the District Council the District Council's reasonable and proper costs incurred in reviewing and approving the Mid Stage Review.

### **Late Stage Review**

2. The Owner and the District Council covenant with each other as follows:

2.1 Up to 6 months in advance of, and no later than, the date of Practical Completion of 70% of the Dwellings permitted by the Planning Permission the Owner shall submit to the District Council for approval the Late Stage Review.

2.2 The Late Stage Review shall identify:

- (a) whether a Surplus arises; and
- (b) if a Surplus does arise, the number and tenure of any Additional Affordable Housing Dwellings that can be provided by using the Additional Affordable Housing Formulae (Late Stage) (having regard always to the Affordable Housing Maximum), and the timing for delivery of those Additional Affordable Housing Dwellings.

2.3 The Owner shall notify the District Council 30 Working Days before the date of submission of the Late Stage Review.

2.32.4 ~~The~~ Provided notification was given by the Owner in accordance with paragraph 2.3, the District Council shall within ~~20-25~~ Working Days (or such longer period as the parties may agree in writing each acting reasonably) of receipt of the Late Stage Review ~~or such further information as it has requested in accordance with paragraph 2.3(c); either:~~

- (a) notify the Owner that no further information is required to enable the District Council to review the Late Stage Review; or
- (a) confirm in writing that the Late Stage Review is approved;
- (b) confirm in writing that the Late Stage Review is not approved, providing detailed reasons as to why it is not approved; or

Commented [TL23]: -As above

~~(c)~~(b) if further information is reasonably required to enable the District Council to review the Late Stage Review, request such information from the Owner.

2.42.5 If further information is requested by the District Council in accordance with paragraph ~~2.3~~(c)2.4(b) then the Owner shall provide that information to the Council's satisfaction within a reasonable time period: 20 Working Days (or such longer period as the parties may agree in writing each acting reasonably).

2.6 Within 20 Working Days of either:

(a) notification by the District Council in accordance with paragraph 2.4(a) that no further information is required; or

(b) provision by the Owner of further information in accordance with paragraph 2.5,

the District Council shall either confirm in writing that the Late Stage Review is approved; or confirm in writing that the Late Stage Review is not approved, providing detailed reasons as to why it is not approved.

2.52.7 If there is any dispute between the District Council and the Owner concerning the Late Stage Review then both parties shall use reasonable endeavours to resolve that dispute within 20 Working Days (or such longer period as the parties may agree in writing each acting reasonably), after which time the dispute may be referred by either party to an expert for determination in accordance with the dispute resolution procedure in Clause 15 of this Deed.

Commented [TL24]: -As above

2.62.8 If the approved or determined Late Stage Review requires Additional Affordable Housing Dwellings to be provided within the Development then, no later than 20 Working Days after the date on which the Late Stage Review is agreed or determined, the Owner shall update and resubmit to the District Council:

- (a) the most recently approved Affordable Housing Framework Scheme; and
- (b) any relevant approved Affordable Housing Phase Scheme.

2.72.9 Within 5 Working Days of receipt of a written request thereof the Owner shall pay to the District Council the District Council's reasonable and proper costs incurred in reviewing and approving the Late Stage Review.



### **Delivery of Additional Affordable Housing Dwellings**

3. The Owner will provide all Additional Affordable Housing Dwellings in accordance with the timing for delivering those Additional Affordable Housing Dwellings as identified in the relevant Mid Stage Review or Late Stage Review.
4. The Owner and the District Council agree that paragraphs 3, 4, 5, 6 and 7 of Part 1 of this ~~Seventh~~ Schedule shall apply mutatis mutandis to all Additional Affordable Housing Dwellings.

### **Affordable Housing Maximum Provision**

5. The maximum amount of Surplus which the Developer may be required to apply towards provision of Additional Affordable Housing Dwellings under this Schedule shall not, when combined with the Affordable Housing Dwellings required to be provided pursuant to Paragraph 1.1 of Part 1 of this Schedule or provided at the election of the Owner, exceed the Affordable Housing Maximum.

## EIGHTH SCHEDULE

### ZERO CARBON

**Commented [TL25]:** -Note to Inspector: the District Council's amendments to this schedule are subject to review by the Appellant

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

|  |   |
|--|---|
| <b>"Index Linked (BCIS)"</b>           | means adjusted according to any increase occurring between Q1 2020 and the date of payment of the relevant contribution to the District Council in the BCIS (all items) Index made available through the Royal Institution of Chartered Surveyors;  |
| <b>"Off-Site Zero Carbon Measures"</b> | means any measures to be implemented off-Site in accordance with the relevant approved Zero Carbon Strategy <u>or Revised Zero Carbon Strategy (as the case may be)</u>   |
| <b>"Performance Review"</b>            | means an updated accredited energy demand assessment calculated using Standard Assessment Procedure for residential buildings version 10.2 June 2023 or any subsequent version (SAP)-, with full SAP worksheets, showing the elemental and building system performance as against the performance anticipated in the relevant Zero Carbon Strategy – which is supported by details submitted to Building Control and (where applicable) the corresponding EPC certificate such details to be extracted into a short report setting out the carbon balance (which shall use the same approach as used in the approved Zero Carbon Strategy such information to be provided at the Owner's expense. |
| <b>"Revised Zero Carbon Strategy"</b>  | means <u>a revised additional or alternative measures to be added to the existing</u> Zero Carbon Strategy for a Phase of the Development to <u>address a Shortfall and which shall</u> be submitted to and approved by the District Council in accordance with paragraph <u>1.3 1.4</u> of this Schedule   |

**"Shortfall"** means a shortfall in the amount of carbon dioxide emissions (as expressed in tonnes per year) as against the estimate set out in the Zero Carbon Strategy for that Phase

**"Shortfall Contribution"**

means the sum due to the District Council in the event of a shortfall arising between the modelled performance of the carbon dioxide emissions of a building and the actual carbon dioxide emissions of a building required to minimise that shortfall payable to be calculated as follows:

$(A - B) \times £69 \text{ (Index Linked BCIS)} \times 30$  where:

A = annual carbon dioxide tonnage as set out in the relevant Performance Review

B = annual carbon tonnage of the Development submitted as part of the relevant Zero Carbon Strategy

and to be paid to the District Council to be ring-fenced to secure the delivery of off-site or on-site allowable solutions for carbon dioxide savings

**"Zero Carbon Strategy"**

means in relation to each Phase of the Development:

- (a) a strategy submitted alongside each Reserved Matters application and approved by the District Council pursuant to a condition of the Planning Permission demonstrating how true zero carbon as defined in Policy Bicester 1 of the Cherwell Local Plan and the North West Bicester Supplementary Planning Document (2016) will be achieved within that Phase; and
- (b) (if applicable) any carbon offsetting scheme for Off-Site Zero Carbon Measures approved by the District Council pursuant to a condition of the Planning Permission; and

(c) the additional measures that may be incorporated into the Phase or a subsequent Phase where the Performance Review demonstrates that measures set out in (a) and (if applicable) (b) above fail to achieve true zero carbon in accordance with the said policies and result in a Shortfall

Or:

~~(c)~~(d) (if applicable) a Revised Zero Carbon Strategy

1. The Owner covenants with the District Council as follows:
  - 1.1 Within 10 (ten) Working Days of:
    - 1.1.1 Practical Completion of each Dwelling; and
    - 1.1.2 (if applicable) the date that any Off-Site Zero Carbon Measures are completedto carry out a Performance Review;
  - 1.2 Within 15 (fifteen) Working Days of Practical Completion of the final Dwelling constructed in a Phase to submit to the District Council for its written approval all of the Performance Reviews for that Phase including (if applicable) a Performance Review of any Off-Site Zero Carbon Measures associated with that Phase carried out in accordance with paragraph 1.1 of this Schedule
  - ~~1.3 If the Performance Reviews approved by the Council for a Phase of the Development in accordance with paragraph 1.2 of this Schedule demonstrate a difference in the amount of carbon dioxide emissions (as expressed in tonnes per year) in that Phase as against the estimate set out in the relevant Zero Carbon Strategy (the "Relevant Shortfall") then within 40 Working Days from the date the of the Council's approval the Owner shall:~~
  - 1.3 For each Phase of the Development, following submission of the Performance Reviews by the Owner in accordance with paragraph 1.2 of this Schedule the District Council shall within 40 Working Days confirm to the Owner if the Performance Reviews:
    - 1.3.1 are approved because there is no Shortfall; or
    - 1.3.2 are approved because although the Performance Reviews demonstrate a Shortfall that Shortfall can be addressed by the relevant Zero Carbon Strategy; or
    - 1.3.3 are refused because the Performance Reviews demonstrate a Shortfall which cannot be addressed by the relevant Zero Carbon Strategy.

1.4 In the event that the District Council refuses the Performance Reviews in accordance with paragraph 1.3.3 above the Owner and District Council shall comply with the following obligations:

1.3.1 1.4.1 in relation to a Phase ~~of the Development~~ other than the final Phase:

- (a) ~~prepare~~ The Owner shall within 40 Working Days from the date of the Council's refusal submit a Revised Zero Carbon Strategy for that Phase or a any subsequent Phase to demonstrate how the Relevant Shortfall will be made up;
- ~~(b) and unless otherwise agreed in writing by the District Council no Dwellings in any subsequent Phase shall be Occupied unless or until a revised Zero Carbon Strategy for that Phase has been submitted to and approved by the District Council in accordance with this paragraph~~
- (b) On receipt of the Revised Zero Carbon Strategy the District Council shall within 40 Working Days confirm to the Owner if the Revised Zero Carbon Strategy is either:
  - (i) approved; or
  - (ii) refused, giving detailed reasons for such refusal;
- (c) In the event that the Revised Zero Carbon Strategy is refused in accordance with 1.4.1(b)(ii) the Owner and District Council will repeat the submission and review obligations at 1.4.1(a) and 1.4.1(b);
- (d) In the event that the District Council refuses the Revised Zero Carbon Strategy submitted by the Owner under this paragraph 1.4.1 on two separate occasions the Owner and District Council agree for the matter to be immediately referred to an expert for determination in accordance with Clause 15;
- (e) The District Council and Owner further agree that if the Owner fails to comply with its obligation under paragraph 1.4.1(a) no further Dwellings in the immediately subsequent Phase shall be Occupied unless the relevant Revised Zero Carbon Strategy has been approved pursuant to paragraph 1.4.1(b)(i) or determined pursuant to paragraph 1.4.1(d)

1.3.21.4.2 in relation to the final Phase ~~of the Development~~:

- (a) ~~prepare-~~The Owner shall within 40 Working Days from the date of the Council's refusal submit a Revised Zero Carbon Strategy for ~~that the~~ final Phase; ~~or-and~~
- (b) On receipt of the Revised Zero Carbon Strategy the District Council shall within 40 Working Days confirm to the Owner if the Revised Zero Carbon Strategy is either:
  - (i) approved; or
  - (ii) refused, giving detailed reasons for such refusal;
- (c) In the event that the Revised Zero Carbon Strategy is refused in accordance with 1.4.2(b)(ii) the Owner and District Council will repeat the submission and review obligations at 1.4.2(a) and 1.4.2(b);
- ~~(b)-and only if the Council are-~~In the event that the District Council refuses the Revised Zero Carbon Strategy submitted by the Owner under this paragraph 1.4.2 on two separate occasions then subject to the District Council's prior written confirmation that it is satisfied that zero carbon cannot be achieved on-site or appropriate alternative off-setting measures cannot be achieved:-Site or through Off-Site Zero Carbon Measures to
- ~~(e)-(d)~~ pay the Shortfall Contribution to the District Council

## NINTH SCHEDULE

### CONSTRUCTION STANDARDS

#### MONITORING

~~4. The following definitions relate to monitoring and shall have the following meanings throughout this Agreement:-~~

~~1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt) any defined term which does not appear below shall be given the meaning allocated to it in the main body of this Deed):-~~

"Construction Stage Monitoring Schedule" means the Schedule marked Construction Stage Monitoring ~~set out in the Eco Towns Standards Monitoring Scheme~~ so far as is relevant to the Development attached to this Agreement at Appendix 2.

"Monitoring Details" means a scheme to be submitted by the Owner to the Council demonstrate how the matters set out in the Construction Stage Monitoring Schedule and Post Occupancy Monitoring Schedule will be monitored in practice.

Post Occupancy Monitoring Schedule" means the Schedule marked "Post Occupancy Monitoring" ~~set out in the Eco Towns Standards Monitoring Scheme~~ so far as is relevant to the Development attached to this Agreement at Appendix 3.

#### 2. MONITORING

The Owner covenants with the District Council as follows:-

- 2.1 subject to paragraphs 2.4 and 2.5 of this Ninth Schedule to comply fully with the measures in the Post Occupancy Monitoring Schedule and Construction Stage Monitoring Schedule;
- 2.2 to commence the measures set out in the Construction Stage Monitoring Schedule on Implementation of the Development;

- 2.3 to commence the measures set out in the Post Occupancy Monitoring Schedule prior to the First Occupation of the second ~~unit forming part of Dwelling to be Occupied~~ within the Development;
- 2.4 prior to Implementation of the Development to submit to and secure the written approval of the District Council for the Monitoring Details;
- 2.5 not to cause or permit the Implementation of the Development unless and until the Monitoring Details have been approved in writing by the District Council;
- 2.6 to submit to the District Council reports on a six monthly basis until the completion of the Development in respect of the compliance with the Construction Stage Monitoring Schedule in accordance with the requirements of that Schedule; and
- 2.7 to submit to the District Council reports on an annual basis for 10 years commencing on the First Occupation of the second ~~unit forming part of Dwelling to be Occupied~~ within the Development in respect of the compliance with the Post Occupancy Monitoring Schedule in accordance with the requirements of that Schedule.



## TENTH SCHEDULE

### HIGHWAY WORKS AND CONNECTIVITY

#### PART 1

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

|                                       |  |
|---------------------------------------|--|
| <u>"the 1980 Act"</u>                 | means the Highways Act 1980 (as amended)   |
| <u>"Adjacent Land"</u>                | means any area of land not falling within the Site but which abuts the Site  |
| <u>"Construction Traffic"</u>         | means all vehicular traffic entering or leaving the site for the purposes of construction of the Development other than private cars   |
| <u>"Eastern Parcel"</u>               | means the area shown hatched maroon on the Parcels Plan  |
| <u>"Elmsbrook Spine Road"</u>         | Means the spine road through the adjacent development from the B4100 and marked Charlotte Avenue and Braeburn Avenue on the Site Access Plan   |
| <u>"Highways Agreement"</u>           | means a Section 278 Agreement or a Section 38 Agreement as the case may be   |
| <u>"Northern Construction Access"</u> | means an access to the Site to be used by Construction Traffic in the location marked "CONSTRUCTION ACCESS - WESTERN PARCEL" on the Site Access Plan   |
| <u>"Parcels Plan"</u>                 | means the drawing marked "Parcels Plan" attached to this deed at Appendix 4  |
| <u>"Pedestrian/Cycle Connection"</u>  | means pedestrian/cycle routes within the Site built to adoptable standards from the internal estate roads to the boundary of the Site such that a route terminates at or near each of the Pedestrian/Cycle Connection Points |

"Pedestrian/Cycle Connection Point" means each of the points marked A, B, C, D, E, F and G shown on the Pedestrian/Cycle Access Plan

"Pedestrian/Cycle Access Plan" means the plan marked Pedestrian/Cycle Access Plan attached to this Deed as Appendix 5

"Section 278 Agreement" means an agreement under Section 278 (and if appropriate section 38) of the 1980 Act substantially in accordance with the form annexed to this Deed at Appendix 8 (subject to any amendments that the circumstances may reasonably and properly require) which provides for the execution of the Works by the Owner at the Owner's expense.

"Section 38 Agreement" means an agreement substantially in accordance with the form annexed to this Deed at Appendix 9 (subject to any amendments that the circumstances may reasonably and properly require) further to Section 38 Highways Act 1980 for the construction and adoption of new roads with the grant of easements reasonably required for the operation and/or maintenance of the new roads

"Site Access Point" means any or all four proposed vehicular access points to the Site respectively marked A, B C and D on the Site Access Plan

"Site Access Plan" means drawing reference number 4600-1100-T-078 Rev A annexed to this Deed at Appendix 6

"Southern Construction Access" means an access to the Site to be used by Construction Traffic in the location marked "SITE ACCESS E CONSTRUCTION ACCESS" on the Site Access Plan

"Western Parcel" means the area shown hatched green on the Parcels Plan

"Works Package" means a works package as set out in column A of the table at paragraph 2.5 of this Schedule and where followed by a letter means the works package followed by that letter in the table;

Works Plan means the drawings referred to in the third column of the table at Part 2 of this Schedule as attached to this Deed as Appendix 7

Works means the principal works together with associated preparatory and ancillary works and the amenity and accommodation works described in Part 2 of this Schedule

~~Works Package means a works package as set out in column A of the table at paragraph 3.5 of this Schedule and where followed by a letter means the works package followed by that letter in the table~~

## 1. Site Access Obligations

- 1.1. The Owner covenants with and undertakes to the County Council not to cause or permit any Construction Traffic to take access to or effect egress from the Western Parcel other than by the Northern Construction Access
- 1.2. The Owner covenants with and undertakes to the County Council not to cause or permit any Construction Traffic to take access to or effect egress from the Eastern Parcel other than by the Southern Construction Access

## 2. On-Site Works Obligations

- 2.1. The Owner covenants with and undertakes to the County Council:
  - 2.1.1. not to allow the construction and Occupation of more than 69 Dwellings in that part of the Development to which vehicular access is provided via Works Package B.
  - 2.1.2. not to allow the construction and Occupation of more than 138 Dwellings in that part of the Development to which vehicular access is provided via Works Package A.
  - 2.1.3. subject always to paragraph 2.1.5 below not to allow the construction and Occupation of more than 180 Dwellings in that part of the Development to which vehicular access is provided exclusively via Works Package C.
  - 2.1.4. subject always to paragraph 2.1.5 below not to allow the construction and Occupation of more than 180 Dwellings in that part of the Development to which vehicular access is provided exclusively via Works Package D.
  - 2.1.5. for the avoidance of doubt it is agreed between the parties that where there is provided a vehicular link through the Development between Works Package C and Works Package D other than the existing link provided by the Elmsbrook Spine Road then subject

always to any Qualifying Permission the restrictions on the number of Dwellings that may be constructed and Occupied in that part of the Development to which vehicular access is provided via Works Package C and Works Package D in paragraphs 2.1.3 and 2.1.4 are of no effect

- 2.2. It is acknowledged and agreed between the parties that whether or not Elmsbrook Spine Road has been adopted as highway maintainable at the public expense at the date work needs to commence on the access roads for the Development will affect the Highways Agreements that the Owner and the County Council need to enter into in respect of the access roads for the Site
- 2.3. If the Elmsbrook Spine Road has been adopted by the event specified in Column B [of the table at paragraph 2.5 below](#) in respect of the relevant Works Package, the Owner covenants with and undertakes to the County Council:
- 2.3.1. to comply with the following in respect of each Works Package set out in column A of the table at paragraph 2.5 below prior to the event specified in column B in the table below and not cause or permit the event specified in column B to occur unless the following have been complied with
- 2.3.1.1. there has been submitted to the County Council and approved by it in writing in principle drawings for the relevant Works Package together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;
- 2.3.1.2. there has been submitted to the County Council and approved by it in writing plans detailing the land (if any) to be dedicated following completion of the relevant Works Package and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated;
- 2.3.1.3. the anticipated duration of construction of the relevant Works Package has been agreed with the County Council together with the longstop date for completion of the Works Package and (if relevant) commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works Package has been agreed; and
- 2.3.1.4. a Section 278 Agreement incorporating in principle drawings and plans and other matters approved and

agreed pursuant to paragraphs 2.3.1.1 to **Error! Reference source not found.**above has been entered into by the Owner in respect of the relevant Works Package together with all parties with an interest in any land to be dedicated further to the Section 278 Agreement and it is acknowledged by the parties that separate Section 278 Agreements could be entered into in respect of the relevant Works Packages and similarly that a combined Section 278 Agreement may be entered into in respect of multiple Works Packages

- 2.3.2. to carry out and complete the relevant Works Package as set out in column A of the table at paragraph 2.5 below prior to the event specified in Column C in respect of that Works Package and not to cause or permit the event specified in Column C to take place unless and until the relevant Works Package has been carried out and completed in accordance with the relevant Section 278 Agreement
- 2.4. If the Elmsbrook Spine Road has not been adopted by the event specified in Column B in respect of the relevant Works Package, then the Owners covenant with and undertake to the County Council:
  - 2.4.1. to comply with the following in respect of each Works Package set out in column A of the table at paragraph 2.5 below prior to the event specified in column B in the table below and not cause or permit the event specified in column B to occur unless the following have been complied with
    - 2.4.1.1. there has been submitted to and approved by the County Council drawings and technical information for that Works Package in accordance with the County Council's section 38 application form (as adjusted from time to time);
    - 2.4.1.2. there has (if relevant) been agreed commuted maintenance in respect of that Works Package;
    - 2.4.1.3. the Section 38 Agreement for the construction and adoption of that Works Package has been entered into by the Owner together with all parties with an interest in any land to be dedicated further to the Section 38 Agreement such agreement to incorporate approved drawings and provisions (if relevant) for payment of the agreed commuted maintenance and it is acknowledged by the parties that separate Section 38 Agreements could be

entered into in respect of the relevant Works Packages and similarly that a combined Section 38 Agreement may be entered into in respect of multiple Works Packages

- 2.4.2. to carry out and complete the relevant Works Package as set out in column A of the table at paragraph 2.5 below prior to the event specified in Column C in respect of that Works Package and not to cause or permit the event specified in Column C to take place unless and until the relevant Works Package has been completed to adoption standards in accordance with the provisions of the relevant Section 38 Agreement and opened to vehicular and pedestrian traffic including buses where relevant

2.5. Table

| Column A        | Column B<br>(enter agreement)             | Column C<br>(works to be done)   |
|-----------------|---|--|
| Works Package A | Prior to Implementation on Eastern Parcel | First Occupation of any Dwelling which is shown in a Qualifying <u>Decision Permission</u> as being accessed via Works Package A |
| Works Package B | Prior to Implementation on Western Parcel | First Occupation of any Dwelling which is shown in a Qualifying <u>Decision Permission</u> as being accessed via Works Package B |
| Works Package C | Prior to Implementation on Western Parcel | First Occupation of any Dwelling which is shown in a Qualifying <u>Decision Permission</u> as being accessed via Works Package C |
| Works Package D | Prior to Implementation on Western Parcel | First Occupation of any Dwelling which is shown in a Qualifying <u>Decision Permission</u> as being accessed via Works Package D |

### 3. Connectivity

The Owner covenants with and undertakes to the County Council

- 3.1. not to cause or permit the First Occupation of any Dwellings within 50 metres of a Pedestrian/Cycle Connection Point prior to the construction and opening to the public of a Pedestrian/Cycle Connection to that Pedestrian/Cycle Connection Point and to use reasonable endeavours to ensure that the Pedestrian/Cycle Connection Point is aligned with any pedestrian /cycle route constructed or to be constructed on the Adjacent Land so as to create a pedestrian and cycling route between the Site and the Adjacent Land

### 4. Off Site Works Obligations

- 4.1. The Owner covenants with and undertakes to the County Council not to cause or permit the Implementation of the Development on the Eastern Parcel until:
  - 4.1.1. there has been submitted to the County Council and approved by it in writing in principle drawings for ~~the~~ Works Package E1 together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;
  - 4.1.2. there has been submitted to the County Council and approved by it in writing plans detailing the land (if any) to be dedicated following completion of ~~the~~ Works Package E1 and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated;
  - 4.1.3. the anticipated duration of construction of Works Package E1 has been agreed with the County Council together with the longstop date for completion of ~~the~~ Works Package E1 and commuted maintenance sum in respect of the cost of future maintenance (if relevant), and as applicable replacement of ~~the~~ Works Package E1, has been agreed; and,
  - 4.1.4. a Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 4.1.1 to 4.1.3 ~~above~~ has been entered into by the Owner in respect of ~~the~~ Works Package E1 together with all parties with an interest in any land to be dedicated further to the Highways Agreement, and

- 4.1.5. ~~the~~ Works Package E1 has been completed pursuant to and in accordance with the Highways Agreement
- 4.2. The Owner covenants with and undertakes to the County Council ~~that~~ within 5 years of the Implementation of the Development on the Eastern Parcel to:
- 4.2.1. submit to the County Council for approval in writing in principle drawings for ~~the~~ Works Package E2 together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;
- 4.2.2. submit to the County Council for approval by it in writing plans detailing the land (if any) to be dedicated following completion of ~~the~~ Works Package E2 and deduce to the satisfaction of the County Council title in respect of any such land to be dedicated;
- 4.2.3. agree the anticipated duration of construction of Works Package E2 with the County Council together with the longstop date for completion of ~~the~~ Works Package E2 and commuted maintenance sum in respect of the cost of future maintenance (if relevant), and as applicable replacement of the Works Package E2; and,
- 4.2.4. enter a Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 4.2.1 to 4.2.3 ~~above~~ in respect of ~~the~~ Works Package E2 together with all parties with an interest in any land to be dedicated further to the Highways Agreement, and
- 4.2.5. complete Works Package E2 pursuant to and in accordance with the Highways Agreement
- 4.2.6. not cause or permit any further Development to take place after the date which is 5 years from the date of Implementation of the Development on the Eastern Parcel unless and until Works Package E2 has been completed
- 4.3. The Owner covenants with and undertakes to the County Council not to cause or permit the Implementation of the Development on the Western Parcel until:
- 4.3.1. there has been submitted to the County Council and approved by it in writing in principle drawings for ~~the~~ Works Package F1 together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;
- 4.3.2. there has been submitted to the County Council and approved by it in writing plans detailing the land (if any) to be dedicated following completion of ~~the~~ Works Package F1 and there has been deduced



to the satisfaction of the County Council title in respect of any such land to be dedicated;

- 4.3.3. the anticipated duration of construction of Works Package F1 has been agreed with the County Council together with the longstop date for completion of ~~the~~ Works Package F1 and commuted maintenance sum in respect of the cost of future maintenance (if relevant), and as applicable replacement of ~~the~~ Works Package F1, has been agreed; and,
  - 4.3.4. a Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 4.3.1 to 4.3.3 above has been entered into by the Owner in respect of ~~the~~ Works Package F1, and
  - 4.3.5. Works Package F1 has been completed pursuant to and in accordance with the Highways Agreement
- 4.4. The Owner covenants with and undertakes to the County Council ~~that~~ within 5 years of the Implementation of the Development on the Western Parcel to:
- 4.4.1. submit to the County Council for approval in writing in principle drawings for ~~the~~ Works Package F2 together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;
  - 4.4.2. submit to the County Council for approval by it in writing plans detailing the land (if any) to be dedicated following completion of ~~the~~ Works Package F2 and deduce to the satisfaction of the County Council title in respect of any such land to be dedicated;
  - 4.4.3. agree the anticipated duration of construction of Works Package F2 with the County Council together with the longstop date for completion of ~~the~~ Works Package F2 and commuted maintenance sum in respect of the cost of future maintenance (if relevant), and as applicable replacement of ~~the~~ Works Package F2; and,
  - 4.4.4. enter a Section 278 Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 4.4.1 to 4.4.3 above in respect of ~~the~~ Works Package F2, and
  - 4.4.5. complete Works Package F2 pursuant to and in accordance with the Highways Agreement
  - 4.4.6. not cause or permit any further Development to take place after the date which is 5 years from the date of Implementation of the

Development on the Western Parcel unless and until Works Package F2 has been completed

- 4.5. The Owner covenants with and undertakes to the County Council not to cause or permit the First Occupation of any Dwelling on the Eastern Parcel until:
- 4.5.1. there has been submitted to the County Council and approved by it in writing in principle drawings for ~~the~~ Works Package G together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;
  - 4.5.2. there has been submitted to the County Council and approved by it in writing plans detailing the land (if any) to be dedicated following completion of Works Package G and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated;
  - 4.5.3. the anticipated duration of construction of Works Package G has been agreed with the County Council together with the longstop date for completion of ~~the~~ Works Package G and (if relevant) commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works, has been agreed; and,
  - 4.5.4. a Section 278 Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 4.5.1 to 4.5.3 above has been entered into by the Owner in respect of ~~the~~ Works Package G together with all parties with an interest in any land to be dedicated further to the Section 278 Agreement, and
  - 4.5.5. The Owner covenants with and undertakes to the County Council not to cause or permit the First Occupation of any Dwelling on the Eastern Parcel until Works Package G has been completed pursuant to and in accordance with the Section 278 Agreement.
- 4.6. It is noted and agreed between the Council and the Owner that separate Section 278 Agreements could be entered into in respect of the relevant Works Package and similarly that a combined Section 278 Agreement may be entered into in respect of any number of Works Packages

## PART 2 THE WORKS

### (1) Principal Works

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

| <u>Highway Works Package:</u> | <u>Description</u>   | <u>Drawing Ref:</u>   |
|-------------------------------|--|-----------------------|
| A                             | Bellmouth access onto the eastern side of Charlotte Avenue with dropped kerb crossings and continuation of 2m footway in the position labelled Access A on the Site Access Plan  | 4600-1100-T-040 Rev A |
| B                             | Bellmouth access onto the western side of Charlotte Avenue with dropped kerb crossings and provision of 2m footway to link existing footways on the western side of Charlotte Avenue in the position labelled Access B on the Site Access Plan   | 4600-1100-T-041 Rev A |
| C                             | Bellmouth access onto the western side of Charlotte Avenue with dropped kerb crossings and provision of 2m footway to link existing footways on the western side of Braeburn Avenue in the position labelled Access C on the Site Access Plan  | 4600-1100-T-042 Rev A |
| D                             | Carriageway and 1.8m footway to tie in to existing carriageway and footway on Tarragon Terrace in the position labelled Access D on the Site Access Plan   | 4600-1100-T-010 Rev B |
| E1                            | Southern Construction Access including:<br>- bellmouth access onto the B4100   | 4600-1100-T-011 Rev F |
| E2                            | Removal and reversal of the Highway Works Package E1 and the return of the highway to same condition that it was in prior to the commencement of Highway Works Package E1 including replanting of hedge and any trees  |                       |
| F1                            | Northern Construction Access including:<br>- bellmouth access onto the layby on the B4100 to the north of the Site together with any necessary works to ensure the safety of all road users within the layby   | 4600-1100-T-027 Rev B |
| F2                            | Removal and reversal of the Highway Works Package F1 and the return of the highway to same condition that it was in prior to the commencement of Highway Works Package F1 including replanting of hedge and any trees  |                       |
| G                             | Pedestrian crossing of B4100 and associated footways including:<br>- traffic signal controlled pedestrian crossing of the B4100 together with 2m-wide footway linking a pedestrian access point into the site near its northern boundary with the existing pedestrian gate into Caversfield Church | 4600-1100-T-004 Rev D |

## **(2) Preparatory and Ancillary Works**

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

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

## **(3) Amenity and Accommodation Works**

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

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

(d) any necessary embankments retaining walls or other things necessary to give support to adjoining land affected by the Principal Works

## ELEVENTH SCHEDULE

### DISTRICT COUNCIL'S COVENANTS WITH THE OWNER

#### Repayment of Contributions

1. Save for the Healthcare Contribution and the Neighbourhood Policing Contribution (both as defined in the Second Schedule) the District Council covenants with the Owner to use all sums received from the Owner under the terms of the Second, Fourth and Eighth Schedules of this Deed 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.~~
2. The District Council covenants with the Owner that following written request from the Owner it will pay to the Owner such amount of any payment made by the Owner to the District Council under the terms of the Second and Eighth Schedules of this Deed except the Healthcare Contribution and the Neighbourhood Policing Contribution in accordance with the provisions of this Deed which has not been expended 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 15 (fifteen) years of the date of receipt by the District Council of such payment. Any contribution or part of a contribution which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the District Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph.
3. Save for the Healthcare Contribution and the Neighbourhood Policing Contribution (both as defined in the Second Schedule) 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 by the Owner under the terms of the Second and Eighth Schedules of this Deed upon a written request by the Owner such request not to be made more than once in any year.

#### Discharge of Obligations

4. 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.

## TWELFTH SCHEDULE

### COUNTY COUNCIL'S COVENANTS WITH THE OWNER

1. The County Council covenants with the Owner not to use any sums received from the Owner under the terms of the Third Schedule to this Deed other than 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 County Council shall agree.~~
2. The County Council covenants with the Owner that following a written request from the Owner it will repay to the person that made the payment the balance (if any) of the contributions paid to the County in accordance with the Third Schedule ~~4 of to~~ this Deed which at the date of the receipt of such written request has not been expended provided always that no such request shall be made prior to the expiration of 10 years from the date of payment of the relevant contribution or if later 10 years from expiration of the due date for payment of the relevant contribution. 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.
3. The County Council shall provide to the Owner such evidence, ~~as~~ as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the County Council under this Deed upon receiving a written request from the Owner such request not being made more than once in any year.

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

Authorised Signatory:

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

County Solicitor /Designated Officer

Executed as a deed by Firethorn  
Bicester Limited  
acting by a director in the presence of:

|       |           |
|-------|-----------|
| _____ | Witness   |
| _____ | Full name |
| _____ | Address   |
| _____ |           |

Executed as a deed by SGR (Bicester 2)  
Limited  
acting by a director in the presence of:

|       |           |
|-------|-----------|
| _____ | Witness   |
| _____ | Full name |
| _____ | Address   |
| _____ |           |



SIGNED as a DEED by  
A2DOMINION DEVELOPMENTS LIMITED  
by affixing its Common Seal

SIGNED as a DEED by  
[A2Dominion South Limited]

Commented [TL26]: Some execution blocks to be added

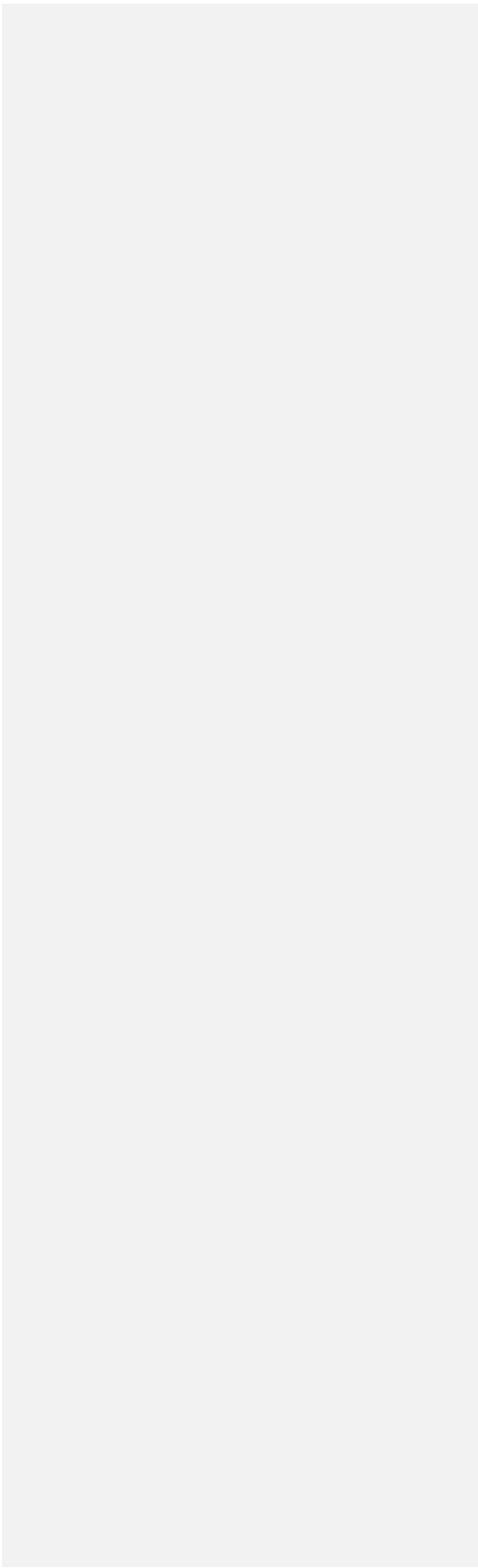
[Elmsbrook ELMSBROOK (Crest CREST A2D) LLP]  
acting by two members

Executed as a deed by Crest Nicholson  
Operations Limited  
acting by a director in the presence of:

|       |           |
|-------|-----------|
| _____ | Witness   |
| _____ | Full name |
| _____ | Address   |
| _____ |           |

[A2Dominion Developments Limited]

|





**APPENDIX 1**

**COUNTY MONITORING FEE SPREADSHEET**

**APPENDIX 2**

**CONSTRUCTION STAGE MONITORING SCHEDULE**

[To be confirmed]



### APPENDIX 3

#### POST OCCUPANCY MONITORING SCHEDULE

[To be confirmed]





**APPENDIX 4**  
**PARCELS PLAN**

**APPENDIX 5**  
**PEDESTRIAN/CYCLE ACCESS PLAN**

**APPENDIX 6**  
**SITE ACCESS PLAN**

**APPENDIX 7**  
**WORKS PLAN**

**APPENDIX 8**

**FORM OF SECTION 278 AGREEMENT**

**APPENDIX 9**

**FORM OF SECTION 38 AGREEMENT**