**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**[ANITA CURTIS]**

**-and-**

**KENNETH RAYMOND ALAN HOLFORD and ARC TRUSTEES LIMITED, as trustees of K Holford Company Pension Scheme**

**-and-**

**ANDREW MICHAEL DEAN and SUZANNE DEAN**

**-and-**

**RICHBOROUGH ESTATES LIMITED**

**-and-**

**LONE STAR LAND LIMITED**

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

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

**relating to land at OS Parcel 1570 adjoining and west of Chilgrove Drive and adjoining and north of Camp Road Heyford Park**

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**THIS AGREEMENT** is dated 2023

PARTIES

1. CHERWELL DISTRICT COUNCIL of Bodicote House White Post Road Bodicote Banbury in Oxfordshire OX15 4AA (“District Council”)
2. OXFORDSHIRE COUNTY COUNCIL whose main office is at County Hall New Road Oxford OX1 1ND (“County Council”)
3. [ANITA CURTIS] of [address] (“First Owner”)
4. KENNETH RAYMOND ALAN HOLFORD of 55 Napier Street Bletchley MK2 2NF and ARC TRUSTEES LIMITED (incorporated in England and Wales under company number 08818861) as the TRUSTEES OF K HOLFORD AND COMPANY PENSION SCHEME whose registered office address is New Maxdov House 130 Bury New Road Manchester England M25 0AA (“Second Owner”)
5. ANDREW MICHAEL DEAN and SUZANNE DEAN of Letchmere Camp Road Upper Heyford Bicester OX25 5LS (“Third Owner”)
6. RICHBOROUGH ESTATES LIMITED (incorporated in England and Wales under company number 04773757) whose registered office address is Waterloo House Waterloo Street Birmingham West Midlands B2 5TB (“First Promoter”)
7. LONE STAR LAND LIMITED (incorporated in England and Wales under company number 07134980) whose registered office address is 50 High Street Henley-In-Arden England B95 5AN (“Second Promoter”)

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 for the area in which the Site is situated and has powers and duties in respect of education, highways, transport and the regulation of traffic
3. The First Owner is the registered freehold proprietor of Land A subject to an agreement in favour of the [ ] Promoter.
4. The Second Owner is the registered freehold proprietor of Land B subject to an agreement in favour of the [ ] Promoter
5. The Third Owner is the registered freehold proprietor of Land C subject to an agreement in favour of the [ ] Promoter
6. The District Council refused the Application on [ ]
7. An appeal to the Secretary of State against the refusal of the Application was submitted by the First Promoter and the Second Promoter on [ ]
8. The Owner, the First Promoter, the Second Promoter, the District Council and the County Council have agreed that it is necessary in planning terms to enter into this deed to mitigate the impact of the Development and make it acceptable in the event that the Planning Permission is granted on Appeal and to be bound by and observe and perform the planning obligations subject to Clause 5

**NOW THIS DEED WITNESSES** as follows**:**

OPERATIVE PART

# DEFINITIONS

* 1. For the purposes of this deed the following expressions shall have the following meanings:

| **Expression** | **Meaning** |
| --- | --- |
| **“Act”** | the Town and Country Planning Act 1990 (as amended); |
| **“Appeal”** | the appeal submitted by the First Promoter and the Second Promoter against the District Council’s refusal of the Application and allocated reference number APP/C3105/W/23/3326761; |
| **“Application”** | the application for outline planning permission submitted to the District Council and validated on 4 April 2022 for the Development and allocated reference number 21/04289/OUT; |
| **“Commencement of the Development”** | occurs on and means the carrying out of any material operation (as defined in section 56(4) of the Act) forming part of the Development (whether or not such operation is a lawful commencement of the Development) other than (for the purposes of this deed and for no other purpose) operations consisting of: ;   * site clearance |
|  | * demolition work; |
|  | * archaeological investigations; |
|  | * investigations for the purpose of assessing ground conditions; |
|  | * remedial work in respect of any contamination or other adverse ground conditions; |
|  | * erection of any temporary means of enclosure; |
|  | * the temporary display of site notices or advertisements; |
|  | and **“Commence” “Commenced”** and **“Commencing”** or any other derivation of this term shall be construed accordingly |
| **“Community Development Fund”** | means the sum of £10,350 (ten thousand three hundred and fifty pounds) to be Index Linked and to be used [ ] payable in accordance with the Fourth Schedule |
| **“Community Development Worker Fund”** | means the sum of £16,939 (sixteen thousand nine hundred and thirty-nine pounds) to be used [ ] payable in accordance with the Fourth Schedule |
| **“Community Hall Facilities Contribution”** | means the sum of £262,967.90 (Two hundred and sixty-two thousand nine hundred and sixty-seven pounds ninety pence to be Index Linked and to be used [ ] payable in accordance with the Fourth Schedule |
| **“Construction”** | the construction of any building forming part of the Development including footings or foundations and **“Construct”** and **“Constructed”** shall be construed accordingly; |
| **“Development”** | the outline proposal for the erection of up to 230 dwellings, creation of new vehicular access from Camp Road and all associated works with all matters reserved apart from access to be carried out pursuant to the Planning Permission granted in accordance with the Application (and any non-material modification under section 96A of the Act) and any Reserved Matters approval or any variation under section 73 of the Act approved by the District Council |
| **“Due Date”** | if the provisions of clause 12 are complied with is the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs but otherwise is the date hereof |
| **“Dwelling”** | each of the residential dwellings to be Constructed or proposed to be Constructed on the Site pursuant to the Planning Permission (irrespective of any non-compliance with conditions) as approved by any Reserved Matter approval and   * Affordable Housing Dwellings are those Dwellings provided and whose occupancy and ownership is restricted as set out in the Second Schedule); * Market Dwellings are those Dwellings that are not Affordable Housing Dwellings |
| **“Index Linked”** | means adjusted according to the increase (if any) in the BCIS All in One Tender Price index published by the Royal Institution of Chartered Surveyors’ Building Costs Information Service (or such other index as may from time to time replace the BCIS All in One Tender Price index or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing) between the published figure for the date hereof and the Due Date |
| **“Indoor Sports Contribution”** | means the sum of £192,038 (One hundred and ninety-two thousand and thirty-eight pounds) to be Index Linked which shall be used [ ] payable in accordance with the Fourth Schedule |
| **“Inspector”** | a planning inspector appointed by the Secretary of State to consider the Appeal under delegated powers; |
| **“Interest”** | interest at the rate of four percent (4%) above the base lending rate of Lloyds Bank PLC from time to time; |
| **“Implementation”** | occurs when the Development is initiated in accordance with section 56 of the Act notwithstanding that any condition requiring compliance before that has not been complied with and ‘**Implement**’ or any other derivation of this term shall be construed accordingly |
| **“Land A”** | as defined in the First Schedule |
| **“Land B”** | as defined in the First Schedule |
| **“Land C”** | as defined in the First Schedule |
| **Monitoring Fee** | the sum of £[ ] to be applied towards the costs of monitoring and reporting upon compliance with the obligations in schedules [ ] to this deed; |
| **“NPPF”** | the National Planning Policy Framework (as amended from time to time) or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede it; |
| **“Occupy”** | occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **“Occupation” “Occupied”** and **“Occupier”** shall be construed accordingly; |
| **“Outdoor Sports Contribution”** | means the sum of £463,917 (Four hundred and sixty-three thousand nine hundred and seventeen pounds) to Index Linked which shall be used [ ] payable in accordance with the Fourth Schedule |
| **“Owner”** | First Owner and the Second Owner and the Third Owner |
| **“Plan”** | the ‘Location Plan drawing number LO1 (December 2021)’ attached to this deed at the annex to the first schedule; |
| **“Planning Permission”** | the outline planning permission subject to conditions to be granted by the District Council pursuant to the Application (“**Outline Permission**”) or any planning permission permitting variations of those conditions granted by the Council under section 73 of the Act or any non-material amendment under section 96A of the Act; |
| **“Public Art Contribution”** | means the sum of £51,520 (Fifty-one thousand five hundred and twenty pounds) to be Index Linked and used for the purpose of [ ] it is payable in accordance with the Fourth Schedule |
| **“Registration Fee”** | the sum of five hundred pounds (£500); |
| **“Reserved Matters”** | details of any one or more of appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval; |
| **“Site”** | Land A, Land B and Land C together comprising OS Parcel 1570 adjoining and west of Chilgrove Drive and adjoining and north of Camp Road Heyford Park the land against which this deed may be enforced as described in the first schedule and shown edged red on the Plan; |
| **“Secretary of State”** | the Secretary of State for Levelling Up, Housing and Communities or any other minister appointed to determine Appeals from time to time; |
| **“Trigger Event”** | any event that when it occurs requires any party to this deed to pay any sum or carry out any works or take (or desist from taking) any other action including service of any notice; |
| **“Working Days”** | Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27th and 31st December in any calendar year |

# CONSTRUCTION OF THIS DEED

* 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. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
  3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
  4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
  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.
  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.
  7. Any reference to a statute shall include any modification, extension or re-enactment of that statute 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 statute or deriving validity from it.
  8. References to any party to this deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to its respective statutory functions.
  9. The headings and contents list are for reference only and shall not affect construction.

# LEGAL BASIS

* 1. This deed is made pursuant to section 106 of the Act section, 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
  2. The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to section 106 of the Act
  3. The covenants, restrictions and requirements set out generally herein are enforceable by the District Council and the County Council but
     1. those set out in[Second Schedule Third Schedule Fourth Schedule [and Fifth Schedule] are only enforceable by the District Council as local planning authority (district planning authority), and
     2. those set out in the Fifth Schedule are only enforceable by the County Council as local planning authority (county planning authority)

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

# CONDITIONALITY

* 1. Save as set out below this deed is conditional upon:
     1. the grant of the Planning Permission; and
     2. the Commencement of the Development,
  2. The provisions of Clauses 4, 8.1.1, 8.1.4, 12, 16 and 17 (conditionality, legal costs, monitoring and administering, notifications, jurisdiction and delivery) shall come into effect immediately upon completion of this deed.
  3. Should the Secretary of State or his appointed Inspector make a finding that any of the covenants or obligations in this Deed do not meet the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 then such covenant(s) or obligation(s) as so identified by the Secretary of State or his appointed Inspector shall be deemed to be of no effect notwithstanding the remaining provisions of this Agreement which for the further avoidance of doubt shall remain in effect and enforceable.

# THE COVENANTS by Owner

* 1. The Owner covenants with both the District Council and the County Council as set out herein and covenants with
     1. the District Council as set out in the Second Schedule, the Third Schedule, the Fourth Schedule; and
     2. the County Council as set out in the Fifth Schedule.

# THE DISTRICT COUNCIL’S COVENANTS

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

# THE COUNTY COUNCIL’S COVENANTS

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

# MISCELLANEOUS

* 1. The Owner shall pay or secure the payment:
     1. to the District Council on the execution and completion of this deed of the reasonable legal costs of the District Council related to the Application and this Deed;
     2. to the County Council on the execution and completion of this deed of the reasonable legal costs of the County Council related to the Application and this Deed
     3. on completion of this Deed pay or within 35 Working Days of the Secretary of State’s decision allowing the Appeal whichever is the later pay
        1. to the District Council the Monitoring Fee and the Registration Fee and
        2. to the County Council the sum of **£[XX]** (XX pounds)

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

* 1. The Owner shall reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council
  2. No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
  3. This deed shall be registrable as a local land charge by the District Council.
  4. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or County Council under the terms of this deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and in the case of the District Council or the County Council, any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:
     1. the District Council by the Assistant Director: Planning and Development; and
     2. the County Council by the Director for Environment and Place,
  5. Following the District Council and the County Council being notified in writing and the District Council and the County Council being satisfied of the performance and satisfaction of all the obligations contained in this deed (as confirmed in writing) the District Council shall forthwith effect the cancellation of all entries made in the register of local land charges in respect of this deed.
  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.
  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 the Planning Permission expires prior to Implementation.
  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.
  9. Except for any provision hereof that restricts or prevents any Dwelling being occupied or prevents a number of Dwellings being occupied until another provision hereof is complied with this deed shall not be enforceable
     1. against owner-occupiers or tenants of any Dwelling nor any mortgagee or chargee of the interest of any such owner-occupier nor against those deriving title from them;
     2. any statutory undertaker whose interest in the Site derives from having equipment necessary to carry out their undertaking on the Site or on adjoining land
  10. Nothing contained or implied in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission and any Reserved Matter approval granted (whether or not on appeal) after the date of this Deed.

# 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.

# 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.

# **CHANGE OF OWNERSHIP etc**

The Owner agrees with the District Council and separately with the County Council to give each written notice of any change in the ownership of any of its interests in the Site within ten (10) Working Days and in any event before the next Trigger Event that arises following such change in ownership if sooner occurring before all the obligations under this deed have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan provided that this clause shall not apply to:

* 1. the sale of individual Dwellings on the Development; or
  2. any disposal of any part or parts of the Site for servicing or utility requirements or to a statutory body or service supply company for the purpose of carrying out its undertaking

# NOTIFICATIONS

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

* 1. to notify the District Council and the County Council in writing no later than five (5) Working Days prior to the anticipated date of each of the following:
     1. Implementation
     2. Commencement of Development;
     3. first Occupation of [each Phase of] the Development;
     4. Occupation of [XX]% (XX per cent) of the Dwellings [Constructed on each Phase of] the Development; and
     5. Occupation of [XX]% (XX per cent) of the Dwellings [Constructed on each Phase of] the Development

and not to Commence Occupy or cause or permit Occupation until the appropriate notice has been given and five (5) Working Days have elapsed since it was served;

* 1. to notify the District Council and the County Council in writing of the actual date of each such event referred to in clause 12.1 above no later than ten (10) Working Days after the event occurs;
  2. to notify the District Council and the County Council within ten (10) Working Days of the each of the usual quarter days (25 March, 24 June, 29 September and 25 December) the number of Dwellings on [each Phase of] the Development which have been Occupied on that quarter day and the addresses/plot numbers together with a plan showing plot numbers

# INTEREST

* 1. If any payment due under this deed is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.
  2. Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the Due Date

# VAT

* 1. All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable and the Owner shall pay to the District Council and separately to the County Council any value added tax properly payable on any sums paid to the District Council and/or the County Council or works undertaken under this deed upon presentation of any appropriate value added tax invoice addressed to the Owner .

# NOTICES

* 1. Any notice or notification to be given to the District Council under this deed shall be sent to the District Council attention of the Assistant Director Planning and Development at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall direct from time to time.
  2. Any notice or notification to be given to the County Council under this deed shall be sent to the Director of Environment and Place, Oxfordshire County Council, County Hall, New Road, Oxford,OX1 1ND or to such other person at such other address as the County Council shall direct from time to time.
  3. Any notice to be given to the Owner shall be sent to the First Owner the Second Owner and the Third Owner at the respective owner’s address at the head of this deed or to such other person at such address as the Owner shall notify to the District Council and separately to the County Council from time to time.
  4. Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
     1. if delivered by hand, at the time of delivery;
     2. if sent by post, on the second (2nd) Working Day after posting; or
     3. if sent by recorded delivery, at the time delivery was signed for.
  5. If a notice, demand or any other communication is served after 16:00 on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
  6. For the avoidance of doubt, where proceedings have been issued in the Courts of England, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
  7. Any notice or notification to be given pursuant to this deed shall be in writing and shall, unless otherwise agreed, be delivered by hand or sent by post.

# JURISDICTION

This deed is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

# 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.

# CONSENT of PROMOTERS

* 1. The First Promoter acknowledges and declares that this Deed has been entered into by the [ ] Owner with its consent and that Land A [ ]the Site shall be bound by the obligations contained in this deed and that the security of the mortgage over Land A shall take effect subject to this deed PROVIDED THAT the First Promoter shall otherwise have no liability under this deed unless it acquires a freehold interest in the Site in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner, the Second Owner and the Third Owner as relevant
  2. The Second Promoter acknowledges and declares that this Deed has been entered into by the First Owner, the Second Owner and the Third Owner with its consent and that Site shall be bound by the obligations contained in this deed and that the security of the mortgage over Land A shall take effect subject to this deed PROVIDED THAT the Second Promoter shall otherwise have no liability under this deed unless it acquires a freehold interest in the Site in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner, the Second Owner and the Third Owner as relevant

# DATA PROTECTION

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

* 1. persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further
  2. any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004

# Disputes

The provisions of the [Eighth Schedule] shall apply to any dispute arising in respect of the provisions and terms of this Deed with the exception of those contained in the [Fifth Schedule and the Seventh Schedule].

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

1. Details of the Owner’s Title, and description of the Site
   * 1. “Land A” Lot 4 Letchmere Farm Camp Road Upper Heyford Bicester OX25 5LS the freehold to which is registered at HM Land Registry under title ON266890
     2. “Land B” Land lying to the south and east of Letchmere Farm Camp Rad Upper Heyford Bicester OX25 5LS the freehold to which is registered at HM Land Registry under title ON268806
     3. “Land C” Land lying to the east of Letchmere Farmhouse Camp Road Upper Heyford Bicester OX25 5LS the freehold to which is registered at HM Land Registry under title ON274435

ANNEX  
THE PLAN

1. AFFORDABLE HOUSING
2. COVENANTS WITH THE DISTRICT COUNCIL - AFFORDABLE HOUSING
   1. **Definitions**
      1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| 1. Expression | 1. Meaning |
| --- | --- |
| Affordable Housing | housing for sale or rent that will be available for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) and which meets the definition in Annex 2 of the NPPF |
| Affordable Housing Dwellings | the Intermediate Housing or Affordable Rented Housing or Social Rented Housing or such alternative tenure to be agreed with the District Council that shall comprise not less than 35% (thirty-five per cent) of the total number of Dwellings on the Development being 80.5 Dwellings |
| Affordable Housing Tenure Mix | the mix of tenure and dwelling types whereby not less than 35% (thirty-five per cent) of the Dwellings within the Development are provided as Affordable Housing as follows and whereby 70% of the Affordable Housing Dwellings shall be provided as Social Rented Housing 25% shall be provided as First Homes and the remaining 5% shall be Intermediate Housing or such alternative mix of tenure as at any time may be submitted to the District Council for approval in writing |
| Affordable Housing Scheme | a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out details of the property types numbers locations and external appearance of the Affordable Housing Dwellings; including the timing of construction of the Affordable Housing Dwellings. |
| Affordable Housing Site | that part or parts of the Site or any building or any buildings on the Site upon or within which there will be provided Affordable Housing Dwellings together with full rights of access to each Affordable Housing Site from the Site and the provision of all necessary Infrastructure and connections thereto and the necessary installations thereof for the dwellings to be constructed on the Affordable Housing Site |
| Affordable Housing Standards | the design criteria with which the Affordable Housing shall comply (unless otherwise agreed between the District Council and the Owner), namely:   * (in relation to the Affordable Rented Housing or Social Rented Housing only) 1% to comply with the Building Regulations Requirement M4(3) Category 3(2b): Wheelchair Adaptable Dwellings; * shall be located in clusters of no more than 10 Affordable Housing Dwellings of one tenure and no more than 15 units of Affordable Housing Dwellings of mixed tenure in any one cluster; * shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Housing; and * they shall be constructed to the nationally described space standard as set out in the Department for Communities and Local Government’s technical housing standards |
| Affordable Rented Housing | rented housing provided by the Registered Provider to households who are eligible for social rented housing and which is not subject to the national rent regime but in line with the District Council's tenancy strategy, the rents shall be no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting whichever is the lower |
| Allocations Scheme | the District Council’s allocation policy from time to time which determines the District Council’s priorities and procedures when allocating accommodation in accordance with the requirements of Section 166A of the Housing Act 1996 (and any amendment, re-enactment or successor provision) |
| Chargee | any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it and includes any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 (including a Housing Administrator under the provisions of the Housing and Planning Act 2016) howsoever appointed or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security |
| Help to Buy Agent | that organisation which is appointed by the Regulator or other such successor body to assess eligibility for and market low cost home ownership products |
| Infrastructure | in relation to the Affordable Housing Site:   * roads and footpaths to serve the Affordable Housing Site; * temporary services for contractors and a haul road for the use of contractors; * adequate inverts for the foul and surface water drains sufficient to serve the drainage requirements of the Affordable Housing Site; * pipes sewers and channels sufficient to serve the Affordable Housing Site; * spur connections to agreed inverts (to be available at a time or times to be agreed with the Registered Provider) from the Owner's foul and surface water drain run serving the Development up to the boundaries of the Affordable Housing Site such spur connections to be to a specification agreed with the Registered Provider; |
| and the following services:   * a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider; * a water supply connection from the mains (size and termination position to be agreed with the Registered Provider); * an electricity supply (size and termination position to be agreed with the Registered Provider); * a gas supply (size and termination position to be agreed with the Registered Provider) (should it be required for the Affordable Housing Dwellings) * a telephone spur (terminating in a junction box at a location agreed with the Registered Provider); * if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a spur to the Affordable Housing Site (final locations to be agreed with the Registered Provider);   PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable Housing Site nor to the Affordable Housing Dwellings |
| Intermediate Housing | housing at prices and rents above those for social rented housing but below open market prices or rents and for the avoidance of doubt the expression ‘Intermediate Housing' includes Shared Ownership, shared equity and low cost homes for sale but does not include Affordable Rented Housing. The Intermediate Housing will be delivered as Shared Ownership Housing unless otherwise agreed between the District Council and the Owner |
| Market Dwellings | that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing |
| Mortgage Land | the Affordable Housing Site or any part of it which is mortgaged or charged to a Chargee |
| Nominations Agreement | an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Rented Dwellings and the Social Rented Dwellings on the Site and which shall guide in conjunction with the Allocations Scheme those persons eligible to be nominated to the Affordable Housing Dwellings |
| Qualifying Persons | those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to Affordable Rented Housing and Social Rented Housing in accordance with this Allocations Scheme and the Nominations Agreement |
| Registered Provider | a private provider of social housing which is designated in the register maintained by the Regulator or any similar future authority carrying on substantially the same regulatory or supervisory functions pursuant to section 111 of the Housing and Regeneration Act 2008 as a non-profit organisation under sub­sections 115(1)(a) or 278(2) of the Housing and Regeneration Act or which is designated in that register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008 which is on the District Council’s list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and been approved in writing by the District Council |
| Shared Ownership Housing | ownership under the terms of a lease which accords with the Regulator’s Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 10% - 75% of the equity in an Affordable Housing Dwelling from the housing provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity and where the lessee has the option to increase their percentage of ownership through a process of staircasing up to outright ownership |
| Social Rented Housing | rented housing owned and managed by Registered Providers for which guideline target rents are determined though a national rent regime as described in Annex 2 of the NPPF |
| Staircasing | the exercise by the owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the entire interest in the dwelling after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and ‘Staircases’ or any other derivative thereof shall be construed accordingly |
| The Regulator | the Regulator of Social Housing constituted pursuant to the Housing and Regeneration Act 2008 (as amended) and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing |

* 1. **Affordable Housing Covenants**

The Owner covenants with the District Council that they:

* + 1. will submit a detailed scheme for the provision, proposed location and construction programme of the Affordable Housing Dwellings, including details of the proposed Affordable Housing Tenure Mix to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme and shall in addition to demonstrating that the Development will comprise no less than 35% Affordable Housing Dwellings as a minimum show:
       1. [Social Rented Housing consisting of
          1. [ ] 1 bedroom 2 person maisonettes
          2. [ ] 1 bedroom 2 person houses
          3. [ ] 2 bedroom 4 person houses
          4. [ ] 3 bedroom 6 person houses
          5. [ ] 4 bedroom 7 person house;
       2. Shared Ownership Housing consisting of
          1. [ ] 2 bedroom 4 person houses
          2. [ ] 3 bedroom 5 person houses ]

referred to in this Schedule as the Indicative Affordable Housing Dwelling and Tenure Mix

* + 1. will not Commence or cause or permit the Commencement of the Development until the Affordable Housing Scheme has been approved in writing by the District Council;
    2. will not Occupy or cause or permit the Occupation of more than thirty per cent (30%) of the Market Dwellings unless otherwise agreed between the Owner and the District Council until
       1. each area comprising the Affordable Housing Site has been offered to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession on completion and capable of being fully serviced and properly connected to the public highway and a Registered Provider has exchanged a binding contract for the purchase of the Affordable Housing; and
       2. there has been provided to the District Council’s reasonable satisfaction the Infrastructure to serve each parcel of the Affordable Housing Site and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);
    3. will not cause or permit more than eighty per cent (85%) of the Market Dwellings to be used or Occupied unless and until the Owner has constructed all of the Affordable Housing Dwellings and made the same ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing Site has been offered to and transferred to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway;
    4. will not use or cause or permit the use of the Affordable Housing Site for any other purpose than for the provision of Affordable Housing in accordance with this Deed unless otherwise specified in this Deed;
    5. will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected thereon except to a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings; and
    6. will provide the Affordable Housing Dwellings in in accordance with the Affordable Housing Scheme or such other mix as may be agreed in writing between the Owner and the District Council.
  1. **Mortgagee Exemption**
     1. The provisions of paragraph 2 will not be binding on a bona fide purchaser for value from a Chargee exercising its power of sale (other than a purchaser which is a registered provider) or the successors in title of such purchaser if the Chargee:
        1. has first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, in its mortgage, charge or other security; and
        2. has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 3.1.1 above to dispose of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed to a Registered Provider or the District Council
        3. has not been able to complete a transfer of the Mortgage Land to either the District Council or a Registered Provider
     2. Subject to compliance with the provisions of paragraph 3.1 above the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraph 2 above with the effect that they shall cease to bind any person obtaining title to the Mortgage Land.
     3. Notwithstanding the provisions of paragraph 3.1 above it is agreed that nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained within this Schedule) or all sums due under the terms of the Chargee’s mortgage or charge together with costs and expenses of the sale of the Mortgage Land and interest due under the mortgage
  2. **Allocation**

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

* + 1. the Affordable Rented Housing and the Social Rented Housing shall only be allocated to Qualifying Persons in accordance with the District Council’s Allocations Scheme and in accordance with the terms of the Nominations Agreement;
    2. the Shared Ownership Housing shall be marketed through the Registered Provider’s website or other marketing media used by the Registered Provider or where possible through the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the Help to Buy Agent's criteria shall be considered for the Shared Ownership Housing; or
    3. as agreed by the District Council.
  1. **Miscellaneous**

It is agreed that

* + 1. the provisions of this part will not be binding on any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any owner of Shared Ownership Housing who has staircased up to 100% or any mortgagee, chargee or successor in title thereto.
    2. if the Affordable Housing Dwellings are vested or transferred to another Registered Provider pursuant to a proposal made by the Homes England pursuant to Sections 143A-169 of the Housing and Regeneration Act 2008 (or any statutory provision amending or replacing the same) then the provisions of this Agreement shall continue in respect of such other Registered Provider.

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

| **Expression** | **Meaning** |
| --- | --- |
| **“Attenuation Basin”** | [ ] |
| **“Attenuation Basin Sum”** | means Sixty-six pounds and six pence (£66.06) per square metre |
| **“BS5837”** | means the British Standard for Trees in relation to design, demolition and construction – Recommendations, the latest version being published in 2012 and applies to all trees that could be affected during the carrying out of the Development |
| **“Existing Hedgerows”** | [means those existing hedgerows identified as such in the Open Spaces Scheme] |
| **“Existing Woodland”** | [means those existing woodland identified as such in the Open Spaces Scheme] |
| **“Existing Woodland Sum”** | means Forty-six pounds ninety-seven pence (£46.97) per square metre |
| **"****Final Completion Certificate"** | means a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space in accordance with the relevant scheme or specification approved pursuant to this Deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction |
| **“Hedgerows Commuted Sum”** | means Twenty-six pounds and sixty-six pence (£12.65 per linear metre) |
| **“Index Linked”** | means adjusted according to the increase (if any) in the BCIS All in One Tender Price index published by the Royal Institution of Chartered Surveyors’ Building Costs Information Service (or such other index as may from time to time replace the BCIS All in One Tender Price index or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing) between the published figure for the date hereof and the Due Date |
| **"Informal Open Space"** | means areas of informal open space to be provided on the Development as identified within the Open Space Scheme |
| **“Informal Open Space Commuted Sum”** | means Twelve pounds sixty-five pence £12.65 per square metre of Informal Open Space as shown in the Open Space Scheme; |
| **“Landscape Management Contribution”** | means the sum of One Thousand and Five Hundred Pounds (£1,500) to be used [towards the Council’s Landscape Services’ costs of managing and monitoring consultants who monitor the LEMP] |
| **“LAP”** | an equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 6 with a minimum area of [100m2] and located a minimum of [5m] from the nearest Dwelling boundary; |
| **“LAP Commuted Sum”** | means the sum of Thirty Six Thousand One Hundred and Thirty-five Pounds (£36,135.00) Index Linked for the LAP proposed in the Open Spaces Scheme; |
| **“LEAP/NEAP”** | [means areas to be provided on the Development and identified within the Open Space Scheme as a local equipped area for play and/or a neighbourhood equipped area for play] |
| **“LEAP/NEAP Contribution”** | means the sum of Five hundred and Forty Thousand and Forty-eight pounds (£540,048) to be used [ ] |
| **“LEMP Monitoring Contribution”** | means the sum of Fifteen Thousand Pounds (£15,000) towards two Site visits per year to monitor the LEMP, such Site visits to continue for a period of fifteen years from [ ] |
| **"Maintenance Period"** | means a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate or such longer period as the District Council may determine if it is not satisfied that the Open Space has been maintained in accordance with the Maintenance Plan during that period |
| **“Maintenance Plan”** | means a scheme that complies with the Technical Specification to be submitted to and approved in writing by the District Council in accordance with paragraph 2.1 below which identifies the proposed ongoing maintenance operations for the Open Space during the Maintenance Period: |
| **“Management Company”** | [ ] |
| **“Management Company Monitoring Payment”** | [ ] |
| **“Management Company Structure Scheme”** | means a scheme that addresses the following in relation to the Management Company:   * details of the identity and constitution of the Management Company * proposed banking arrangements for the Management Company, including details of how any failure or default by the Management Company will be funded * details of forward funding arrangements for the Management Company by the Owner until the Development is fully Occupied and the Management Company is funded from receipts from residents of the Dwellings * details of insurance to cover the use of the Open Space and LAP against damage and liability * details of the mechanism to ensure transfer of ownership and responsibility of the Open Space and LPA to the Management Company (if elected) * a detailed scheme for the ongoing maintenance of the Open Space and LAP |
| **“ManCo Default Deposit** | is the Open Space Commuted Sum divided by 15 |
| **“ManCo Forward Funding Deposit”** | is the Open Space Commuted Sum divided by 15 and the result divided by 2 |
| **“Mature Trees”** | means those trees identified as such in the Open Spaces Scheme; |
| **“Mature Trees Commuted Sum”** | means two hundred and eighty pounds (£280.00) per Mature Tree; |
| **"Open Space Commuted Sum"** | means the sum calculated as follows:  ((A × the Informal Open Space Commuted Sum) Index Linked  +  (B × the Hedgerows Commuted Sum) Index Linked)  + (C × the Mature Trees Commuted Sum) Index Linked  + (D × the Existing Woodland Sum) Index Linked +  (E x the Proposed Woodland Sum) Index Linked +  (F x the Ponds Sum) Index Linked  +  (G x the Attenuation Basin Sum) Index Linked  +  the LAP Commuted Sum  + the LEAP/NEAP Contribution  +  LEMP Monitoring Contribution  +  Landscape Management Contribution  ÷ 15  Where:  A is the area in square metres of the Informal Open Space;  B is the length in linear metres of hedgerows or mature trees comprised in the Open Space  C is the number of Mature Trees  D is the number of square metres of Existing Woodland  E is the number of square metres of Proposed Woodland  F is the number of square metres of Pond  G is the square meterage of the Attenuation Basin  such areas lengths and numbers being determined by reference to the Open Spaces Scheme |
| **"Open Space"** | means the areas within the Site to be provided for recreation and amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include the [Informal Open Space LEAP/NEAP and the LAP]; |
| **"Open Space Scheme"** | means a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the Open Space to be submitted to and approved in writing by the District Council for approval in accordance with paragraph 2.1 below which shall include:   1. details of the locations of Informal Open Space and the LAP LEAP/NEAP; and 2. a timetable for carrying out the works and the planting comprised in the laying out landscaping of the Open Space to which the respective scheme relates |
| **“Pond”** | [ ] |
| **“Ponds Sum”** | means Forty-one pounds and Forty pence (£41.40) per square metre |
| **"Practical Completion Certificate"** | means a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Deed |
| **“Proposed Woodland”** | [ ] |
| **“Proposed Woodland Sum”** | means Thirty-five pounds and two pence (£35.02) per square metre |
| **“Service Charge”** | [ ] |
| **“Technical Specification”** | means the specification set out in the document headed “Cherwell District Council and South Northamptonshire Council Contract for the provision of landscape maintenance services 01 April 2018 - 31 March 2024 Document 3: Technical Specifications” available at:  <https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim_screen_cherwell-dc_gov_uk/Eajlf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE> |

* 1. Pre-Commencement/Occupation
     1. Before Commencing the Development there shall be submitted to the District Council the proposed
        1. Open Space Scheme; and
        2. Maintenance Plan

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

* 1. Open Space
     1. The Open Space
        1. shall be provided; and
        2. shall be provided in accordance with the Open Space Scheme
     2. Nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the Open Space Scheme or the efficient implementation of the Management Plan and in particular:
        1. no materials or equipment shall be stored on;
        2. no services shall be run over, under or through;
        3. no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;
        4. no parking area or temporary roadway shall be created or designated on;

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

* + 1. Any Mature Trees and/or Existing Hedgerows shall be protected in accordance with BS5837 before any works comprised in the Development are carried out on the Site
    2. The District Council shall be entitled on reasonable notice but no less than one Working Days’ Notice to enter the Site with workman and contractors to remedy any default in compliance with paragraphs 3.2 and 3.3 above and to recover the cost thereof from the Owner
    3. The Open Space shall be constructed laid out and seeded in accordance with the approved Open Space Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing;
    4. The LAP (or if more than one, each of them) shall, in addition to the obligations in paragraph 3.5 above be designed to and comply with the following:
       1. the standards, policy, design principles and practice referred to in the Fields in Trust publication “Planning and Design for Outdoor Sport and Play” and the Play England publication “Design for Play – A guide to creating Successful Play Spaces” (or later revisions of these publications); and
       2. achieve a minimum score rating of ‘Good’ as measure against RoSPA’s Play Value Assessment
    5. The Open Space shall not be used for any purpose other than as public open space land as an amenity for the occupiers of the Development and surrounding area but with the prior written consent of the District Council:
       1. the subsoil of the Open Space may accommodate services provided such services do not prejudice the function of the Open Space;
       2. may be used for the storage of materials and equipment necessary for the maintenance of the Open Space;
       3. may accommodate an area for the parking of cars and/or any other vehicles associated with the use of the Open Space; or
       4. may reserve any necessary rights of access over the Open Space to any adjoining land
    6. Upon completion of the Open Space the District Council shall be notified and invited to inspect the Open Space within 15 Working Days with a view to either
       1. issuing a Practical Completion Certificate that certifies that the Open Space has been provided in accordance with the Open Space Scheme to the satisfaction of the District Council; OR
       2. issuing a notice (Defects Notice) which states the Open Space has not been provided in accordance with the Open Space Scheme to a standard that satisfies the District Council and sets out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done

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

* + 1. If a Defects Notice is issued the works specified in the Defects Notice shall be carried out and the District Council invited to re-inspect the Open Space with a view to securing the issue of the Practical Completion Certificate.
    2. No more than 75% of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued for the Open Space and the Open Space Monitoring Fee has been paid unless otherwise agreed between the Owner and the District Council;
    3. After the issue of the Practical Completion Certificate the Open Space shall be maintained in accordance with the Maintenance Plan during the Maintenance Period and the general public shall be permitted to use the Open Space at all reasonable times save as necessary to carry out maintenance and in the interests of health and safety for the purposes for which it is provided
    4. Upon completion of the Maintenance Period the District Council
       1. if satisfied that the relevant Open Space has been maintained throughout the Maintenance Period in accordance with the Maintenance Plan and any minor defects set out in the Practical Completion Certificate have been remedied shall issue a Final Completion Certificate; or
       2. if not so satisfied issue a Defects Notice and the provisions of paragraph 3.8 and 3.9 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate
    5. At all reasonable times and upon reasonable notice officers servants and agents of the District Council may enter onto any necessary part of the Site for the purpose of inspecting the Open Space upon the District Council first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site.
  1. Election
     1. No later than within 5 Working Days of the issue of the Practical Completion Certificate the Owner shall elect by written notice whether on the issue of a Final Completion Certificate they wish
        1. to secure the maintenance and management of the Open Space through a Management Company

OR

* + - 1. the District Council to acquire the Open Space
    1. In the event that no such written notice is served in the time specified in paragraph 5.1 above (time being of the essence) the Owner shall be deemed to have elected to require the District Council to acquire the Open Space.
    2. If the Owner shall elect to secure the maintenance and management of the Open Space through a Management Company (pursuant to sub-paragraph 5.1.1 above) the provisions of paragraphs 5 to 8 below shall apply
    3. If the Owner shall elect (or shall be deemed to have elected) for the District Council to acquire the Open Space (pursuant to sub paragraphs 5.1.2 and 5.2 above) the provisions of paragraph 10 below shall apply
  1. Management Company

The Owner covenants with the District Council as follows:

* + 1. that they shall:
       1. within 10 Working Days of their election submit a draft Management Company Structure Scheme to the District Council for its approval;
       2. not Occupy or cause or permit the Occupation of any Dwellings until
          1. the District Council shall have approved the submitted Management Company Structure Scheme; and
          2. the Management Company has been established in accordance with the approved Management Company Structure Scheme and evidence thereof has been submitted to the District Council that it has been so established
    2. not to dispose of an interest in any Dwelling without putting in place in the plot documentation for each of the Dwellings a covenant whereby the owner/occupiers of each Dwelling (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge which shall be collected and ring-fenced by the Management Company as successor in title to the Owner for application for the management and maintenance of the Open Space
    3. to put in place in the sale documentation for each of the Dwellings a covenant whereby each of the residents (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge prior to Occupation of the relevant Dwelling
    4. prior to the Occupation of any Dwelling pay to the District Council the Management Company Monitoring Payment and shall not Occupy or cause or permit the Occupation of any Dwelling until the Management Company Monitoring Payment has been paid in full
  1. Transfer

The Owner shall

* + 1. Transfer the Open Space to the Management Company within 20 Working Days of the issue of the Final Completion Certificate; and
    2. in any event not Occupy or cause or permit the Occupation of more than 90% of the Dwellings until the completion of the Transfer of the Open Space to the Management Company
  1. Financial Provisions
     1. On or before the Transfer to the Management Company of the Open Space in accordance with this Schedule, the Owner shall:
        1. set up the ManCo Default Escrow Account and provide evidence to the District Council that the account has been set up; and
        2. set up the ManCo Maintenance Escrow Account and provide evidence to the District Council that the account has been set up
        3. pay the ManCo Default Deposit into the ManCo Default Escrow Account and provide evidence to the District Council that such payment has been made
        4. pay the first ManCo Forward Funding Deposit into the ManCo Maintenance Escrow Account and provide evidence to the District Council that such payment has been made
     2. On each anniversary of the first payment of the ManCo Forward Funding Deposit into the ManCo Maintenance Escrow Account to make a further payment of the ManCo Forward Funding Deposit less any sums which remain unspent from the immediately preceding payment of the ManCo Forward Funding Deposit until the earlier of
        1. the fourteenth anniversary of the date of the first payment of the Management Company Forward Funding Deposit and
        2. the date that 95% of the Dwellings (having regard to the number approved in Reserved Matters) have been Occupied
     3. The ManCo Default Escrow Account shall be retained for a period expiring 15 (fifteen) years after the date the ManCo Default Escrow Account is first opened and the ManCo Default Escrow Account shall be closed at this point (or earlier if the Management Company is wound up prior to the expiration of the said 15 years) and any monies whether capital or interest sums remaining in the ManCo Default Escrow Account at that time shall be released to the person who made the payments
     4. The ManCo Maintenance Escrow Account shall be retained for a period expiring once 47 of the Dwellings (or if less than 47 Dwellings are proposed pursuant to any Planning Permission then 95% of the Dwellings approved pursuant to the subsequent Planning Permission and if more than one Planning Permission proposing different numbers of Dwellings 95% of the lowest number of Dwellings approved) have been Occupied and then shall be closed and any monies whether capital or interest sums remaining in the ManCo Maintenance Escrow Account at that time shall be released to the person who made the payments
  2. Default by Management Company
     1. In the event that
        1. the Management Company fails to maintain any part or aspect of the Open Space in accordance with the approved Management Scheme; or
        2. the Management Company
           1. suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
           2. commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of it with one or more other companies or its solvent reconstruction
           3. is wound up or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Management Company (other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction),
           4. has an administrator appointed or an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given;
           5. has an administrative receiver appointed or the holder of a qualifying floating charge over the assets of it has become entitled to appoint an administrative receiver;
           6. a receiver is appointed over all or any of its assets or a person becomes entitled to appoint a receiver over all or any of those;
           7. has a creditor or encumbrancer of it attach or take possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any of its assets, and such attachment or process is not discharged within ten Working Days
           8. suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (whether or not that part of the business involves maintaining the Open Space)

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

* + 1. In the event that the Management Company
       1. shall have failed to maintain the Open Space in accordance with the approved Management Scheme the District Council will not exercise the right in paragraph [8.1.2] above to carry out Works in Default before having given written notice to the Management Company stating the nature of the failure, the steps required to remedy the failure, and a reasonable time period for remedying it and shall afford the Management Company the opportunity to remedy the failure in accordance with the steps and time period in the written notice
       2. shall have failed for whatever reason to reimburse the costs and expenses incurred by District Council in carrying out any Works in Default within 14 days of a written demand therefor, the District Council shall be entitled to recover such costs and expenses from the ManCo Default Escrow Account

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

* + 1. In the event that
       1. the District Council shall have served notice on the Management Company requiring it to remedy any failure to maintain the Open Space in accordance with the approved Management Scheme; and
          1. the Management Company have failed to remedy that failure within the time given in the notice; but
          2. at that point in time there are no funds in the ManCo Default Escrow Account or the funds in the ManCo Default Escrow Account are insufficient to defray the costs of the Works in Default
       2. the Management Company shall have failed to make any payment of the Management Company Forward Funding Deposit into the ManCo Maintenance Escrow Account within 14 days of such payment being due
       3. any of the circumstances set out in paragraph 8.5.2 above shall occur or the Management Company otherwise ceases to be able to carry out its obligations in the Management Scheme

then the provisions of paragraph 9.4 below shall apply

* + 1. the Management Company (or the such other person or body as shall then have control over the Management Company’s assets) as successor in title to the Owner shall, at the election of the District Council either
       1. Transfer all its interest in the Open Space to the District Council or its nominee together with all responsibilities for management and maintenance of the same; or
       2. Transfer the responsibility for management and maintenance of the Open Space to the District Council or its nominee and
       3. pay any accrued Service Charges to the District Council or its nominee and assign
          1. its right to collect and receive payments of the Service Charge: and
          2. any rights it has to draw down funds from the ManCo Default Escrow Account and/or the ManCo Maintenance Escrow Account
  1. Transfer to the District Council

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

* + 1. the freehold interest in the Open Space shall be transferred to the District Council or such other body as the District Council may direct on the following terms:
       1. Consideration for the transfer shall be no more than One pound (£1-00);
       2. To be with
          1. full title guarantee, and
          2. vacant possession on completion
       3. The transfer shall include such rights as may be necessary for the District Council to access the Open Space for purposes of maintenance repair improvement and replacement of any aspect of the Open Space
          1. A covenant not to use or permit the Open Space to be used for anything other than the purposes that they were provided for and not to use them for any income generating use without the consent of the transferor (such consent not to be unreasonably withheld or delayed); and
          2. Save as is inconsistent herewith on the Law Society’s Standard Conditions of Sale applicable at the time of the issue of the Completion Certificate
       4. A draft transfer shall be prepared by the transferor and sent to the District Council for approval or amendment within Twenty (20) Working Days of the issue of the last Final Completion Certificate and once approved an executed transfer shall be delivered to the District Council for its execution by the District Council within Ten (10) Working Days
    2. The Open Space Commuted Sum shall be paid to the District Council

Notwithstanding the issue of a Final Completion Certificate the Open Space shall continue to be maintained in accordance with the Maintenance Plan until its transfer in accordance with paragraph 9.1 above

1. FINANCIAL CONTRIBUTIONS PAYABLE TO THE DISTRICT COUNCIL
   1. Definitions
      1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| **Expression** | **Meaning** |
| --- | --- |
| **“District Council Contributions”** | the total of the following combined contributions:   * Indoor Sports Contribution * Outdoor Sports Contribution * Community Development Fund * Community Development Worker Fund * Community Hall Facilities Contribution * Public Art Contribution |
| **“Oxfordshire Clinical Commissioning Group Contribution”** | means Eighty-two Thousand and Eight Hundred pounds (£82,800) Index Linked towards [ ] payable [insert trigger] |
| **“Thames Valley Police Contribution”** | means Seventy-four Thousand Nine Hundred and Twenty-Three pounds (£74,923) Index Linked towards [ ] payable [insert trigger] |

* + 1. The Owner covenants with the District Council as follows:
  1. Financial Contributions

The Owner covenants with the District Council:

* + 1. to pay 50% of the District Council Contributions on Occupation of 33% of the Dwellings on the Site
    2. to pay the remaining 50% of the District Council Contributions on Occupation of 67% of the Dwellings on the Site
    3. to pay the Oxfordshire Clinical Commissioning Group Contribution [ insert trigger ]
    4. to pay the Thames Valley Police Contribution [ insert trigger ]

1. COVENANTS TO THE COUNTY COUNCIL
   1. **Definitions**
      1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

| **Expression** | **Meaning** |
| --- | --- |
| **Education Payment** | any instalment of the Primary and Nursery Education Contribution or any instalment of the Secondary Education Contribution or any instalment of the SEND Education Contribution due to be paid pursuant to paragraph 2 of this Schedule |
| **Cycle Route Contribution** | means the sum of Eighty-four Thousand Three Hundred and Seventy-Four pounds (£84,374) Index Linked towards [ ] payable [insert trigger] |
| **County Council Contribution** | means the Household Waste Recycling Centre Contribution the Library Contribution the Primary and Nursery Education Contribution the Secondary Education Contribution the SEND Education Contribution |
| **County Council Highway Contribution** | means the Cycle Route Contribution the Highways Works Contribution the M40 Junction 10 Mitigation Contribution the Local Weight Restriction TRO Contribution the Middleton Stoney Mitigation Contribution the Public Transport Services Contribution the Safety Improvements 1 Contribution the Safety Improvements 2 Contribution the School Transport Contribution the Travel Plan Monitoring Contribution and the Village Traffic Calming Contribution |
| **Highways Works Contribution** | means One Million Six hundred and Eighty-two Thousand Two Hundred and Thirty-Seven pounds (£1,682,237) Index Linked towards [ ] payable [insert trigger] |
| **Household Waste Recycling Centre Contribution** | means Twenty-one Thousand Six Hundred and Eleven pounds (£21,611) Index Linked towards [ ] payable [insert trigger] |
| **Index Linked** | in relation to   * the Public Transport Services Contribution Travel Plan Monitoring Contribution and School Transport Contribution adjusted according to any increase occurring between [ ] 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 Highway Works Contribution the Junction 10 Mitigation Contribution the Middleton Stoney Mitigation Contribution the Village Traffic Calming Contribution the Cycle Route Contribution the Safety Improvements 1 Contribution the Safety Improvements 2 Contribution and the Local Weight Restriction TRO Contribution adjusted according to any increase occurring between [ ] and the quarter period in which the contribution is paid (by reference to the index value for that quarter) in the Extension of PUBSEC Tender Price Index of Public Sector Building Non-Housing within the BCIS Public Sector Price and Cost Indices and made available through the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors * the Primary and Nursery Education Contribution the Secondary education Contribution the SEND Education Contribution the Library Contribution and the Household Waste Recycling Centre Contribution and any supplemental payments made under paragraph 4.1 adjusted according to any increase occurring between [ ] 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 Twelve Thousand Four Hundred and Eighty-five pounds (£12,485) Index Linked towards [the forward funding of Bicester Library and supplementary core book stock to serve occupiers of the Development] payable [insert trigger] |
| **Local Weight Restriction TRO Contribution** | means Five Thousand Eight Hundred and Ninety-two pounds (£5,892) Index Linked towards [ ] payable [insert trigger] |
| **M40 Junction 10 Mitigation** | means Three Hundred and Eight Thousand Five Hundred and Eight pounds (£308,508) Index Linked towards [ ] payable [insert trigger] |
| **Middleton Stoney Mitigation Contribution** | means Ninety-nine Thousand Four Hundred and Fifty-five pounds (£99,455.00) Index Linked towards [ ] payable [insert trigger] |
| **Pedestrian and Cycle Access Plan** | means the drawing annexed hereto at Annex [ ] and labelled [ ] |
| **Primary and Nursery Education Contribution** | means One Million Six Hundred and Four Thousand Six Hundred and Thirty pounds (£1,604,630) Index Linked towards [ ] payable [insert trigger] |
| **Public Transport Services Contribution** | means no more than Four Hundred and Fifty-Three Thousand One Hundred and Fifty-five pounds (£453,155) Index Linked (being calculated at One Thousand Nine Hundred and Seventy Pounds and Twenty Pence per Dwelling) towards [provision of bus services to serve the Development] payable [insert trigger] |
| **Safety Improvements 1 Contribution** | means Six Thousand Six Hundred and Thirty pounds (£6,630) Index Linked towards [ ] payable [insert trigger] |
| **Safety Improvement 2 Contribution** | means Seven Thousand One Hundred and Thirty-nine pounds (£7,139) Index Linked towards [ ] payable [insert trigger] |
| **School Transport Contribution** | means Three Hundred and Eighty-five Thousand Seven Hundred pounds (£385,700) Index Linked towards [ ] payable [insert trigger] |
| **Secondary Education Contribution** | means One Million One Hundred and Ninety-five Thousand Six Hundred and Thirty-two pounds (£1,195,632) Index Linked towards [the expansion of Heyford Park School to accommodate students from the Development] payable [insert trigger] |
| **SEND Education Contribution** | means One Hundred and Twenty-five Thousand Six Hundred and Thirty-Seven pounds (£125,637) Index Linked towards [ ] payable [insert trigger] |
| **Travel Plan Monitoring Contribution** | means One Thousand Five Hundred and Fifty-Eight pounds (£1,558) Index Linked towards [ ] payable [insert trigger] |
| **Village Traffic Calming Contribution** | means Fifty-seven Thousand Seven Hundred and Four pounds (£57,704) Index Linked towards [ ] payable [insert trigger] |

2. The Owners covenant to pay the County Council Contribution to the Council County [insert triggers].

3. The Owners covenant to pay to the County Council the County Council Highway Contributions as follows:

3.1 the first 25% prior to Occupation of the 25th Dwelling;

3.2 the second 25% prior to Occupation of the 50th Dwelling;

3.3 the third 25% prior to Occupation of the 75th Dwelling; and

3.4 25% prior to Occupation of the 100th Dwelling.

1. DISTRICT COUNCIL’S COVENANTS WITH THE OWNER
   1. Repayment of Contributions
      1. The District Council covenants with the Owner to use all sums received from the Owner under the terms of the Fourth Schedule for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree.
      2. Subject to the proviso to clause 8.1.3 if the Appeal is dismissed the District Council covenants to return the monitoring fee paid pursuant to clause 8.1.3(a) to the party or person who paid it
      3. The District Council covenants with the Owner that following written request from the person who made the relevant payment the District Council will repay to that person the balance (if any) of any payment made by that person to the District Council under the terms of the Fourth Schedule in accordance with the provisions of this Deed which has not been expended or committed at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always
         1. that no such request will be made prior to the expiry of ten years of the date of receipt by the District Council of such payment.
         2. that 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.
         3. that if capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph

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

* + 1. The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of the Fourth Schedule upon a written request by the Owner such request not to be made more than once in any year.
    2. If any court of competent jurisdiction shall quash the Planning Permission after any of payments required by the Third Schedule and/or the Fourth Schedule have been paid but not expended to return so much of such payment as has not been expended to the person who made the contribution
  1. Discharge of Obligations

At the written request of any 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.

1. COUNTY COUNCIL’S COVENANTS WITH THE OWNER

Application of Monies Received

* + 1. The County Council shall not apply any of the contributions referred to in the Fifth Schedule for any purpose other than as set out in the definition of each contribution therein in such form and at such time as the County Council shall in its discretion decide or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree in writing

Repayment

* + 1. Following written request from the person who made the relevant contribution the County Council will repay to that person the balance (if any) of such contribution which at the date of the receipt of such written request has not been expended together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request shall be made prior to the expiry of 10 years from the Due Date or the date of receipt by the County Council (whichever is the later) of the last instalment of any such contribution.
    2. Subject to the proviso to clause 8.1.3 if the Appeal is dismissed the County Council covenants to return the monitoring fee paid pursuant to sub-clause (b) to the party or person who paid it
    3. Any contribution or part of a contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date

1. DISPUTES
2. A dispute in the context of this agreement arises where any Party requires or seeks the approval or consent of another Party pursuant to any provision set out in Clause [20] and that approval or consent is refused or is not given within 20 Working Days but FOR THE AVOIDANCE OF DOUBT:
   1. disputes relating to the construction, interpretation and/or the application of this Agreement shall only be determined by an Expert with the express further agreement of all other Parties and in the absence of such agreement can only be determined by a Court of competent jurisdiction;
   2. any dispute relating to a refusal or failure to determine any application (whether pursuant to Sec 106A of the Act or otherwise) to modify or discharge any provision hereof shall not constitute a dispute to be determined pursuant to this Schedule but in accordance with Section 106B of the Act or Section 84A of the Law of Property Act 1925 or otherwise as appropriate
3. Any Party may by serving notice on all the other Parties (the Notice) require a dispute to be referred to an Expert (as hereinafter defined) for determination.
4. The Notice must:
   1. specify the nature, basis and brief description of the dispute;
   2. identify the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
   3. propose a person to determine the dispute (‘the Expert’).
5. The Expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Notice is issued pursuant to paragraph 1 either Party may request that the following nominate the Expert at their joint expense:
   1. if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;
   2. if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the Expert;
   3. if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;
   4. if such dispute relates to Affordable Housing the Expert shall be nominated by the President of the Royal Town Planning Institute; and
   5. in all other cases, the President of the Law Society to nominate the Expert as he thinks appropriate
6. The Parties may agree to appoint joint Experts or (in default of agreement) invite joint Experts to be nominated pursuant to paragraph 4 and in which case ‘Expert’ shall mean both or all of them.
7. If an Expert (including one or more jointly nominated experts) nominated or appointed pursuant to this Schedule shall die or decline to act another Expert may be appointed in his place in accordance with the provisions of paragraph 4.
8. The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of the notice of his appointment given pursuant to paragraph 8.
9. Notice in writing of the appointment of an Expert pursuant to this Schedule shall be given by the Expert to the Parties and he shall invite each of the Parties to submit to him within ten Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
10. The Expert shall act as an expert and not as an arbitrator but shall consider any written representation submitted to him within the period specified in this Schedule although he shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
11. The Expert shall give notice of his decision in writing
12. If the Expert consists of more than one person the decision shall be a joint decision approved by all such persons and the decision will (in the absence of manifest error) be final and binding on the Parties hereto.
13. If for any reason the Expert fails to make a decision and give notice thereof in accordance with this Schedule the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
14. The Expert's costs shall be in the Expert's award or in the event that no determination as to costs is made, such costs will be borne by the parties to the Dispute in equal shares.
15. Nothing in this Schedule shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

EXECUTION

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

Authorised Signatory

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

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

**SIGNED AS A DEED** by the said **ANITA CURTIS** in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation

**SIGNED AS A DEED** by the said **KENNETH RAYMOND ALAN HOLFORD** as trustee of **K Holford Company Pension Scheme** in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation

**EXECUTED AS A DEED** by **ARC TRUSTEES LIMITED** acting by a Trustee on behalf of **K Holford Company Pension Scheme** in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation

**SIGNED AS A DEED** by the said **ANDREW MICHAEL DEAN** in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation

**SIGNED AS A DEED** by the said **SUZANNE DEAN** in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation

**EXECUTED AS A DEED** by **RICHBOROUGH ESTATES LIMITED** acting by a Director in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation

**EXECUTED AS A DEED** by **LONE STAR LAND LIMITED** acting by a Director in the presence of:

Witness  
signature

Witness Name  
(BLOCK CAPS)

Address

Occupation