

5 July 2024
~~DATED 6 July 2024~~ RW

- (1) CHERWELL DISTRICT COUNCIL
- (2) OXFORDSHIRE COUNTY COUNCIL
- (3) WILLIAM HERBRAND SACKVILLE EARL DE LA WARR
- (4) VISTRY HOMES LIMITED

**PLANNING OBLIGATION
BY DEED OF AGREEMENT**

under section 106 of the Town and Country
Planning Act 1990 relating to

Land at Warwick Road, Hanwell, Banbury

Application No: 23/00853/OUT

Appeal Ref: APP/C3105/W/24/3338211

THIS DEED is dated

5 July

2024

- (1) **CHERWELL DISTRICT COUNCIL**, of Bodicote House, White Post Road, Bodicote, Banbury OX15 4AA (the "District Council"); and
- (2) **OXFORDSHIRE COUNTY COUNCIL**, of County Hall, New Road, Oxford OX1 1ND (the "County Council");
- (3) **WILLIAM HERBRAND SACKVILLE EARL DE LA WARR** of The Estate Office, Buckhurst Park, Withyham, East Sussex, TN7 4BL ("the Owner")
- (4) **VISTRY HOMES LIMITED** (Company Number: 00397634) and whose registered office is 11 Tower View, Kings Hill, West Malling, ME19 4UY ("the Developer")

Whereas

- 1 The County Council and the District Council are local planning authorities for the purposes of the 1990 Act for the area in which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
- 2 The County Council is the Highway Authority and the Traffic Authority for the purposes of the Highway Act 1980, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Education Authority and the Waste Disposal Authority
- 3 The Owner is the freehold owner of that part of the Site registered at land registry with title number ON234037 subject to the interest of the Developer
- 4 The Developer has an option over the Site dated 7 January 2016 (as varied by a deed of variation dated 12 April 2023)
- 5 The District Council refused the grant of the Planning Permission
- 6 The Developer has appealed the refusal to the Secretary of State and the Appeal is to be determined by an Inspector appointed by the Secretary of State
- 7 This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSETH as follows:

Operative Part

1 Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation apply in this deed:

Definitions:

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1990 Act: means the Town and Country Planning Act 1990 (as amended)

Additional First Homes Contribution: means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of Part 2 of Schedule 2, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;

Affordable Housing: means 40% of the Dwellings which are to be managed or owned by an AHP (except for First Homes) and which are to be provided for people who cannot afford to rent or purchase housing appropriate to their needs on the private market within the same area and "Affordable Housing Units" shall be construed accordingly;

Affordable Housing Mix: means the following mix:

- (a) 25% First Homes;
- (b) 67% Social Rented Units and Affordable Rented Housing; and
- (c) 8% Shared Ownership Units

or such other mix as may be agreed by the District Council in writing (such agreement not to be unreasonably withheld or withdrawn);

Affordable Housing Scheme: means a scheme identifying the sizes, tenures, types of the proposed affordable dwellings and should also include the location phasing proposal and internal dimensions of all Affordable Housing Units and accompanying plans should also show compliance with M4(2) and M4(3) requirements;

Affordable Rented Housing means a unit of Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing in accordance with the definition of affordable rented housing contained in Annex 2 to the NPPF (or any subsequent replacement or modification thereof) but for the avoidance of doubt must be at an affordable rent which is subject to rent controls that require a rent of no

more than 80% of the equivalent local Market Rent (including service charges, where applicable) and "Affordable Rent Units" shall be construed accordingly;

AHP: means an organisation that is involved in the delivery and management and ownership of Affordable Housing which is registered or eligible for registration under chapter 3 part 2 of the Housing and Regeneration Act 2008 as shall be approved in writing by the District Council which is capable of managing Affordable Housing and receiving grant from the Homes England;

AT: means an Assured Tenancy or an Assured Shorthold Tenancy within the meaning of the Housing Act 1988;

Appeal: means appeal reference number APP/C3105/W/24/3338211 submitted to the Secretary of State and given a start date of 15 February 2024;

Armed Services Member: means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

Bird Nesting Land: means the land shown edged in blue on the Plan and which is approximately 8.4HA in size;

Bird Nesting Land Owner: means the owner of the Bird Nesting Land from time to time;

Bird Nesting Land Management Body: means a body previously approved by the District Council who shall be responsible for monitoring the Bird Nesting Land to ensure compliance with the Farmland Bird Mitigation Scheme and who shall be responsible for the preparation and submission of the Ecological Monitoring Reports to the District Council such body to employ a suitable ecologist who is a member of the CIEEM or such other ecologist as previously approved by the District Council in writing (such approval not to be unreasonably withheld or delayed);

Cluster: shall mean a group of Affordable Housing Units which does not have contiguous boundaries with another group of Affordable Housing Units;

Commencement Date: means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and 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, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions "Commence", "Commences", "Commencement", "Commencement of Development" and "Commenced" shall be construed accordingly;

Community Development Worker Contribution: means the sum of £102.73 (one hundred and two pounds and seventy three pence) per Dwelling which if 170 Dwellings are provided would equate to £17,463.35 (seventeen thousand four hundred and sixty three pounds and thirty five pence) to be paid to the District Council to be used towards the costs associated with employing a community development worker to engage regularly with residents and to provide links to local services and social networks to help residents integrate;

Community Facilities Contribution: means the sum of £1,143.33 (one thousand one hundred and forty three pounds and thirty three pence) per Dwelling which if 170 Dwellings are provided would equate to £194,365.42 (one hundred and ninety four thousand three hundred and sixty five pounds and forty two pence) to be paid to the District Council as a contribution towards the addition of a mezzanine floor to Hanwell Fields Community Centre;;

Compliance Certificate: means the certificate issued by the District Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 of Part 2 of Schedule 2 applies the Eligibility Criteria (Local);

Completion: means when a certificate of practical completion has been issued by the appointed architect, engineer or project manager or other suitably qualified party to the Owner confirming that the Development or the relevant part of the Development is complete to be put into use;

Construction: the construction of any building forming part of the Development including footings or foundations and "Construct" and "Constructed" shall be construed accordingly;

County Monitoring Fee: means the 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 in respect of the Development in accordance with Schedule 1 disregarding index linking;

Decision Letter: means the decision letter issued by the Secretary of State confirming whether or not the Appeal is allowed;

Development: means the development of the Site for up to 170 dwellings (Use Class C3) with associated open space and vehicular access as permitted by the Planning Permission;

Development Standard: means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015
- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the District Council from time to time

- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited
- (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)
- (e) and the same may be amended by written agreement of the parties in accordance with paragraph 5.1 of Part 2 of Schedule 2;

Discount Market Price: means a sum which is the Market Value discounted by at least 30%;

Disposal: means sale, transfer, option, gift exchange, declaration of trust, assignment lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly and in the case of First Homes means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- a letting or sub-letting in accordance with paragraph 7 of Part 2 of Schedule 2
- a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- an Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly;

District Council Contributions: means the Community Facilities Contribution, the Community Development Worker Contribution, the Pitches Contribution, the Indoor Sports Facilities Contribution and NHS Contribution;

District Council Monitoring Fee: means the sum of £5,000 to be used by the District Council towards its costs associated with monitoring compliance with this Deed;

Due Date: means 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;

Dwelling: a building (including a house flat or maisonette) Constructed or proposed to be Constructed on the Site as part of the Development or part of such building designed for residential Occupation by a single household pursuant to the Qualifying Permission and including any Affordable Housing;

Ecological Monitoring Report: means the ecological reports to be submitted to the District Council demonstrating compliance with the Farmland Bird Mitigation Scheme;

Ecological Monitoring Reports Monitoring Fee: means the Index Linked sum of £3,500 (three thousand five hundred pounds) for the review and inspection of the Ecological Monitoring Reports referred to in paragraph 1.3 of Schedule 4 and which is payable to the District Council;

Eligibility Criteria (National): means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National);

Eligibility Criteria (Local): means criteria (if any) published by the District Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
 - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
 - (ii) The purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
 - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

it being acknowledged that at the date of this agreement the District Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home;

Exempt Disposal: means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 of Part 2 of Schedule 2 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7 of Part 2 of Schedule 2;

Farmland Bird Mitigation Scheme: means the scheme to be submitted to the District Council prior to Commencement of Development for the Bird Nesting Land which is to include full details of the programme for implementation, ongoing management and monitoring of at least ten (10) skylark mitigation plots within the Bird Nesting Land each an undrilled area approximately sixteen (16) metres square and at least three (2) metres wide and at least fifty (50) metres from boundaries and located away from tramlines and margins and at a density of no more than two (2) plots per hectare, which are to be maintained for a period of thirty (30) years (or such other scheme as may be approved between the parties in writing);

First Home: means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap;

First Homes Mortgagee: means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home;

First Homes Owner: means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 7 of Part 2 of Schedule 2;

First Time Buyer: means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;

Head of Housing: means the District Council's Head of Housing for the time being and his agents;

Housing Allocation Scheme: means the District Council's Housing Allocation Scheme which was adopted on 1 December 2021 including any variations thereto or superseding documents;

Income Cap (Local): means a local income cap as may be published from time to time by the District Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the District Council has not set an Income Cap (Local);

Income Cap (National): means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;

Index Linked means in relation to contributions payable to the District Council:

(a) increased according to the fluctuations between the date of this Deed and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in one Tender Index

(b) as where otherwise specified in Schedule X of this Deed where payments are increased according to the fluctuations between the Q2 BCIS 2023 and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in one Tender Index;

and "Index Linking" shall be construed accordingly;

Indoor Sports Facilities Contribution: means sum of £ 834.95 (eight hundred and thirty four pounds and ninety five pounds) per Dwelling which if 170 Dwellings are provided would equate

to £141,940.96 (one hundred and forty one thousand nine hundred and forty pounds and ninety six pence) to be paid to the District Council to be used towards the provision of an indoor tennis centre in Banbury or improvements to other indoor sport facilities in the locality of the Development;

Inspector: means the inspector appointed by the Secretary of State to determine the Appeal

Interest: means interest at four percent (4%) above the base lending rate of Lloyds Bank Plc from time to time;

Key Worker: means such categories of employment as may be designated and published by the District Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the District Council has not designated any categories of employment as Key Worker;

Local Connection: shall have the meaning given to it by the Housing Allocations Scheme and in the case of First Homes means such local connection criteria as may be designated and published by the District Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal it being acknowledged that at the date of this agreement the District Council has not designated any criteria as Local Connection Criteria and "Local Connection Criteria" shall be construed accordingly;

Market Rent: means the estimated amount for which the relevant Dwelling should be let on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion;

Market Value: means the open market value as assessed by a Valuer of Dwelling as confirmed to the District Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation;

NHS Contribution: means a sum to be calculated on the following basis:

$$A \times B \times £360 = C$$

Where:

A is the number of Dwellings;

B is an average occupancy of 2.4 people per Dwelling; and

C is the NHS Contribution

and which if 170 Dwellings are provided would equate to the sum of one hundred and forty-six thousand eight hundred and eight pounds (£146,880) which shall be paid to the District Council which is to be transferred to the NHS Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board and which shall be used towards improvements to Banbury Cross Health Centre to increase capacity or such other surgery alterations and other capital projects serving the Development;

Occupancy: means occupation for the purposes of the Qualifying Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expressions "Occupation" and "Occupied" shall be construed accordingly;

Open Market Units: means Dwellings which are not Affordable Housing Units;

Pitches Contribution: means the sum of £2,017.03 (two thousand and seventeen pounds and three pence) per Dwelling which if 170 Dwellings are provided would equate to £342,895.10 (three hundred and forty two pounds and eight hundred and ninety five pounds and ten pence) to be paid to the District Council to be used towards the provision of an outdoor 3G football pitch (and associated infrastructure) at the North Oxfordshire Academy;

Plan: means the plan annexed to this Deed with drawing number edp3253_d045c;

Planning Application: means the application for outline planning permission validated by the District Council on 29 March 2023 and bearing the District Council's reference number 23/00853/OUT;

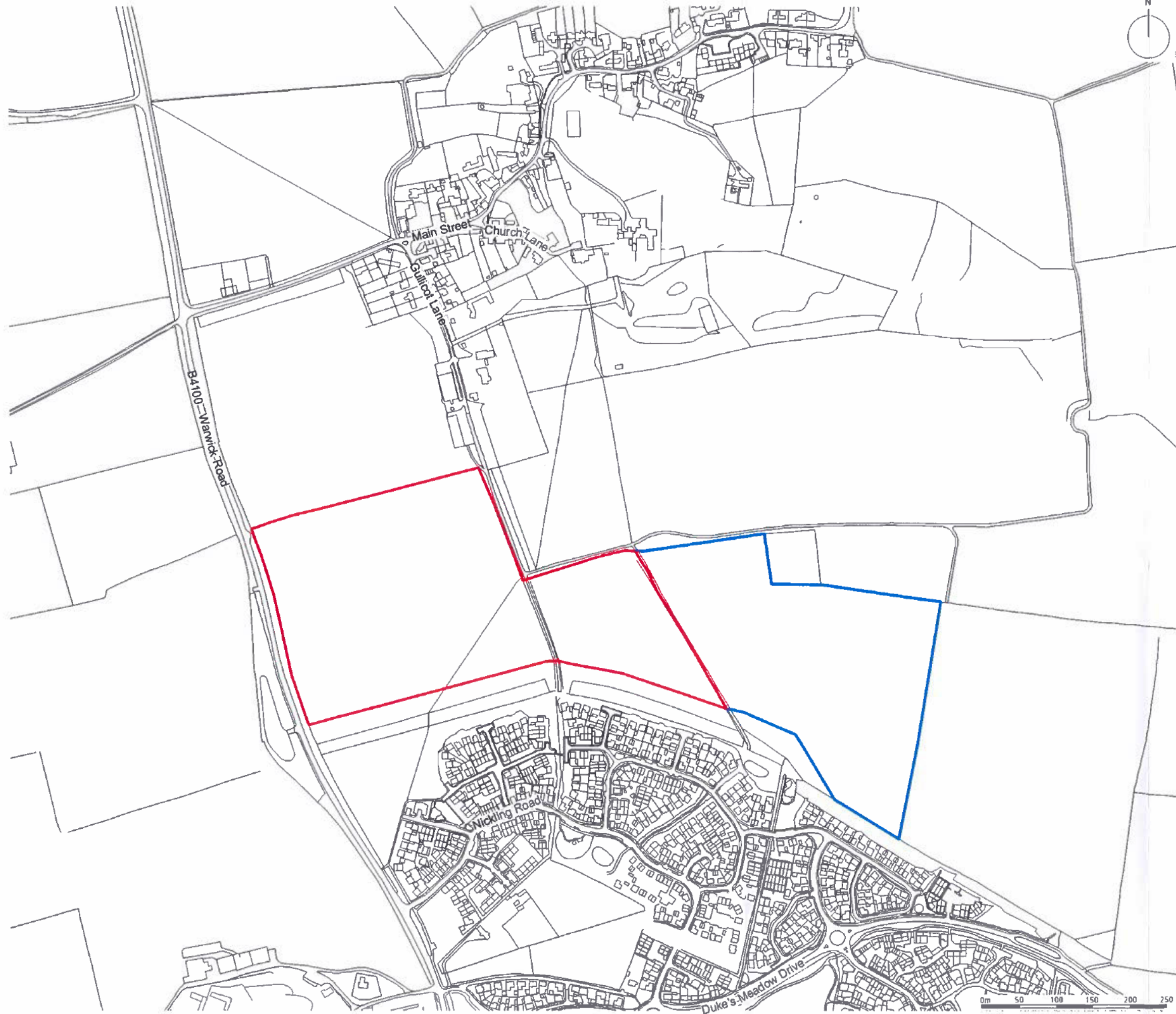
Planning Permission: means the permission to be granted by way of approval of the Planning Application whether on appeal or otherwise or from any Qualifying Application;

Practical Completion: means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied;

Price Cap: means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State;

Qualifying Person: means a person or household in need of Affordable Housing identified in accordance with the provisions below:

- in the case of Social Rented Housing or Affordable Rented Housing a person accepted on to the District Council's Housing Register (from time to time) in accordance with the Housing Allocations Policy;



client
Vistry Group

project title
Land East of Warwick Road, Banbury

drawing title
Site Boundary Plan

| | | | |
|----------------|----------------------|----------|------------|
| date | 04 MARCH 2024 | drawn by | NBo |
| drawing number | edp3253_d045c | checked | PW |
| scale | 1:5,000 @ A3 | | QA |



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- in the case of a Shared Ownership Unit a person who meets the eligibility criteria for shared ownership housing set by the Government from time to time and who is approved by the relevant Help to Buy Agency appointed by the Homes England for the area in which the Shared Ownership Unit is located;

Qualifying Application: means an application for Reserved Matters Approval pursuant to the Planning Permission or any application under Section 73, Section 73A or Section 96A of the Act or application for full planning permission for any phase of the Development or any application under sections for a 73, 73A or 96A of the 1990 Act to vary or amend a Qualifying 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 Approval: details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Qualifying Permission for subsequent approval;

RPI: means the Retail Price Index being a price index calculated and published by the UK's Office of National Statistics which measures the change in the prices charged for goods and services bought for consumption in the UK;

SDLT: means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;

Secretary of State: means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;

Shared Ownership Lease: means a lease in the form of the Homes England's model shared ownership lease and on terms that permit part purchase of the open market value of the equity in a unit together with rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit (or such other rent or form of lease approved in writing by the District Council);

Shared Ownership Unit: means a unit of Affordable Housing to be made available by an AHP under a Shared Ownership Lease;

Site: means the freehold land to the east of Warwick Road, Drayton, Warwick Road, Banbury registered at the Land Registry with Title Absolute under the Title Number ON234037 and against which this Deed may be enforced all of which land is shown for identification purposes only edged red on the Plan;

Social Rented Housing: means rented housing owned and managed by Registered Providers for which guideline target rents are determined through a national rent regime as described in Annex 2 of the NPPF;

Trigger Event: means 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;

Valuer: means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity;

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England and any day which is on or between 27th and 31st December in any Calendar Year;

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 Words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.4 The reference to any statute or section of a statute includes 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.
- 1.5 Any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears.
- 1.6 Reference to the Site includes any part of it.
- 1.7 Where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually unless there is an express provision otherwise in this Deed which for the avoidance of doubt includes the provisions at Clauses 4 and 5.
- 1.8 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 the County Council the successors to their respective functions.
- 1.9 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
- 1.10 "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.

1.11 The headings and contents list are for reference only and shall not affect construction.

2 Effect of this Deed

2.1 This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and the County Council.

2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 and section 120 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

2.3 The Owner enters into the obligations for itself and its successors in title with the District Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof.

2.4 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act

2.5 Those covenants, restrictions and requirements set out in this Deed are enforceable by both the District Council and the County Council but those

2.5.1 set out in Schedule 2, Schedule 3, Schedule 4 and Schedule 8 are enforceable by the District Council as local planning authority and

2.5.2 set out in Schedule 1 and Schedule 6 are enforceable by the County Council as County planning authority

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

3 Conditionality

3.1 This Deed is conditional upon:-

3.1.1 the Secretary of State (through his Inspector or otherwise) granting the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions of Clauses 1, 2, 3, 5, 7.1, 7.6, 7.7, 11.1.1, 11.1.2, 11.1.3, 12, 13, 15 and 17 which shall come into effect immediately upon completion of this Deed

- 3.2 If the Secretary of State or his Inspector expressly states in the Decision Letter that a particular obligation contained in this Agreement does not satisfy the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 then such obligation shall not be enforceable by the District Council or the County Council but for the avoidance of doubt all other obligations shall remain enforceable by the District Council and County Council as applicable.

4 Owner's and Bird Nesting Land Owner's covenants

- 4.1 The Owner of the Site covenants with the County Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedules 1 and 6 hereto and it is hereby agreed that the obligations in Schedule 1 and 6 shall not be enforceable against the Bird Nesting Land Owner unless the Bird Nesting Land Owner and the Owner are the same entity.
- 4.2 The Owner of the Site covenants with the District Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 2, Schedule 3, Paragraph 1 of Schedule 4 and Schedule 8 hereto and it is hereby agreed that the obligations in Schedules 2 and 3 (inclusive) and Schedule 8 and Paragraph 1 of Schedule 4 shall not be enforceable against the Bird Nesting Land Owner unless the Bird Nesting Land Owner and the Owner of the Site are the same entity.
- 4.3 The Bird Nesting Land Owner covenants with the District Council to observe and perform the covenants restrictions stipulations and obligations in Paragraph 2 of Schedule 4 and it is hereby agreed that the obligations in Paragraph 2 of Schedule 4 shall not be enforceable against the Owner of the Site unless the Bird Nesting Land Owner and the Owner of the Site are the same entity

5 County Council Covenants

- 5.1 The County Council hereby covenants with the Owner to observe and perform the covenants and obligations as set out in Schedule 5 to this Deed

6 District Council covenants

- 6.1 The District Council hereby covenants with the Owner to observe and perform the covenants and obligations as set out in Schedule 7 to this Deed.

7 Miscellaneous

- 7.1 This Deed shall be registered as a local land charge by the District Council.
- 7.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a member of a group company or a statutory successor to a party hereto.
- 7.3 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

| In respect of the Owner: | In respect of the District Council: | In respect of the County Council: | In respect of the Developer: |
|---|---|--|---|
| 42 Buckhurst Park, Withyham, East Sussex, TN7 4BL | Bodicote House, White Post Road, Bodicote, Banbury OX15 4AA (quoting reference 23/00853/OUT) | County Hall, New Road, Oxford OX1 1ND (quoting reference 23/00853/OUT) | Vistry Homes Limited, 11 Tower View, Kings Hill, West Malling, ME19 4UY |

- 7.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 7.5 No waiver whether express or implied by the County Council or District Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council or the District Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.
- 7.6 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not occurred in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Qualifying Permission
- 7.7 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the District Council or County Council or any officer of the District Council or County Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation or certification 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:
- 7.7.1 the District Council by the Assistant Director: Planning Policy and Development; and
- 7.7.2 the County Council by the Director for Environment and Place
- 7.8 Save for owners and occupiers of the Affordable Housing Units who shall continue to be bound by the obligations in Schedule 2 the obligations in this Deed will not be enforceable against owners or occupiers of individual Dwellings nor against those deriving title from them nor their mortgagees or charges PROVIDED ALWAYS that it is intended that restrictions on Occupation shall be enforceable against such persons

- 7.9 No planning obligations contained in this Deed shall be binding on any part of the Site or Bird Nesting Land held by any statutory utilities for their operational purposes
- 7.10 Any future mortgagee or chargee agrees that the security of the charge over the Site or Bird Nesting Land shall take effect subject to this Deed PROVIDED THAT the mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site or Bird Nesting Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner or Bird Nesting Land Owner (as applicable).
- 7.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site or Bird Nesting Land in accordance with a planning permission (other than the Planning Permission or any approval of reserved matters pursuant to the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.12 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:
- 7.12.1 if delivered by hand, at the time of delivery;
- 7.12.2 if sent by post, on the second Working Day after posting; or
- 7.12.3 if sent by recorded delivery, at the time delivery was signed for.
- 7.13 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.
- 7.14 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.
- 7.15 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.

8 Developer Consent

The Developer hereby consents to the execution of this Deed by the Owner and agrees that the Site and Bird Nesting Land shall be bound by the restrictions and obligations contained in this provided that the Developer shall (save for clause 11.1) have no liability under this Agreement unless it becomes an Owner of the Site or the Bird Nesting Land.

9 Release

No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site or the Bird Nesting Land (or the part of the Site or the Bird Nesting Land to which the breach relates), but without prejudice to liability for any breach subsisting before parting with that interest.

10 Determination of Disputes

In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions may apply:

- 10.1 The Owner the Developer and the District Council shall use their reasonable endeavours to resolve the dispute by agreement
- 10.2 If agreement cannot be reached the matter in dispute may be referred to and settled by some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president of the Royal Institution of Chartered Surveyors (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert on the application of any of the Owner the Developer and/or the District Council after giving notice in writing to the other party to this Deed
- 10.3 The person to be appointed pursuant to clause 10.2 shall be a person having ten years or more post qualification experience of projects comprising works of the scale and nature of the Development
- 10.4 Reference to the expert shall be on terms that determination shall take place within 28 working days of the expert accepting his instructions
- 10.5 The expert shall have the power to award costs of the determination in favour of any of the Owner the Developer and/or the District Council to the dispute at the expense of the Owner the Developer and/or the District Council and failing such determination such costs shall be borne by the parties in equal shares
- 10.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- 10.7 The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the Owner the Developer and/or the District Council to the dispute
- 10.8 For the avoidance of doubt this clause 10 shall not apply to the County Council

11 Miscellaneous

11.1 The Developer shall

- 11.1.1 pay to the District Council on the execution and completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation, preparation and execution of this Deed;
- 11.1.2 pay to the County Council on the execution and completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed; and

11.1.3 within ten (10) days of the grant of Planning Permission pay:

- (a) to the County Council the sum of one thousand pounds (£1000.00) of the County Monitoring Fee ; and
- (b) to the District Council the sum of one thousand pounds (£1000.00) of the District Council Monitoring Fee (Index Linked)

11.2 The Owner shall

11.2.1 Prior to the Commencement of Development pay:

- (a) to the County Council the balance of the County Monitoring Fee; and
- (b) to the District Council the remaining sum of the Index Linked District Council Monitoring Fee;

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

11.3 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

11.4 Following the Owner notifying the District Council and the County Council 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

11.5 In the event that a Qualifying Permission is granted (or if any condition of the Planning Permission is varied or released following an appeal under section 78 of the Act) this Deed shall (unless the County Council determine that revised planning obligations are required as a result of such Qualifying Permission or variation or release) apply to the development pursuant to the said Qualifying Permission or varied Planning Permission and the covenants and provisions of this Deed shall be deemed to apply in equal terms to the development further to that Qualifying Permission and the Planning Permission as varied without the need for a further Deed to be entered into pursuant to Section 106 of the Act and for the avoidance of doubt where a different section 106 obligation is agreed by the County Council as being binding on any development further to a Qualifying Permission or varied Planning Permission this Deed shall not apply to that

development if that separate section 106 obligation expressly states that it is in substitution for all of the obligations in this Deed

- 11.6 This Agreement shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

12 No Fetter

- 12.1 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.

13 Change of Ownership etc

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

13.1.1 the sale of individual Dwellings on the Development; or

13.1.2 any disposal of any part or parts of the Site for servicing or utility requirements or to a statutory body or service supply company of an electricity substation gas governor pumping station water pumping station or other statutory service which have been constructed or installed in or on the Site

14 Interest

- 14.1 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.
- 14.2 Interest shall be calculated and accrue daily and if any payment is made more than three months after the Due Date shall be compounded monthly.

15 Data Protection

- 15.1 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:

15.1.1 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

15.1.2 any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000

16 Value Added Tax

16.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any valued 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.

17 Jurisdiction

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

IN WITNESS whereof the parties hereto have executed this Deed by the same remains undelivered until the day and year first before written

Schedule 1
County Council Contributions

1. DEFINITIONS

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

| Expression | Meaning |
|--------------------------------------|---|
| "Approval (Reserved Matters)" | Means if paragraph 5.1 of this Schedule applies the approval of a Qualifying Application which first establishes the Composition of the Development or if paragraph 5.2 of this Schedule applies the Composition of the Development for the purposes of this definition only is deemed to be 22 x 1 Bed Dwellings and 43 x 2 Bed Dwellings and 74 x 3 Bed Dwellings and 31 x 4 Bed Dwellings; |
| "Approval (Variation)" | means any approval (further to an application for Reserved Matters Approvals or approval of a non-material change to a Qualifying Permission, the Planning Permission or otherwise) which alters the Composition of the Development as established further to the Approval (Reserved Matters) in the event that paragraph 5.1 of this Schedule applies or as defined in the Approval (Reserved Matters) in the event that paragraph 5.2 of this Schedule applies or as established in any preceding Approval (Variation) (as applicable); |
| Bedroom | means a room in a Dwelling designed as a bedroom or study/ bedroom and <ul style="list-style-type: none">• 1 Bed Dwelling means a Dwelling with 1 Bedroom• 2 Bed Dwelling means a Dwelling with 2 Bedrooms |

Expression**Meaning**

- 3 Bed Dwelling means a Dwelling with 3 Bedrooms
- 4 Bed Dwelling means a Dwelling with 4 or more Bedrooms;

Composition of the Development

means the aggregate number of Dwellings comprised in the entire Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling and "Composition" shall be construed accordingly;

Bus Services Contribution

means if the Development is not to be brought forward in a Single Phase the sum of two hundred and seventy five thousand and sixty pounds (£275,060.00) County Index Linked or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule and County Index Linked towards the continued running of the B9 bus services (or such other substantially similar route or service) from the Development towards Banbury town centre;

Cycle Infrastructure Contribution

means if the Development is not to be brought forward in a Single Phase the sum of one hundred and seventy thousand pounds (£170,000.00) County Index Linked or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule and County Index Linked towards improvements to Proposed Route 4 of the Banbury Local Cycle and Walking Infrastructure Plan (2023) between the

Expression**Meaning**

Development and Banbury town centre to improve cycle infrastructure and cyclist safety;

Infrastructure

means infrastructure serving the development including SUDS, internal roads, access to the development, highway works, open space or development required for the provision of services and utilities but which for the avoidance of doubt does not apply to any Qualifying Application that contains a Dwelling;

Public Rights of Way Contribution

means the sum of sixty five thousand pounds (£65,000.00) County Index Linked towards improvements to such parts of Hanwell Footpaths 239/6, 7, 8 and 10 and Banbury Footpath 120/116 within 1km of the Site;

Secondary Education Contribution

means if the Development is not to be brought forward in a Single Phase the sum of one million three hundred and sixty two thousand seven hundred and seventeen pounds (£1,362,717.00) County Index Linked or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule and County Index Linked towards a new secondary school serving Banbury and payable in three instalments as follows:

- Secondary Education Instalment 1 being 34% of the Secondary Education Contribution and
- Secondary Education Instalment 2 being 33% of the Secondary Education Contribution

Expression**Meaning****Secondary Education Land Contribution**

- Secondary Education Instalment 3 being the remaining 33% of the Secondary Education Contribution;
- Means if the Development is not to be brought forward in a Single Phase the sum of one hundred and twenty six thousand one hundred and sixteen pounds (£126,116.00) County Index Linked or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule and County Index Linked towards the purchase of land for a new secondary school serving Banbury and payable in three instalments as follows:
 - Secondary Education Land Instalment 1 being 34% of the Secondary Education Land Contribution and
 - Secondary Education Land Instalment 2 being 33% of the Secondary Education Land Contribution and
 - Secondary Education Land Instalment 3 being the remaining 33% of the Secondary Education Land Contribution;

SEND Education Contribution

means if the Development is not to be brought forward in a Single Phase the sum of ninety eight thousand seven hundred and fifteen pounds (£98,715.00) County Index Linked or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule and County Index Linked

Expression**Meaning**

towards SEND education serving the Site and payable in three instalments as follows:

- SEND Education Instalment 1 being 34% of the SEND Education Contribution and
- SEND Education Instalment 2 being 33% of the SEND Education Contribution
- SEND Education Instalment 3 being the remaining 33% of the SEND Education Contribution;

Strategic Waste Management Contribution

means if the Development is not to be brought forward in a Single Phase the sum of fifteen thousand nine hundred and seventy three pounds (£15,973.00) County Index Linked or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule and County Index Linked towards the expansion and efficiency of household waste recycling centres serving the Site;

Traffic Regulation Order Contribution

means the sum of three thousand eight hundred and forty pounds (£3,840.00) County Index Linked towards the costs to the County Council of the promotion, consultation and, if appropriate, the making of a Traffic Regulation Order to extend the speed limit on the B4100;

County Index Linked

means in relation to

- The Cycle Infrastructure Contribution and any payments towards the Cycle Infrastructure Contribution due in accordance with paragraph 4 below and the Public Rights of Way Contribution adjusted according to any increase occurring

Expression

Meaning

between July 2023 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 Bus Services Contribution and any payments towards the Bus Services Contribution due in accordance with paragraph 4 below adjusted according to any increase occurring between December 2021 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 Traffic Regulation Order Contribution adjusted according to any increase occurring between April 2024 and the date when the relevant payment is made to the County Council in the all Items Retail

Expression

Meaning

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

- The Travel Plan Monitoring Contribution 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 Secondary Education Land Contribution and any payments towards the Secondary Education Land Contribution due in accordance with paragraph 4 below adjusted according to any increase occurring between November 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 Secondary Education Contribution and the SEND Education Contribution and the Strategic Waste Management Contribution and any payments towards the Secondary Education Contribution and the SEND Education Contribution and the Strategic Waste Management Contribution that are due in accordance with paragraph 4 below

Expression**Meaning**

adjusted according to any increase occurring between index value TPI 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;

Infrastructure Contributions

means the Bus Services Contribution and the Cycle Infrastructure Contribution and the Secondary Education Contribution and the Secondary Education Land Contribution and the SEND Education Contribution and the Strategic Waste Management Contribution;

Matrix

means the formula:

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

When

A means the number of 1 Bed Dwellings

B means the number of 2 Bed Dwellings

C means the number of 3 Bed Dwellings

D means the number of 4 Bed Dwellings

W, X, Y and Z are as set out in the table in Annex 1 to this Schedule in respect of Secondary Education Contribution, Secondary Education Land Contribution, SEND Education Contribution, the Bus Services Contribution, the Cycle

| | |
|--|--|
| Expression | Meaning |
| | Infrastructure Contribution, and the Strategic Waste Management Contribution; |
| Notification (Initial) | means written notification confirming whether paragraph 5.1 or paragraph 5.2 of this Schedule applies and if paragraph 5.1 applies notification of the Approval (Reserved Matters) containing a copy of that approval and details of the Composition of the Development established by that approval; |
| Notification (Variation) | means written notification of an Approval (Variation) containing a copy of that approval and details of the Composition of the Development established applying that approval; |
| Revised Contribution | means as appropriate the Revised Secondary Education Contribution and/or the Revised Secondary Land Contribution and/or the Revised SEND Contribution and/or the Revised Bus Services Contribution and/or the Revised Cycle Infrastructure Contribution and/or the Revised Strategic Waste Management Contribution |
| Revised Bus Services Contribution | means the sum calculated by applying the Composition of the Development as identified in the Notification (Variation) to the Bus Services line of the Matrix where this is higher than the Bus Services Contribution or in the event that there is more than one Approval (Variation) the Revised Bus Services Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Bus Services line of the Matrix if that |

Expression**Meaning**

sum is higher and which shall be used for the same purposes as the Bus Services Contribution;

Revised Cycle Infrastructure Contribution

means the sum calculated by applying the Composition of the Development as identified in the Notification (Variation) to the Cycle Infrastructure line of the Matrix where this is higher than the Cycle Infrastructure Contribution or in the event that there is more than one Approval (Variation) the Revised Cycle Infrastructure Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Cycle Infrastructure line of the Matrix if that sum is higher and which shall be used for the same purposes as the Cycle Infrastructure Contribution;

Revised Secondary Education Land Contribution

means the sum calculated by applying the Composition of the Development as identified in the Notification (Variation) to the Secondary Land line of the Matrix where this is higher than the Secondary Education Land Contribution or in the event that there is more than one Approval (Variation) the Revised Secondary Education Land Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Secondary Land line of the Matrix if that sum is higher and which shall be used for the same purposes as the Secondary Education Land Contribution;

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

means the sum calculated by applying the Composition of the Development as identified in the Notification (Variation) to the Secondary line of the Matrix where this is higher than the Secondary Education Contribution or in the event that there is more than one Approval (Variation) the Revised Secondary Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Secondary line of the Matrix if that sum is higher and which shall be used for the same purposes as the Secondary Education Contribution ;

Revised SEND Education Contribution

means the sum calculated by applying the Composition of the Development as identified in the Notification (Variation) to the SEND line of the Matrix where this is higher than the SEND Education Contribution or in the event that there is more than one Approval (Variation) the Revised SEND Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the SEND line of the Matrix if that sum is higher and which shall be used for the same purposes as the SEND Contribution;

Revised Strategic Waste Management Contribution

means the sum calculated by applying the Composition of the Development as identified in the Notification (Variation) to the Strategic Waste Management line of the Matrix where this is higher than the Strategic Waste Management Contribution or in the event that there is

Expression**Meaning**

more than one Approval (Variation) the Revised Strategic Waste Management Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Strategic Waste Management line of the Matrix if that sum is higher and which shall be used for the same purposes as the Strategic Waste Management Contribution;

Single Phase

means a Qualifying Application of not less than 160 Dwellings PROVIDED THAT Infrastructure may be brought forward in a separate Qualifying Application;

Travel Plan Monitoring Contribution

means the sum of one thousand eight hundred and ninety pounds (£1,890.00) County Index Linked towards the cost of monitoring the travel plan for the Development;

2. COVENANTS

The Owner covenants with the County Council as follows:

- 2.1 to pay the Bus Services Contribution and the Cycle Infrastructure Contribution and the Public Rights of Way Contribution and the Traffic Regulation Order Contribution and the Travel Plan Monitoring Contribution and the Secondary Education Instalment 1 and the Secondary Education Land Instalment 1 and the SEND Education Instalment 1 to the County Council prior to first Occupation of any Dwelling; and
- 2.2 not to cause or permit the first Occupation of any Dwelling until it has paid the Bus Services Contribution and the Cycle Infrastructure Contribution and the Public Rights of Way Contribution and the Traffic Regulation Order Contribution and the Travel Plan Monitoring Contribution and the Secondary Education Instalment 1 and the Secondary Education Land Instalment 1 and the SEND Education Instalment 1 to the County Council.
- 2.3 to pay the Strategic Waste Management Contribution and the Secondary Education Instalment 2 and the Secondary Education Land Instalment 2 and the SEND Education Instalment 2 to the County Council prior to first Occupation of more than fifty six (56) Dwellings; and

- 2.4 not to cause or permit the Occupation of more than fifty six (56) Dwellings until it has paid the Strategic Waste Management Contribution and the Secondary Education Instalment 2 and the Secondary Education Land Instalment 2 and the SEND Education Instalment 2 to the County Council.
- 2.5 to pay the Secondary Education Instalment 3 and the Secondary Education Land Instalment 3 and the SEND Education Instalment 3 to the County Council prior to first Occupation of more than one hundred and thirteen (113) Dwellings; and
- 2.6 not to cause or permit the Occupation of more than one hundred and thirteen (113) Dwellings until it has paid the Secondary Education Instalment 3 and the Secondary Education Land Instalment 3 and the SEND Education Instalment 3 to the County Council.

3. OWNER'S COVENANTS (NOTIFICATION AND ASSESSMENT)

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

- 3.1.1 to give to the County Council the Notification (Initial) within 14 days of the issue of the Approval (Reserved Matters).
- 3.1.2 not to cause or permit Commencement of the Development until the Notification (Initial) has been given to the County Council.
- 3.1.3 to give to the County Council a Notification (Variation) within 14 days of the issue of each Approval (Variation).
- 3.1.4 where a Notification (Variation) has been given (or is required to be given further to clause 3.1.3) and the relevant Approval (Variation) results in the establishment of a Revised Contribution then
- (a) for the purposes of calculating any Secondary Education Contribution and/or SEND Education Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Secondary Education Contribution and/or the Revised SEND Education Contribution (as the case may be) shall be applied in place of the Secondary Education Contribution and/or the SEND Education Contribution
- (b) there shall be calculated the difference between any Secondary Education Contribution and/or SEND Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Secondary Education Contribution and/or SEND Education Contribution would have been if it had been

- calculated by reference to the Revised Secondary Education Contribution and/or the Revised SEND Education Contribution (disregarding index linking)
- (c) for the purposes of calculating any Secondary Education Land Contribution which will payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Secondary Education Land Contribution be applied in place of the Secondary Education Land Contribution.
 - (d) there shall be calculated the difference between any Secondary Education Land Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Secondary Education Land Contribution would have been if it had been calculated by reference to the Revised Secondary Education Land Contribution (disregarding index linking).
 - (e) for the purposes of calculating any Bus Services Contribution which will payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Bus Services Contribution be applied in place of the Bus Services Contribution.
 - (f) there shall be calculated the difference between any Bus Services Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Bus Services Contribution would have been if it had been calculated by reference to the Revised Bus Services Contribution (disregarding index linking).
 - (g) For the purposes of calculating any Cycle Infrastructure Contribution which will payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Cycle Infrastructure Contribution be applied in place of the Cycle Infrastructure Contribution.
 - (h) there shall be calculated the difference between any Cycle Infrastructure Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Cycle Infrastructure Contribution would have been if it had been calculated by reference to the Revised Cycle Infrastructure Contribution (disregarding index linking).
 - (i) for the purposes of calculating any Strategic Waste Management Contribution which will payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Strategic Waste Management Contribution be applied in place of the Strategic Waste Management Contribution.
 - (j) there shall be calculated the difference between any Strategic Waste Management Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Strategic Waste Management Contribution

would have been if it had been calculated by reference to the Revised Strategic Waste Management Contribution (disregarding index linking).

4. COVENANTS – PAYMENT (ADDITIONAL COVENANT)

- 4.1 The Owner covenants with the County Council to pay to the County Council any sum or sums (as the case may be) calculated further to paragraph 3.1.4 County Index Linked with the next payment of the applicable Infrastructure Contributions (as the case may be) subsequent to the date of grant of the relevant Approval (Variation) or if all the payments of the applicable Infrastructure Contribution have been paid to pay such sum County Index Linked within 14 days of the grant of the Approval (Variation).

5. DETERMINATION OF THE INFRASTRUCTURE CONTRIBUTIONS

The Owner covenants with the County Council that:

- 5.1 in the event that the Dwellings (excluding any infrastructure which may come forward in a separate phase) comprised in the Development are brought forward in a Single Phase as part of a Qualifying Permission then:

- 5.1.1 the Bus Services Contribution shall be calculated by multiplying £1,618 per Dwelling by the number of Dwellings set out in the Approval (Reserved Matters) which sum shall be County Index Linked; and
- 5.1.2 the Cycle Infrastructure Contribution shall be calculated by multiplying £1,000 per Dwelling by the number of Dwellings set out in the Approval (Reserved Matters) which sum shall be County Index Linked; and
- 5.1.3 the Secondary Education Contribution shall be calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Permission where W, X, Y and Z are the Secondary Education figures set out in the first line of the table at Annex 1 of this Schedule and County Index Linked; and
- 5.1.4 the Secondary Education Land Contribution shall be calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Permission where W, X, Y and Z are the Secondary Education Land figures set out in the second line of the table at Annex 1 of this Schedule and County Index Linked; and
- 5.1.5 the SEND Education Contribution shall be calculated by applying the Matrix to the Composition of the development as identified in that Qualifying Permission where W,

X, Y and Z are the SEND figures set out in the third line of the table at Annex 1 of this Schedule and County Index Linked; and

- 5.1.6 the Strategic Waste Management Contribution shall be calculated by multiplying £93.96 per Dwelling by the number of Dwellings set out in the Approval (Reserved Matters) which sum shall be County Index Linked.

5.2 In the event that the Dwellings (excluding any Infrastructure which may come forward in a separate phase) comprised in the Development are not brought forward in a Single Phase then:

- 5.2.1 the Bus Services Contribution shall be the sum of two hundred and seventy five thousand and sixty pounds (£275,060) County Index Linked; and
- 5.2.2 the Cycle Infrastructure Contribution shall be the sum of one hundred and seventy thousand pounds (£170,000) County Index Linked; and
- 5.2.3 the Secondary Education Contribution shall be the sum of one million three hundred and sixty two thousand seven hundred and seventeen pounds (£1,362,717.00) County Index Linked; and
- 5.2.4 the Secondary Education Land Contribution shall be the sum of one hundred and twenty six thousand one hundred and sixteen pounds (£126,116) County Index Linked; and
- 5.2.5 the SEND Education Contribution shall be the sum of ninety eight thousand seven hundred and fifteen pounds (£98,715) County Index Linked; and
- 5.2.6 the Strategic Waste Management Contribution shall be the sum of fifteen thousand nine hundred and seventy three pounds (£15,973) County Index Linked.

ANNEX 1

| | 1 Bed W | 2 Bed X | 3 Bed Y | 4+ Bed Z |
|-------------------------------|------------|------------|------------|-------------|
| Secondary | £0.00 | £7,081.68 | £9,779.46 | £10,791.13 |
| Secondary Land | £0.00 | £655.39 | £905.06 | £998.69 |
| SEND | £0.00 | £526.22 | £708.79 | £762.49 |
| Bus Service | £1,618 | £1,618 | £1,618 | £1,618 |
| Cycle Infrastructure | £1,000 | £1,000 | £1,000 | £1,000 |
| Strategic Waste Management | £93.96 | £93.96 | £93.96 | £93.96 |

Schedule 2 - Affordable Housing

Part 1

The Owner covenants with the District Council as follows:

1 Affordable Housing Scheme

- 1.1 To submit an Affordable Housing Scheme to the District Council for approval prior to the Commencement Date and not to Commence Development until the Affordable Housing Scheme has been approved by the District Council in writing such approval not to be unreasonably withheld or delayed and PROVIDED THAT in the event that the District Council does not approve the Affordable Housing Scheme within 20 Working Days of receipt the Affordable Housing Scheme shall be deemed approved

2 Construction

- 2.1 To construct the Affordable Housing Units in accordance with the approved Affordable Housing Scheme and Affordable Housing Mix and to meet the standards contained in the Technical Housing Standards -Nationally Described Space Standard.
- 2.2 50% of the Social Rented Housing and/or Affordable Rented Housing must be built to Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)
- 2.3 At least one of the Affordable Housing Units must be built to Optional Requirement M4(3) Category 3 – Wheelchair user dwellings
- 2.4 To keep the District Council informed of all key stages in the construction of the Affordable Housing and in particular shall forthwith provide the District Council with written confirmation of the Practical Completion of the Affordable Housing.

3 Occupation

- 3.1 No more than 50% of the Open Market Units shall be Occupied until:
- 3.1.1 50% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for Occupation and written notification of such has been received by the District Council; and
- 3.1.2 those Affordable Housing Units (save for the First Home) have been transferred to an AHP.
- 3.2 No more than 80% of the Open Market Units shall be Occupied until:
- 3.2.1 100% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for Occupation and written notification of such has been received by the District Council; and

3.2.2 those Affordable Housing Units (save for the First Home) have been transferred to an AHP.

3.3 Subject to paragraph 4 below the Owner shall not Occupy or permit each Shared Ownership Unit to be Occupied unless and until in respect of that Shared Ownership Unit the AHP referred to in paragraphs 3.1.2 and 3.2.1 above has entered into a Shared Ownership Lease to a Qualifying Person with a Local Connection.

3.4 Subject to paragraph 4 below the Social Rent Housing and Affordable Rent Units shall not be Occupied otherwise than using an AT (or other approved tenancy agreement as agreed in writing by the District Council)

3.5 if there are more applicants than Social Rented Housing units and Affordable Rent Units available, the available Social Rented Housing units and Affordable Rent Units will be allocated in accordance with the Housing Allocation Scheme.

3.6 The parties hereby agree that the Open Market Units may be Occupied and disposed of as additional affordable housing but that such units are not Affordable Housing Units for the purposes of this Agreement and are not bound by the obligations in this Schedule 2

4 Chargee provision

4.1 The Affordable Housing (save for First Homes) shall not be used for any purpose other than for Affordable Housing PROVIDED ALWAYS THAT the provisions in this Schedule 2:

4.1.1 shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(a) such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

(b) if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations in this Schedule 2 which shall determine absolutely

4.1.2 shall cease to bind an Affordable Housing Unit where any person acquires the freehold or leasehold interest in respect of that Affordable Housing Unit pursuant to a right to buy or right to acquire or equivalent right; or

4.1.3 shall cease to bind an Affordable Housing Unit where any person acquires 100% of the equity in that Affordable Housing Unit

and for the avoidance of doubt, this paragraph shall extend to include the mortgagees, chargees and successors in title to those set out in paragraphs 4.1.1 to 4.1.3 above.

5 Transfer to the AHP

5.1 Following the transfer of the Affordable Housing Units to the AHP the AHP (and in the case of First Homes the First Homes Owners) shall be liable for complying with the Affordable Housing obligations in this Schedule and save for rectification of any breaches pursuant to Clause 9 of this Deed

Part 2 – First Homes

1 Obligations

1.1 Unless otherwise agreed in writing by the District Council, the Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the District Council as below save that

1.2 paragraphs 2, 3, 4 and 5 of this Part 2 shall not apply to a First Homes Owner;

1.3 paragraphs 6 and 7 of this Part 2 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.4 Paragraph 8 of this Part 2 applies as set out therein

2 Quantum of First Homes

2.1 25% of the Affordable Housing Units on the Site (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

2.2 Unless otherwise agreed in writing by the District Council 25% of the total number of the Affordable Housing Units in each residential phase (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Part 2 of this Schedule in accordance with the approved Affordable Housing Scheme relevant to that residential phase.

3 Clustering

- 3.1 The First Homes shall not be visually distinguishable from the Open Market Units based upon their external appearance;
- 3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted
- 3.3 Clusters of First Homes provided as houses shall not exceed ten (10) Affordable Housing Units;
- 3.4 Clusters of First Homes provided as flats in blocks shall not exceed ten (10) Affordable Housing Units;

4 Type and Distribution

The mix of First Homes provided within the Site shall be in accordance with

- 4.1 the Affordable Housing Mix; and
- 4.2 the distribution in the Affordable Housing Scheme

5 Development Standard

All First Homes shall be constructed to:-

- 5.1 the Development Standard current at the time of the relevant Reserved Matters Approval; and
- 5.2 no less than the standard applied to the Open Market Units.

6 Delivery Mechanism

- 6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
 - 6.1.1 the Eligibility Criteria (National); and
 - 6.1.2 the Eligibility Criteria (Local) (if any).
- 6.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 6.1.2 above shall cease to apply.
- 6.3 Subject to paragraphs 6.6 to 6.10 below, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee
- 6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.4.1 The District Council has been provided with evidence that:

6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility Criteria (Local) (if any)

6.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.4.1.3 the transfer of the First Home includes:

- (a) a definition of the "Council" which shall be Cherwell District Council of Bodicote House, White Post Road, Bodicote, Banbury OX15 4AA
- (b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Part 2 of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure."
- (c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) Cherwell District Council (2) Oxfordshire County Council (3) William Herbrand Sackville Earl De La Warr (4) Vistry Homes Limited
- (d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions
- (e) a copy of the First Homes Provisions in an Annexure

6.4.2 The District Council has issued the Compliance Certificate and the District Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4.1 have been met

6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

6.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the District Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 above (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1 above; or

6.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

6.7 Upon receipt of an application served in accordance with paragraph 6.6 the District Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

6.8 If the District Council is satisfied that either of the grounds in paragraph 6.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:

6.8.1 to the District Council at the Discount Market Price; or

6.8.2 (if the District Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 which shall cease to apply on receipt of payment by the District Council where the relevant Dwelling is disposed of other than as a First Home

6.9 If the District Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the District Council in accordance with paragraph 6.6 following which the District Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

6.10 Where a Dwelling is Disposed of other than as a First Home or to the District Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above the Owner of the

First Home shall pay to the District Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

6.11 Upon receipt of the Additional First Homes Contribution the District Council shall:

6.11.1 within twenty (20) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title

6.11.2 apply all monies received towards the provision of Affordable Housing

6.12 Any person who purchases a First Home free of the restrictions in this Schedule 2 of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to pay the Additional First Homes Contribution to the District Council.

7 Use

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the District Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the District Council and the District Council consents in writing to the proposed letting or sub-letting. The District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;

- (e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence

8 First Homes Mortgagee Exclusion

The obligations in paragraphs 1-7 of this Part 2 of Schedule 2 in relation to First Homes shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver PROVIDED THAT:

- 8.1 Such First Homes Mortgagee or Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the First Homes Mortgagee or Receiver to the District Council the First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3
- 8.3 following the Disposal of the relevant First Home the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the District Council the Additional First Homes Contribution.
- 8.4 following receipt of notification of the Disposal of the relevant First Home the District Council shall:
 - 8.4.1 forthwith Issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
 - 8.4.2 apply all such monies received towards the provision of Affordable Housing

Schedule 3 – District Council Contributions

The Owner covenants with the District Council as follows:

1 Community Facilities Contribution

- 1.1 To pay fifty percent (50%) of the Community Facilities Contribution to the District Council prior to the Occupation of more than forty-five percent (45%) of the Dwellings.
- 1.2 Not to Occupy more than forty-five percent (45%) of the Dwellings until the first instalment of the Community Facilities Contribution has been paid in accordance with paragraph 1.1 of this Schedule.
- 1.3 To pay the remaining fifty percent (50%) of the Community Facilities Contribution to the District Council prior to the Occupation of more than ninety percent (90%) of the Dwellings.
- 1.4 Not to Occupy more than ninety percent (90%) of the Dwellings until the Community Facilities Contribution has been paid in accordance with paragraph 1.3 of this Schedule.

2 Community Development Worker Contribution

- 2.1 To pay fifty percent (50%) of the Community Development Worker Contribution to the District Council prior to the Occupation of more than forty-five percent (45%) of the Dwellings.
- 2.2 Not to Occupy more than forty-five (45%) of the Dwellings until the first instalment of the Community Development Worker Contribution has been paid in accordance with paragraph 2.1 of this Schedule.
- 2.3 To pay the remaining fifty percent (50%) of the Community Development Worker Contribution to the District Council prior to the Occupation of more than ninety percent (90%) of the Dwellings.
- 2.4 Not to Occupy more than ninety percent (90%) of the Dwellings until the Community Development Worker Contribution has been paid in accordance with paragraph 2.3 of this Schedule.

3 Pitches Contribution

- 3.1 To pay fifty percent (50%) of the Pitches Contribution to the District Council prior to the Occupation of more than forty-five percent (45%) of the Dwellings.
- 3.2 Not to Occupy more than forty-five percent (45%) of the Dwellings until the first instalment of the Pitches Contribution has been paid in accordance with paragraph 3.1 of this Schedule.
- 3.3 To pay the remaining fifty percent (50%) of the Pitches Contribution to the District Council prior to the Occupation of more than ninety percent (90%) of the Dwellings.
- 3.4 Not to Occupy more than ninety percent (90%) of the Dwellings until the Pitches Contribution has been paid in accordance with paragraph 3.3 of this Schedule.

4 Indoor Sports Facilities Contribution

- 4.1 To pay fifty percent (50%) of the Indoor Sports Facilities Contribution to the District Council prior to the Occupation of more than forty-five percent (45%) of the Dwellings.
- 4.2 Not to Occupy more than forty-five percent (45%) of the Dwellings until the first instalment of the Indoor Sports Facilities Contribution has been paid in accordance with paragraph 4.1 of this Schedule.
- 4.3 To pay the remaining fifty percent (50%) of the Indoor Sports Facilities Contribution to the District Council prior to the Occupation of ninety (90%) of the Dwellings.
- 4.4 Not to Occupy more than ninety percent (90%) of the Dwellings until the Indoor Sports Facilities Contribution has been paid in accordance with paragraph 4.3 of this Schedule.

5 NHS Contribution

- 5.1 To pay fifty percent (50%) of the NHS Contribution to the District Council prior to the Occupation of more than forty-five percent (45%) of the Dwellings.
- 5.2 Not to Occupy more than forty-five percent (45%) of the Dwellings until the first instalment of the NHS Contribution has been paid in accordance with paragraph 5.1 of this Schedule.
- 5.3 To pay the remaining fifty percent (50%) of the NHS Contribution to the District Council prior to the Occupation of ninety (90%) of the Dwellings.
- 5.4 Not to Occupy more than ninety percent (90%) of the Dwellings until the NHS Contribution has been paid in accordance with paragraph 5.3 of this Schedule.

Schedule 4 –Bird Nesting Land

- 1 The Owner covenants with the District Council as follows:
 - 1.1 To submit the Farmland Bird Mitigation Scheme to the District Council for written approval prior to the Commencement of the Development and for the avoidance of doubt the required details may be submitted and approved pursuant to a condition of the Planning Permission PROVIDED THAT the Owner shall not submit a Farmland Bird Mitigation Scheme (either under this Deed or a planning condition) for approval without the prior written approval of the Bird Nesting Land Owner in relation to any part of the Farmland Bird Mitigation Scheme which relates to the Bird Nesting Land and such evidence shall be submitted to the District Council with the Farmland Bird Mitigation Scheme
 - 1.2 Not to Commence the Development unless and until the Farmland Bird Mitigation Scheme is approved by the District Council.
 - 1.3 Prior to the Completion of the Development to appoint a Bird Nesting Land Management Body and to procure the submission of the Ecological Monitoring Reports to the District Council on the first anniversary and the fifth anniversary of the Completion of the Development and thereafter every five (5) years for a total of thirty (30) years
 - 1.4 To pay to the District Council the Ecological Monitoring Reports Monitoring Fee prior to the Occupation of 90% of the Dwellings
- 2 The Bird Nesting Land Owner covenants with the Owner and the District Council as follows:
 - 2.1 Not to unreasonably withhold or delay their approval of the Farmland Bird Mitigation Scheme submitted to it in writing;
 - 2.2 To manage and maintain the Bird Nesting Land in accordance with any requirements of the approved Farmland Bird Mitigation Scheme in so far as it relates to the Bird Nesting Land and for the avoidance of doubt the obligations in this Paragraph 2.2 of Schedule 4 shall only be enforceable against the Bird Nesting Land Owner
 - 2.3 In the event that the Bird Nesting Land Owner has not managed and maintained the Bird Nesting Land in accordance with the approved Farmland Bird Mitigation Scheme and pursuant to paragraph 2.4 below further Ecological Monitoring Reports are required in addition to those in paragraph 1.3 above to pay to the District Council £500 (Index Linked) per additional Ecological Monitoring Report required
 - 2.4 To rectify any defects identified by the District Council pursuant to their review of the Ecological Monitoring Reports submitted pursuant to paragraph 1.3 above, to the reasonable satisfaction of the District Council within such reasonable time as may be prescribed the District Council and to submit a further Ecological Monitoring Report following completion of the remedial works for approval by the District Council in writing

- 2.5 To allow the Bird Nesting Land Management Body access to the Bird Nesting Land for the purposes of preparing of the Ecological Monitoring Reports referred to in paragraph 1.3 above

Schedule 5- County Council Covenants

The County Council Covenants with the Owner

APPLICATION OF MONIES RECEIVED

- 1 The County Council shall not apply any of the contributions referred to in Schedule 1 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

- 2 Following written request from the person who paid 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 of the last instalment of any such contribution (whichever is the later) .
- 3 Any contribution or part of a contribution which the County Council has committed 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.
- 4 The County Council shall provide to the Owners such evidence, as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owners 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

SCHEDULE 6
HIGHWAYS WORKS

PART 1

1 Definitions

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

| Expression | Meaning |
|--------------------------|---|
| the 1980 Act | means the Highways Act 1980 (as amended) |
| Highway Agreement | means an agreement under Section 278 (and if appropriate section 38) of the 1980 Act in accordance with the form annexed to this Deed (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. |
| Works Plan | means the drawing reference number 17279_T_003 Revision P3 attached to this Deed at Appendix 2 |
| Works | means the principal works set out in Part 2 of this Schedule (together with associated preparatory and ancillary works and the amenity and accommodation works set out in Part 3 of this Schedule) |

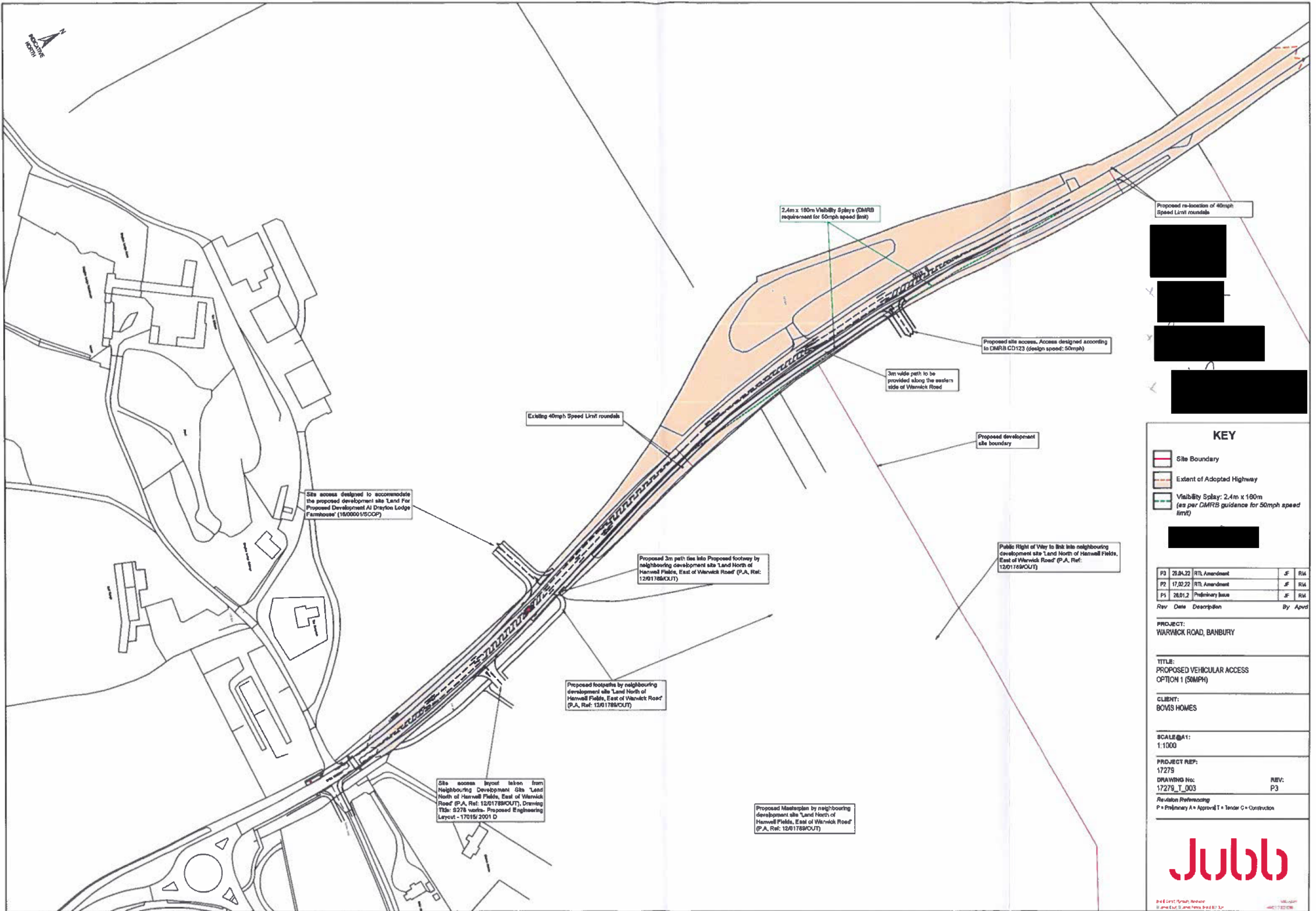
- 1.2 The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act

- 1.3 The parties intend to enter into the Highway Agreement

2 Works Obligations

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

- 2.1.1 there has been submitted to the County Council and approved by it in writing in principle drawings for the Works together with associated drawings and technical information as



KEY

- Site Boundary
- Extent of Adopted Highway
- Visibility Splay: 2.4m x 180m (as per DMRB guidance for 50mph speed limit)

| | | | | |
|-----|----------|-------------------|----|-------|
| P3 | 29.04.22 | RTI Amendment | JF | RM |
| P2 | 17.02.22 | RTI Amendment | JF | RM |
| P1 | 28.01.2 | Preliminary Issue | JF | RM |
| Rev | Date | Description | By | App'd |

PROJECT:
WARWICK ROAD, BANBURY

TITLE:
PROPOSED VEHICULAR ACCESS
OPTION 1 (50MPH)

CLIENT:
BOVIS HOMES

SCALE@A1:
1:1000

PROJECT REP:
17279

DRAWING No:
17279_T_003

REV:
P3

Revision Referencing
P = Preliminary A = Approval T = Tender C = Construction

Drawn: Gert, Revised: Andrew
Checked: Paul, James, Peter, David, Ben, John
Date: 17.02.22

Reduced to Scale

set out in the County Council's Section 278 application form as adjusted from time to time;

- 2.1.2 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 and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated;
 - 2.1.3 The anticipated duration of construction of the Works has been agreed with the County Council together with the longstop date for completion of the Works and commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works, has been agreed; and,
 - 2.1.4 a Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 2.1.1 to 2.1.3 has been entered into by the Owner in respect of the Works together with all parties with an interest in any land to be dedicated further to the Highways Agreement and any mortgagee of such land has released it fully and effectively from its charge.
- 2.2 Not to cause or permit the first Occupation of any building/Dwelling on the Site unless and until the Works have been completed pursuant to and in accordance with the Highway Agreement

PART 2 THE WORKS

1 Principal Works

- 1.1 The provision and construction of the following works as shown indicatively on the Works Plan ("the Principal Works"):
 - (a) Bellmouth access junction on eastern side of B4100 Warwick Road with associated widening to provide ghost island right turning lane leading to site access road with 5.5m wide carriageway and 3m wide footway/cycleway, plus associated visibility splays.
 - (b) 3m wide footway/cycleway from the site access junction south on the B4100 to link to existing cycleway on B4100 provided by others.
 - (c) Extension of speed limit with associated gateway features and road markings to the north of the proposed site access

PART 3

1 Supplemental Works

1.1 Preparatory and Ancillary Works

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Principal Works such alteration thereof) as the County 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

1.2 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

APPENDIX 1

County Monitoring Fee

Admin Fees for period 1st April 2024 to 31st March 2025
Approved by Cabinet 30th January 2024

| Aggregate amount of contributions secured in S106 | Up to £10,000 | £10K - £25K | £25,001 - £50K | £50,001 - £150K | £150,001 - £500K | £500,001 - £1m | £1,000,001 - £2m | Over £2m |
|---|---------------|-------------|----------------|-----------------|------------------|----------------|---------------------------------------|--|
| Administration and Monitoring Fee | £150 | £370 | £730 | £2,200 | £5,410 | £7,310 | 0.9% of aggregate contribution amount | £18,500 + 0.09% of any amount over £2m |

Schedule 7 - District Council Covenants

1 REPAYMENT OF CONTRIBUTIONS

1.1 The District Council covenants with the Owner to use all sums received from the Owner under the terms of Schedule 3 for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree.

1.2 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 Schedule 3 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:

1.2.1 that no such request will be made prior to the expiry of ten (10) years of the date of receipt by the District Council of such payment;

1.2.2 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;

1.2.3 that if any capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph; and

1.2.4 that any contribution or part of a contribution which is a commuted sum or relates to costs associated with monitoring compliance with the terms of this Deed 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.

1.3 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 Error! Reference source not found.3 upon a written request by the Owner such request not to be made more than once in any year.

2 APPROVAL OF FARMLAND BIRD MITIGATION SCHEME

The District Council covenants that it will not approve any Farmland Bird Mitigation Scheme submitted in accordance with paragraph 1 of Schedule 4 unless the Owner has provided written evidence that Farmland Bird Mitigation Scheme has first been approved by the Bird Nesting Land Owner.

3 DISCHARGE OF OBLIGATIONS

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

4 NHS CONTRIBUTION

The District Council covenants with the Owner that within 20 Working Days of receipt of the NHS Contribution from the Owner the District Council shall seek a binding commitment from NHS Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (or an equivalent body) to use the NHS Contribution for the purposes set out in this Deed and upon receipt of such binding commitment the District Council shall pay the NHS Contribution to the NHS Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (or an equivalent body) that have provided such binding commitment as the District Council in its discretion determines suitable and for the avoidance of doubt if any or all of the NHS Contribution is not paid to the NHS Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (or an equivalent body) referred to above it shall be returned to the payer of the NHS Contribution

Schedule 8 – Open Space

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

| | |
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| "Alternative Management Company" | means a private limited company to be established or appointed by the Owner (and registered at Companies House) the purpose of which will be to manage and maintain the Open Space and/or Play Areas |
| "BS5837" | the British Standard for Trees in relation to design, demolition and construction – Recommendations, the latest version being published in 2012 and applies to all trees and Hedgerows that could be affected during the carrying out of the Development. |
| "Certificate of Practical Completion" | means the certificate or certificates issued (not to be unreasonably withheld) by the District Council once the District Council is satisfied that the SUDS, Open Space and Play Areas have been provided and laid out in accordance with the approved Landscape Plan |
| "Certificate of Final Completion" | means the certificate or certificates issued (not to be unreasonably withheld) by the District Council once the District Council is satisfied that the SUDS, Open Space and Play Areas has been provided and laid out in accordance with the approved Landscape Plan |
| "Defects Notice" | means a notice or notices served by the District Council which states the Open Space 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 |
| "Estate Service Charge Deed" | means a deed to be entered into by the owner of each Dwelling and the Management Company setting out and securing: |

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| | <ul style="list-style-type: none"> - the obligations on the Management Company in terms of managing and maintaining the Open Space/ Play Area; - the payment of a Service Charge by the owner of each Dwelling to meet the costs of the Management Company in managing and maintain the Open Space/Play Area - provision for the Service Charge to be adjusted from year to year depending on the expenditure of the Management Company and ensuring that any overpayments are allocated to the next financial year and with any shortfalls being payable by the owner of the Dwelling at the end of the financial year |
| "Hedgerow" | means any hedgerow whether existing or to be planted as identified in the Landscape Plan and "Hedgerows" shall be construed accordingly |
| "LAP" | means a minimum 100 sq. m equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 6. 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 3 items of play equipment are required for the LAP. The equipped activity zone should be located a minimum of 5m from the nearest Dwelling boundary. The landscaped area around the equipped activity zone could be used to incorporate this buffer |
| "LEAP/NEAP Combined" | means a minimum area of 1400 sq. m 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 4 to 12. The size of the equipped |

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| | <p>activity zone should be a minimum of 400m2 in respect of the LEAP element and 1000m2 in respect of the NEAP 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. There are to be 5 items of play equipment for the LEAP element and 8 items of play equipment for the NEAP element (in combination with multi-play structures). The NEAP is to include a youth shelter as a meeting place for young people</p> <p>The equipped activity zone within the landscaped area should be located a minimum of 10 m from the nearest Dwelling boundary and 20 m from the nearest habitable room façade in respect of the LEAP element and a minimum of 30 meters from the nearest Dwelling boundary in respect of the NEAP element. The landscaped area around the equipped activity zone could be used to incorporate this buffer</p> |
| "Landscape Plan" | means the landscape plan to be provided by the Owners for the laying out, construction, landscaping and maintenance of the Open Space and Play Areas |
| "LEMP" | means the fifteen (15) year landscape and ecology management plan approved pursuant to a condition of the Planning Permission detailing area inspections, cleansing and maintenance of Play Areas, hard surfaces and any 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 |

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| | scheme and which may be varied from time to time with the written agreement of the District Council |
| "LEMP Monitoring Sum" | means the sum of Twenty- Four Thousand Eight Hundred and Eighty Pounds and Thirty- Two pence Pounds (£24,880.32) 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 Open Space transferred to the Management Company in accordance with the LEMP (monitoring to be undertaken 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 or such longer period as the District Council may reasonably determine if it is not satisfied that any defects identified in the Open Space and/or Play Areas have not been maintained in accordance with the LEMP during that period |
| "Rent Charge/Management Charge" or "Service Charge" | means the perpetual yearly variable estate management charge to be imposed on each Dwelling to cover the annual costs of the Management Company or Alternative Management Company complying with the obligations of the Management Scheme |
| "Management Agreement" | means an agreement between the Management Company and the Owner which identifies the areas which the Management Company will be responsible for, the standards to which the Management Company will manage the Development (including the LEMP and the Management Scheme) and which requires the Management Company to acquire a legal interest in the Open Space and Play Areas once the Development has been fully constructed |
| "Management Company" | means a private limited company to be appointed by the Owner and which will not be owned or controlled by the owners or occupiers of the Dwellings but which is a specialist property company experienced |

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| | in estate management and who will be a party to the Management Agreement for the purposes of managing and maintaining the Open Space and Play Areas |
| "Management Scheme" | means the scheme setting out the detailed arrangements for the management and maintenance of the Open Space and Play Areas to the reasonable satisfaction of the District Council which scheme shall include full details of the maintenance programme |
| "Mature Trees" | means those mature trees identified as such in the Landscape Plan |
| "Mature Woodland" | means the mature woodland identified as such in the Landscape Plan |
| "Open Space" | means areas of informal open space to be provided on the Development as identified within the Qualifying Permission and/or Open Space Plan, including the SUDS and any Mature Trees, Mature Woodland or Hedgerows but excluding any area accommodating the LAP, LEAP/NEAP Combined |
| "Open Space Plan" | means the plan or drawing attached to this Deed at and referenced edp3253_d031d which plan is for the purposes of identification only or such other revisions thereto as may be agreed in writing between the parties |
| "Play Areas" | means the LAP and LEAP/NEAP Combined all provided in accordance with the Qualifying Permission |
| "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 and LEAP /NEAP Combined is fit for purpose in accordance with the appropriate standards set by the RoSPA. A RoSPA Inspection Report will expire at eleven months. The District Council shall deem the RoSPA Inspection Report for |



- Sito Boundary (12.63 ha)**
- Land Uses**
- Development Zone*** within which up to 170 Dwellings will be Provided (4.91 ha)
 - Highways Access Land** (0.58 ha)
 - Area within which Street Infrastructure** (0.04 ha) will be Provided
- Public Open Space (7.10 ha) of which:**
- Area within which 4.94 ha of Wildflower Meadow and Parkland** will be Provided
 - Area within which 1.33 ha of Woodland Planting** will be Provided
 - Area within which 0.45ha of Informal Sports Provision** will be Provided
 - Area within which Attenuation Basins** (0.23 ha) will be Provided
 - Area within which 0.15ha of Children and Youth Combined Natural Play Space** will be Provided

- Access**
- Proposed Vehicle Access Point**
 - Pedestrian Access Point**
 - Public Right of Way**

- Infrastructure**
- Pumping Station and 20m Offset**
- * dwellings to be a maximum height of 11.5m above FFL

client
Vistry Homes Ltd

project title
Land East of Warwick Road, Banbury

drawing title
Land Use, Amount and Access Parameter Plan

| | | | |
|----------------|------------------------|----------|------------|
| date | 19 OCTOBER 2022 | drawn by | RAI |
| drawing number | edp3253_d031d | checked | PWI |
| scale | 1:2,500 @ A2 | QA | GYo |

edp the environmental dimension partnership

Registered office: 01285 740427 - www.edp-uk.co.uk - info@edp-uk.co.uk

Reduced to scale

| | |
|-----------------------|--|
| | each Play Area to be satisfactory prior to issuing Practical and Final Completion Certificates |
| "SUDS" | means any balancing ponds, attenuation basins, ditches, swales or similar features, to be provided to form the sustainable urban drainage system for the Development to be provided on the Site as determined by Qualifying Permissions |
| "SUDS Scheme" | means a scheme for the provision of SUDS to be submitted to and approved by the District Council prior to the installation of any SUDS |
| "Unaffordable" | means the level of the Management Charge arising from the Management Company carrying out the Management Scheme would be more than 10% higher than the equivalent Management Charge of an Alternative Management Company or if the Owner can otherwise demonstrate to the District Council that the Management Charge is higher than the figure that is reasonable to expect owners and occupiers of the Dwellings to be required to pay |

The Owner covenants as follows:

1 General

- 1.1 Not to remove uproot destroy lop or damage any tree or shrub on the Site unless and until the Landscape Plan has been submitted to and approved by the District Council in writing.
- 1.2 Prior to the Commencement of Development the Landscape Plan including the Management Scheme and LEMP shall be submitted to and approved by the District Council in writing and not to Commence Development until the Landscape Plan including the Management Scheme and the LEMP have been approved in writing by the District Council (such approval not to be unreasonably withheld) and thereafter shall lay out the Open Space and Play Areas in accordance with the approved Landscape Plan
- 1.3 Notify the District Council in writing within seven (7) Working Days of completion of the laying out of the Open Space and Play Areas of the details of their designated contact for queries regarding the Open Space and Play Areas and request an inspection by the District Council.
- 1.4 Not allow more than 80% of the Dwellings to be Occupied until:

- 1.4.1 the Certificate of Practical Completion has been issued in respect of the Open Space;
 - 1.4.2 the Open Space has been made available for public use;
 - 1.4.3 the Owner has erected a prominent sign on the Open Space and Play Areas indicating who is responsible for maintaining the Open Space such sign to be kept in a good and legible condition at all times.
- 1.5 Not without the prior written consent of the District Council, to cause or permit the Occupation of any Dwellings within thirty (30) metres of 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 2 below PROVIDED THAT any Play Areas not within 30 thirty (30) metres of a Dwelling shall be completed as evidenced by the issue of a Certificate of Practical Completion prior to the Occupation of 80% of the Dwellings
- 1.6 After the construction, laying out, and overseeding of the Open Space and as soon as the planting season permits to plant in the Open Space plants and trees in accordance with the approved Landscape Plan.
- 1.7 Not adjust the actual area of Open Space so as to include and/or exclude land that abuts the boundary of the curtilages of individual Dwellings or adopted or adoptable highway UNLESS such adjustment has been agreed in writing with the District Council.
- 1.8 To insure and maintain or procure the maintenance of the Open Space and Play Areas in accordance with the approved Management Scheme and LEMP to the satisfaction of the District Council until completion of its transfer to the Management Company or Alternative Management Company.
- 1.9 Save as set out in the Landscape Plan, LEMP, Open Space Plan and/or BS5837 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the Landscape Plan, LEMP or Open Space Plan in particular:
- 1.9.1 no materials or equipment shall be stored on the Play Areas and Open Space (as provided for in BS5837); and
 - 1.9.2 no services shall be run over, under or through Play Areas and Open Space (as provided for in BS5837); and
 - 1.9.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on Play Areas and Open Space; and
 - 1.9.4 no parking area or temporary roadway shall be created or designated on Play Areas and/or Open Space(as provided for in BS5837); and
 - 1.9.5 no structure or erection that is intended to remain after the Maintenance Period but is not shown in Landscape Plan, LEMP or Open Space Plan (as provided for

in BS5837) shall be located on any part of the Site that is to accommodate the Open Space or lay Areas unless the express prior written permission of the District Council has been requested and given.

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

1.10 Save as set out in the SUDS Scheme and/or the LEMP and/or with BS5837 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the SUDS Scheme or its efficiency or the efficient implementation of the LEMP or that the District Council considers materially affects the costs associated with the maintenance and operation of the SUDS and in particular:

1.10.1 no materials or equipment shall be stored on;

1.10.2 no services other than particular to the SUDs shall be run over, under or through without the prior written consent of the District Council;

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

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

1.10.5 no structure or erection that is intended to remain after the Maintenance Period but is not shown in the Open Space Plan and/or the SUDS Scheme shall be erected or set up on any part of the Site that is to accommodate the SUDS or any part of it (save as set out in the SUDS Scheme) without the express prior written permission of the District Council having been requested.

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

2 Certificate of Practical Completion

2.1 Upon completion of the laying out and landscaping of the Play Areas and Open Space (or any parts thereof) the Owner shall request a Certificate of Practical Completion from the District Council.

2.2 Prior to the issue of a Certificate of Practical Completion for each Play Area, the Owner shall provide a RoSPA post installation report and risk assessment for that Play Area which must confirm that the relevant Play Area has passed the post installation report to the District Council and thereafter the Owner 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 referred to in paragraph 5.3 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.

2.3 The District Council shall inspect the Play Areas and Open Space within 15 Working Days of a request to do so from the Owner.

2.4 Within 10 Working Days of the inspection referred to in paragraph 2.3 above:

2.4.1 if the District Council is reasonably satisfied that the Play Areas and Open Space have been laid out, planted and equipped in accordance with the Landscape Plan the District Council shall issue a Certificate(s) of Practical Completion; or

2.4.2 if the District Council is not reasonably satisfied that the Play Areas and Open Space have been laid out, planted and equipped in accordance with the Landscape Plan the District Council shall issue a Defects Notice.

2.5 If the Owner receives a Defects Notice in respect of the Open Space and/or Play Areas, 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 eight (8) weeks (unless otherwise agreed in writing by the District Council) from receipt of the Defects Notice and shall then invite the District Council to re-inspect the Open Space and/or Play Areas and the process in paragraphs 2.1 to this 2.5 shall be repeated until such time as the District Council has issued a Certificate of Practical Completion in respect of Open Spaces and/or Play Areas.

2.6 If the District Council does not inspect the Open Space and Play Areas within 15 Working Days of a request to do so or having inspected the Open Space and Play Areas does not then issue a Certificate of Practical Completion or a Defects Notice within 10 Working Days of the inspection the Certificate of Practical Completion shall be deemed to be granted by the District Council.

2.7 The Owner will provide an unrestricted right of access for the general public to the Play Areas and Open Space at all reasonable times following the issue of Certificates of Practical Completion save as required to carry out works of maintenance or in the interests of health and safety.

2.8 The Owner shall maintain the Play Areas and Open Space for a period of 12 months from the issue of the Certificate of Practical Completion.

3 Final Certificate

3.1 On the expiry of each respective twelve (12) month maintenance period referred to in paragraph 2.8 above, the Owner shall request a Certificate of Final Completion from the District Council.

3.2 Prior to the issue of the Certificate of Final Completion the Owner shall pay the LEMP Monitoring Sum to the District Council.

- 3.3 The District Council shall inspect the Play Areas and Open Space within 15 Working Days of a request to do so from the Owner.
- 3.4 Within 10 Working Days of the inspection referred to in paragraph 3.2 above:
- 3.4.1 if the District Council is reasonably satisfied that the Play Areas and Open Space have been laid out, planted and equipped in accordance with the Landscape Plan the District Council shall issue a Certificate(s) of Final Completion; or
- 3.4.2 If the District Council is not reasonably satisfied that the Play Areas and Open Space have been laid out, planted and equipped in accordance with the Landscape Plan the District Council shall issue a Defects Notice.
- 3.5 If the Owner receives a Defects Notice in respect of the Open Space and/or Play Areas, 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 eight (8) weeks (unless otherwise agreed in writing by the District Council) from receipt of the Defects Notice and shall then invite the District Council to re-inspect the Open Space and/or Play Areas and the process in paragraphs 3.1 to this 3.5 shall be repeated until such time as the District Council has issued a Certificate of Final Completion in respect of Open Spaces and/or Play Areas.
- 3.6 If the District Council does not inspect the Open Space and Play Areas within 15 Working Days of a request to do so or having inspected the Open Space and Play Areas does not then issue a Certificate of Final Completion or a Defects Notice within 10 Working Days of the inspection the Certificate of Final Completion shall be deemed to be granted by the District Council.

4 Play Areas

- 4.1 Following the issue of a Certificate of Practical Completion in respect of each of the Play Areas the Owner 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).
- 4.2 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 prior to the issue of a Certificate of Practical Completion to notify the District Council of any existing known services laid through, under or over that Play Area.
- 4.3 The Owner shall not grant or cause or permit to be granted any rights or easements over any of the Play Areas.

5 Management Company

- 5.1 Prior to the transfer of any part of the Open Space and/or Play Areas to the Management Company the details of the Management Company must have been submitted to and approved by the District Council in writing.
- 5.2 Any appointment of the Management Company shall be conditional on the Management Company entering into the Management Agreement.
- 5.3 As soon as reasonably practicable after completion of the Management Agreement the Owner shall use reasonable endeavours to transfer the Open Space and/or Play Areas to the Management Company.
- 5.4 In the event that:
- 5.4.1 despite using reasonable endeavours to appoint a Management Company and to enter into a Management Agreement with a Management Company the Owner has been unable to enter into a Management Agreement with a Management Company and complete a transfer of the Open Space and Play Areas within 30 Working Days of commencement of tendering; or
 - 5.4.2 the costs of appointing the Management Company would be Unaffordable for owners and occupiers of the Dwellings;
- the Open Space and Play Areas may be transferred to an Alternative Management Company in accordance with Paragraph 6 below.
- 5.5 The Owner shall set the level of the Service Charge for funding the running of the Management Company and collecting such charges from residents of the Development and in doing so shall ensure that the level of any charges levied against any Affordable Housing Units shall not materially affect the ability of these Dwellings to remain as Affordable Housing.
- 5.6 On completion of the sale of each Dwelling the incoming owner of the Dwelling must enter into an Estate Service Charge Deed with the Management Company.
- 5.7 The Management Agreement and Estate Service Charge Deed must allow for the Management Company to be replaced by a different Management Company or an Alternative Management Company if:
- 5.7.1 the Management Company goes into liquidation for any reason (whether compulsory or voluntary); or
 - 5.7.2 the Management Company fails in a material way to observe and perform its obligations under the Management Agreement and/or the Estate Service Charge Deed; or

5.7.3 once all of the Dwellings on the Development have been sold, not less than 51% of the Occupiers vote in favour of appointing a new management company to take on the management functions (subject to obtaining the District Council's agreement).

5.8 If a new Management Company is to be appointed the Estate Service Charge Deed shall be amended to the name of the new Management Company.

6 Alternative Management Company

6.1 In the event that paragraph 5.4 applies the Owner shall at its own expense:

6.1.1 set up and register the Alternative Management Company as a private limited company incorporated and registered in England at Companies House;

6.1.2 ensure that the Alternative Management Company has at least two named persons as Directors and one Company Secretary that are eligible to be appointed and (if required) removed and replaced by the Members of the Alternative Management Company;

6.1.3 procure that the Alternative Management Company appoints a named manager ("the MC Manager") responsible for liaising with the District Council and owners and occupiers of the Dwellings;

6.1.4 procure through the Alternative Management Company documentation (as set out in paragraph 6.2 below) that the Alternative Management Company will hold at least one (1) public meeting per year;

6.1.5 procure that the Alternative Management Company is responsible for the upkeep and on-going maintenance of Open Space and Play Areas in accordance with the approved Landscape Plan and the obligations under this Deed.

6.2 To provide the District Council with the following information and documents relating to the Alternative Management Company:

6.2.1 a copy of the company Certificate of Incorporation and Articles of Memorandum;

6.2.2 a copy of its Rules (including the holding of at least one (1) public meeting per year and the giving of a minimum of seven (7) days written notice of each meeting to the District Council and all Company Members and any other interested parties and to provide suitable facilities for the meetings of the Management Company) and Regulations and operational manuals;

6.2.3 details of the names and addresses of all Directors, Members and the Company Secretary;

- 6.2.4 full and sufficient details of the financial resources available to the Management Company including evidence that there are adequate resources in place to undertake the maintenance of the Open Space in perpetuity in accordance with the Management Scheme.

6.3 The Owner hereby covenants to:

- 6.3.1 ensure that upon the transfer of any Dwellings that all freehold and registrable leasehold owners of the Dwellings are Members of the Management Company and eligible to vote at any Annual General and Special Company Meetings;
- 6.3.2 ensure that the Registered Provider is a Member of the Management Company;
- 6.3.3 that the MC Manager will ensure that their contact details including his name address and telephone number are regularly updated and distributed to the owners and occupiers of all of the Residential Units;
- 6.3.4 ensure that the Management Charge/Rent Charge is secured on the first transfer or disposal of any Dwellings and that covenants are contained on the transfer to procure that on any subsequent transfer or disposal the Management Charge/Rent charge is secured in favour of the Management Company.

7 Default by a Management Company

7.1 In the event that:

- 7.1.1 the Management Company fails to maintain any part of aspect of the Open Space or Play Areas in accordance with the approved Management Scheme; or
- 7.1.2 the Management Company:
 - (a) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - (b) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of it with one or more other companies or its solvent reconstruction;
 - (c) is wound up or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Management Company (other than for the sole purpose of a scheme for

its solvent amalgamation with one or more other companies or its solvent reconstruction);

- (d) has an administrator appointed or an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given;
- (e) has an administrative receiver appointed or the holder of a qualifying floating charge over the assets of it has become entitled to appoint an administrative receiver;
- (f) a receiver is appointed over all or any of its assets or a person becomes entitled to appoint a receiver over all or any of those assets;
- (g) has a creditor or encumbrancer of it attach or take possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against the whole or any of its assets, and such attachment or process is not discharged within ten (10) Working Days; or
- (h) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (whether or not that business involves maintaining the Open Space)

The District Council may:

- 7.1.3 enter on to the relevant part of the Open Space and/or Play Area together with relevant personnel and equipment to ensure the performance of the obligations contained in these covenants and/or carry out those works it considers necessary to maintain or make good any defect or damage or reinstate the relevant Open Space/Play Area and the District Council shall be entitled to full reimbursement by the owner of the relevant part of the Open Space and/or Play Area in respect of all costs and expenses incurred in performing the said obligations;
- 7.1.4 require the owner of the relevant part of the Open Space and/or Play Area at that time to:
 - (a) transfer all its interest in the relevant part of the Open Space/Play Area to the District Council or its nominee together with all responsibilities for management and maintenance of the same; or
 - (b) transfer the responsibility for management and maintenance of the Open Space and/or Play Area to the District Council or its nominee.
- 7.1.5 In the event that paragraph 7.1.4 applies the Owner will pay any accrued Service Charges to the District Council or its nominee and assign its right to collect and receive payments of the Service Charge.

EXECUTED and DELIVERED as a DEED on the date of this document

THE COMMON SEAL of
CHERWELL DISTRICT COUNCIL

was affixed in the presence of:-

Authorised Signatory: *Rachel O' Shaughnessy*



CDC/21320

THE COMMON SEAL of
OXFORDSHIRE COUNTY COUNCIL

was affixed in the presence of:-

County Solicitor / Designated Officer:



425/24

EXECUTED AS A DEED by
WILLIAM HERBRAND SACKVILLE
EARL DE LA WARR
in the presence of

Witness *MRS S.E. BUTLER*

Signature

Address

*Occupation: 2 Railway Cottages, Ford Brook Hill
CROWBOROUGH ESSEX TN16 3BB*

Secretary.

EXECUTED AS A DEED by VISTRY HOMES LIMITED

Acting by [MARK KNIGHT]

and [VICTORIA TROTMAN]

as Attorneys for and on behalf of **VISTRY HOMES**

LIMITED under a

Power of Attorney dated ~~30 June 2023~~ 14 March 2024

in the presence of:

[Signature of Witness] [REDACTED]

Name: IAN TREGO

Address: Gorway Gardens, WSI 3BJ.

Occupation: Associate Director

[Signature of Witness] [REDACTED]

Name: IAN TREGO

Address: Gorway Gardens, WSI 3BJ

Occupation: Associate Director

[Signature of Attorney] [REDACTED]

Name: M. KNIGHT

[Signature of Attorney] [REDACTED]

Name: VICTORIA TROTMAN

Draft Highways Agreement

139589141-1

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4143-6254-8560, v. 1
Confidential

DATED _____ **20[]**

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

Agreement relating to highway works at [] to be undertaken
by Developer

Anita Bradley
Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

Two Thousand and []

(1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")

(2) ("the Owner")

(3) (company registration

number) ("the Developer")

(4)

In this Deed:-

1.1 "the 1980 Act" means the Highways Act 1980

1.2 "the 1990 Act" means the Town and Country Planning Act 1990

1.3 "As-Built Drawings" means detailed plans and drawings showing the Works in the form in which they have actually been executed and completed required under Condition 29 of the Standard Conditions

1.4 "Certificate of Completion" means a certificate issued under Condition 30 of the Standard Conditions

1.5 "the Council" means the said Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority or planning authority and any duly appointed employee or agent of the Council or such successor

- 1.6 "the Dedication Plan" means the plan marked 'B' / drawing reference [] annexed to this Deed or such other plan as the Owner [the Developer and the Mortgagee] and the Council agree should be substituted for it
- 1.7 ["the Developer" means of/ whose registered office is at and its successors in title and assigns]
- 1.8 "the Development" means []
- 1.9 "Implementation" means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and "implement" and "implemented" shall be construed accordingly
- 1.10 "including" means including without limitation and 'include' shall be construed accordingly
- 1.11 "Index-Linked" means adjusted according to any increase occurring between and the date of payment to the Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

| | | |
|---------|-----------------------|-----|
| Index 1 | Labour & Supervision | 25% |
| Index 2 | Plant & Road Vehicles | 25% |

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

1.27 Where more than one party enters into any obligation or liability those parties are jointly and severally liable

1.28 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

2. **Preliminary**

2.1 The Owner is the owner of freehold of the Site registered with absolute title under title number [] [subject to an Option in favour of the Developer (and/or) a Charge in favour of the Mortgagee but otherwise] free from incumbrances as the Owner hereby warrants

2.2 For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Site

2.3 For the purposes of the 1980 Act, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Council is the highway authority and the traffic authority for certain highways in the area which includes the Site

2.4 The Owner has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990 dated [] and made between [] that [the Development shall not be [implemented [as therein defined]] / [occupied] / [no more than [] dwellings shall be occupied] prior to the completion of this Deed and shall not be

occupied prior to the completion of the Works in accordance with the Deed

- 2.5 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.6 It has been agreed between the Owner and the Council that in lieu of the Owner paying the cost of the Off-Site Works the Off-Site Works should be executed by the Owner in conjunction with the carrying out of the Development
- 2.7 This Deed (which the Council are satisfied will be of benefit to the public) is made under Sections 38 72 and 278 of the 1980, Act Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and all other enabling powers and is a planning obligation for the purposes of Section 106 of the 1990 Act entered into by the Owner the Developer and the Mortgagee in respect of the Site and enforceable by the Council

3. **Covenants**

The Owner and the Developer covenant:-

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

- 3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council
- 3.3 in executing the Works to observe and perform all the obligations which fall on "the Developer" under the Standard Conditions and
- 3.4 to complete the Works not later than and in any event within from the date on which the Works started
- 3.5 not to commence the Works until the Maintenance Costs have been paid to the Council and to pay Maintenance Costs to the Council prior to commencing the Works
- 3.6 to give the Council written notice of any disposal of an interest in the Site and of the name and address of the new owner and the date of the disposal within 14 days of such disposal
- 3.7 if any payment to be made to the Council is not paid on or before the due date for payment to pay interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc from such due date to the date of payment¹

4. **Adoption as Highway**

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

propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of the Standard Conditions be a highway maintainable at public expense

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

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

5/6 **Act Reasonably**

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

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

The Mortgagee acknowledges that the Site is bound by the obligations contained in this Deed [and in the event that the dedication area is revised further to clause 4.2 the Mortgagee agrees that any part of the dedication area which is subject to its charge shall be released from such charge on dedication pursuant to clause 4.1 and the Mortgagee will execute such further documentation as may be required to effect this]

7/8 Costs

- 7.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of this Deed
- 7.2 The Owner will reimburse the Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Deed including correspondence monitoring and site visits by or on behalf of the Council
- 7.3 [The Owner will not claim any compensation in respect of the provision of this Deed]

8 Third Party Rights

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

9 Notice

Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning & Place of the Council (Ref) County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the Council shall direct from time to time [and any notice or notification to be given to [] shall be sent to [] or to such other person at such address as the [] shall notify in writing to the Council from time to time

10 No Waiver

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

11 No Fetter

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

12 VAT

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

13 Jurisdiction

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

14 Delivery

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

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

SCHEDULE

The Works

(1) **Principal Works**

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

(a)

(b)

(c)

(2) **Preparatory and Ancillary Works**

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

(a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works

(b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water

(c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works

- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and 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 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

[ATTACH STANDARD CONDITIONS]

[INSERT EXECUTION CLAUSES FOR ALL PARTIES]

OXFORDSHIRE COUNTY COUNCIL

STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

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Anita Bradley
Director of Law & Governance and
Monitoring Officer
County Hall
New Road
Oxford OX1 1ND

Director of Planning & Place
County Hall
New Road
Oxford OX1 1ND

2016 Edition

OXFORDSHIRE COUNTY COUNCIL

STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

GENERAL

1 INTERPRETATION

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 30.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating GG 119 - Road safety audit.
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.
- 1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.

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

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

2 RELATIONSHIP WITH AGREEMENT

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

3 COMMUNICATIONS WITH THE COUNCIL

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

4 APPROVALS AND CERTIFICATES

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

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

4.3 The matters referred to in Condition 4.1 are:

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

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

5 COUNCIL TO ACT IN DEFAULT OR EMERGENCY

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

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

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

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

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

6 INDEMNITY

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

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

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

7 HEALTH AND SAFETY

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

8 PAYMENTS

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

PRELIMINARIES

9 SUBMISSIONS TO THE COUNCIL

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

Highway Matters

9.1

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

9.2

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

9.3

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

9.4

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

9.5

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

Other Matters

9.6

| | | |
|--|---|--|
| Details of the bondsman proposed to be given pursuant to Condition 12, together with any bills of quantities or tenders which the Developer wishes the Council to take into account under that Condition. | No later than 1 month before the Works are expected to commence. | |
|--|---|--|

9.7

| | | |
|--|---|--|
| Details of the insurances required by Condition 14. | No later than 1 month before the Works are expected to commence. | |
|--|---|--|

9.8

| | | |
|---|---|---|
| <p>Part 1 Noise survey and assessment and modelling sufficient to establish whether any properties will be eligible for noise insulation according to regulation 3 or regulation 4 (as applied by the Council) of the Noise Insulation Regulations 1975 applying the requirements of the Design Manual of Roads and Bridges Volume 11 – Environmental Assessment and the Calculation of Road Traffic Noise 1988 to be undertaken by a noise expert approved by the Council.</p> <p>Part 2 If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council:</p> <p>(a) a map and list of all eligible properties. ¹</p> <p>(b) a list of all occupiers and landlords</p> <p>(c) a survey and assessment for each eligible property of the work to be carried out to comply with requirements of the Noise Insulation Regulations 1975 and the specification for that work</p> | <p>No later than 1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</p> <p>As above</p> | <p>Precise timing of survey to be agreed with the Council. Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p> |
|---|---|---|

¹ Dwellings and other buildings used for residential purposes which will be not more than 300 metres from the edge of the carriageway of the highway after completion of the work.

9.9

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

9.10

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

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

10 UNDERTAKERS' APPARATUS

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

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

11 AUTHORISATIONS

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

11.1.1 planning permission for the Works;

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

² Examples may also include noise consent from district council

- 11.1.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function³;
 - 11.1.4 street works licence further to the New Roads and Street Works Act 1991;
 - 11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in the Council's opinion to enable the Works to proceed and/or to be implemented and function⁴; and
 - 11.1.6 any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.
- 11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.
- 11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.
- 11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.
- 11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.
- 11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

³ This relates to for example Section 127HA.

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

12 BOND

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

12.2 The amount of the Bond shall be

- 12.2.1. the gross cost of the Works (including any costs payable to undertakers pursuant to Condition 10) as then (being one month before the Works are proposed to be commenced) estimated by the Council and such estimate may take into account any bills of quantities prepared or tenders received by the Developer in respect of the Works and submitted by it to the Council; and
- 12.2.2. adjusted to take account of inflation for the duration of the Works (and subsequently) as reasonably estimated by the Council; and
- 12.2.3. adjusted to reflect the full costs that may be incurred by the Council as provided in Condition 5.1 (Council to act in default or emergency).

13 MONITORING AND OTHER COSTS

13.1 The Developer shall pay to the Council in respect of the costs to be incurred by the Council in monitoring the execution and completion of the Works (and administration of the Agreement) a sum equal to 10% of the amount of the Bond, subject to a minimum payment of £2,250

Note: The provisions of Condition 27.2 also apply

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

14 INSURANCE

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

15 CONTRACTORS

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

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

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

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

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

16 PRECONDITIONS TO LETTING CONTRACT

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

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

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

IMPLEMENTATION OF THE WORKS

17 COMMENCEMENT OF WORKS

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

18 NO WORK PENDING APPROVALS ETC

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

- 18.1.1 the Council has issued written approval of the Scheme of Works;
- 18.1.2 Safety Audit Stage 2 Report has been approved;
- 18.1.3 evidence of all Authorisations have been supplied to the Council;
- 18.1.4 the Bond duly executed as a deed by the Developer and the approved guarantor has been delivered to the Council;
- 18.1.5 the costs referred to in Condition 13 have been paid to the Council;
- 18.1.6 the Council has given its written approval to the insurances referred to in Condition 14;
- 18.1.7 the noise survey assessment and modelling in accordance with Condition 9.8 has been supplied to the Council and if appropriate the information referred to in the second part of that Condition has been supplied to the Council
- 18.1.8 the surveys referred to in Condition 9.9 (condition survey) has been supplied to the Council.

18.2 The Developer must have readily available at the site of the Works a copy of the insurances and approved Scheme of Works and shall retain them at the site for the duration of the Works and produce them to any representative of the Council on request.

19 GENERAL CONDUCT

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

20 MONITORING OF SITE AND MATERIALS

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

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

21 ERRORS AND DEFECTS

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

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

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

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

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

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

22 SUSPENSION OF WORK

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

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

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

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

23 VARIATIONS AND ADDITIONS

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

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

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

24 PREVENTION OF NOISE, DISTURBANCE ETC

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

25 PROTECTION OF HIGHWAY

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

26 SAFEGUARDING OF COMPLETED WORK

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

COMPLETION AND CONSEQUENTIAL MATTERS

27 COMPLETION OF WORKS

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

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

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

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

29. HEALTH AND SAFETY

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

30. COMPLETION CERTIFICATE

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

31. DEDICATION AS HIGHWAY

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

32. EASEMENTS

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

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

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

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

33. NOISE INSULATION

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

34. REMEDYING OF DEFECTS AND OUTSTANDING WORKS

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

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

34.1.2 the Developer shall fail to complete any of the outstanding works mentioned in Condition 30 (minor outstanding Works on issue of Certificate of Completion) and the Council notify the Developer in writing of this

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

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

arising from some cause not within the Developer's control when the Developer shall be entitled to a reasonable extension of time).

35. STAGE 4 ROAD SAFETY AUDIT

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

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

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

36. RELEASE OF BOND

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

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

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

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

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

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

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

36.3 Conditions 36.1 and 36.2 are without prejudice to the Council's absolute discretion from time to time upon application of the Developer to release the Bond to an extent commensurate with

the proportion of the Works that have been executed and completed at such time.

