

DATED.....18th November.....2022

CHERWELL DISTRICT COUNCIL

-and-

OXFORDSHIRE COUNTY COUNCIL

-and-

NIGEL JOHN MORRIS and CAROLE MORRIS

-and-

HSBC UK BANK PLC

PLANNING OBLIGATION BY DEED OF AGREEMENT

under Section 106 of the Town and Country Planning Act 1990

**relating to land at Deerfields Farm Canal Lane Bodicote
Banbury Oxfordshire OX15 4AD**

*Shahin Ismail
Assistant Director of Law, Governance
and Democratic Services and Interim
Monitoring Officer
Bodicote House
White Post Road
Bodicote
Banbury
Oxfordshire OX15 4AA*

Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

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THIS AGREEMENT is dated 18th November

2022

PARTIES

- (1) **CHERWELL DISTRICT COUNCIL** whose address is Bodicote House, White Post Road, Bodicote, Banbury OX15 4AA ("**District Council**")
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall, New Road, Oxfordshire, OX1 1ND ("**County Council**")
- (3) **NIGEL JOHN MORRIS and CAROLE MORRIS** of Deerfields, Canal Lane, Bodicote, Banbury, Oxfordshire OX15 4AD ("**Owners**")
- (4) **HSBC UK BANK PLC** Co Reg No 9928412 whose registered office is situate at 1 Centenary Square, Birmingham B1 1HQ ("**Mortgagee**")

INTRODUCTION

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the local 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 county planning authority for the purposes of the Act and the education authority for the area in which the Site is situated.
- (C) The Owners are the freehold owners of the part of the Site subject to the interest of the Mortgagee dated 5 December 2018 but otherwise free from encumbrances as set out in the First Schedule.
- (D) Nigel Morris has submitted the Application to the District Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (E) The District Council resolved on 12th March 2020 to grant the Planning Permission subject to the prior completion of this Deed.
- (F) The Owners, the District Council, the County Council and the Mortgagee, have agreed that it is necessary in planning terms to enter into this Deed to mitigate the impact of

the Development and make it acceptable in the event that the Planning Permission is granted

NOW THIS DEED WITNESSES as follows:

OPERATIVE PART

1. DEFINITIONS

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

Expression	Meaning
“Act”	the Town and Country Planning Act 1990 (as amended);
“Application”	the application for outline planning permission submitted to the District Council and validated on 10 TH December 2019 for the Development (originally for 27 dwellings but amended to 26 dwellings) and allocated reference number 19/02350/OUT;
“Commencement of the Development”	occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of: <ul style="list-style-type: none">• site clearance;• demolition work;• archaeological investigations and site surveys;• investigations for the purpose of assessing ground conditions;• remedial work in respect of any contamination or other adverse ground conditions;• the construction of temporary access;• erection of any temporary means of enclosure;

Expression	Meaning
	<ul style="list-style-type: none"> • the temporary display of site notices or advertisements and “Commence” “Commenced” and “Commencing” or any other derivation of this term shall be construed accordingly;
“Construction”	the construction of any building forming part of the Development including footings or foundations and “Construct” and “Constructed” shall be construed accordingly;
“Development”	the development of the Site for up to 26 dwellings including access as set out in the Application or as may be approved by a Qualifying Permission;
“Due Date”	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 Planning Permission and including Affordable Housing (as defined in Second Schedule);
“Implementation”	means the carrying out of any development which implements any planning permission as set out in Section 56 of the Act and “Implement” and “Implemented” shall be construed accordingly
“Interest”	Interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time;
“Market Dwelling”	any Dwelling which is to be sold let or rented on the open market and not subject to the restrictions in the Second Schedule

Expression	Meaning
“Occupation”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction; fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupied” and “Occupy” shall be construed accordingly;
“Plan”	the site plan attached to this Deed at the Annex to the First Schedule;
“Planning Permission”	the outline planning permission subject to conditions to be granted by the District Council pursuant to the Application which shall include each and every Qualifying Permission;
“Qualifying Application”	an application for approval of Reserved Matters or any separate application(s) for full planning permission for the Development or any part of the Development or any application under Section 73 of the Act relating to the Planning Permission or any application for approval of Reserved Matters relating to such permission further to an application under Section 73 of the Act;
“Qualifying Permission”	approval of Reserved Matters or planning permission as the case may be issued pursuant to a Qualifying Application;
“Reserved Matters”	details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval;
“Site”	the land known as land at Deerfields Farm Canal lane Bodicote shown edged red on the Plan
“Trigger Event”	any event that when it occurs requires any party to this Deed to pay any sum or carry out any works or take (or desist from taking) any other action including service of any notice.

Expression	Meaning
“Working Days”	Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 24 th December and the following 2 nd January inclusive in any Calendar Year.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 **“Including”** means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and **“include”** shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause, permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the

District Council and County Council the successors to their respective statutory functions.

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

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act Section, 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and save as set out in Clause 3.3 below are enforceable by both the District Council and by the County Council as local planning authorities

3.3 Those covenants, restrictions and requirements

3.3.1 set out in Second Schedule are enforceable by the District Council as local planning authority, and

3.3.2 set out in Third Schedule are enforceable by the County Council as County planning authority

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

4. CONDITIONALITY

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

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of the Development,

4.2 The provisions of Clauses 1 to 19 and paragraph 3 of the Third Schedule shall come into effect immediately upon completion of this Deed.

5. THE OWNERS' COVENANTS

- 5.1 The Owners covenant with the District Council as set out in the body of this Deed and the Second Second Schedule.
- 5.2 The Owners covenant with the County Council as set out in the body of this Deed and the Third Schedule.

6. THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owners as set out in the Fourth Schedule.

7. MISCELLANEOUS

7.1 The Owners shall

- 7.1.1 pay to the District Council on the execution and completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation of the Agreement and the preparation and execution of this Deed;
- 7.1.2 pay to the County Council on the execution and completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation of the Agreement and the preparation and execution of this Deed
- 7.1.3 reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council; and
- 7.1.4 on completion of this Deed pay
 - (a) to the County Council the sum of **£4,550** (Four Thousand Five Hundred and Fifty pounds); and
 - (b) to the District Council the sum of **£1000.00** (one thousand pounds)

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

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

Implementation PROVIDED ALWAYS that Implementation of the Planning Permission or any Qualifying Permission has not taken place.

- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Except for any provision hereof that restricts or prevents any Dwelling being occupied or prevents a number of Dwellings being occupied until another provision hereof is complied with this Deed shall not be enforceable against owner-occupiers or tenants of any Dwelling nor any mortgagee or chargee of the interest of any such owner-occupier nor against those deriving title from them.
- 7.10 This Deed shall not be enforceable against any public utility company or statutory undertaker having an interest in the Site for the sole purpose of providing utility services to the Site.
- 7.11 Nothing contained or implied in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission and/or a Qualifying Permission granted (whether or not on appeal) after the date of this Deed.
- 7.12 If the District Council consents pursuant to a Qualifying Application to any variation or release of any condition contained in the Planning Permission (or a previous Qualifying Permission) or if any such condition is varied or released following an appeal under section 78 of the Act the covenants and provisions of this Deed shall be deemed to bind the Qualifying Permission and to apply in equal terms to that Qualifying Permission save that where a different section 106 obligation is agreed by the District Council and/or the County Council as being binding on any Qualifying Permission this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

8. WAIVER

No waiver (whether expressed or implied) by the District Council (or the County Council) of any breach or default in performing or observing any of the covenants

terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. NO FETTER

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

10. CHANGE OF OWNERSHIP ETC

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

10.1 the sale of individual Dwellings on the Development; or

10.2 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

11. NOTIFICATIONS

The Owners agree with the District Council and the County Council:

11.1 to notify the District Council and the County Council in writing

11.1.1 no later than 5 Working Days prior to Commencement of the Development of the anticipated date of Commencement of the Development and not to Commence until 5 Working Days have passed since service thereof; and

11.1.2 within 10 Working Days of the date of the Commencement of the Development the date on which such Commencement of Development occurred; and

11.2 to notify the District Council and separately the County Council in writing no later than within 10 Working Days prior to the anticipated date of the following events and after the event to specify in a further notification the date on which it occurred:

11.2.1 first Occupation of any Dwelling;

11.2.2 the Occupation of more than ten Dwellings

11.2.3 Occupation of 50% (Fifty per cent) of the Market Dwellings (as ascertained from a Qualifying Permission and the Affordable Housing Scheme as required by paragraph 2.1 of the Second Schedule or if more than one the Qualifying Permission approving the lowest number of Dwellings); and

11.2.4 Occupation of more than 80% (Eighty per cent) of the Market Dwellings (as ascertained from a Qualifying Permission and the Affordable Housing Scheme as required by paragraph 2.1 of the Second Schedule or if more than one the Qualifying Permission approving the lowest number of Dwellings)

and not to Occupy or cause or permit Occupation until the appropriate notice has been given and the time therein has expired.

11.3 to notify the District Council and the County Council in writing of the actual date of each such event referred to in Clauses 11.1 above 11.2.4 above no later than 10 Working Days after the event occurs

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

12. INTEREST

12.1 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.

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

13. VAT

13.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the Owners 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 Owners.

14. NOTICES

14.1 Any notice or notification to be given to the District Council under this Deed shall be sent to the District Council (quoting Reference 19/02350/OUT) for the attention of the Assistant Director Planning and Development at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall direct from time to time.

14.2 Any notice or notification to be given to the County Council under this Deed shall be sent to the Director for Planning and Place of the County Council (quoting Reference 19/02350/OUT)) at County Hall, New Road, Oxfordshire, OX1 1ND or to such other person at such other address as the County Council shall direct in writing from time to time.

14.3 Any notice to be given to the Owners shall be sent to the Owners at the Owners' address at the head of this Deed or to such other person at such address as the Owners shall notify to the District Council and separately to the County Council in writing from time to time.

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

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

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

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

14.5 If a notice, demand or any other communication is served after 16:00 on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

14.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

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

15. JURISDICTION

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

16. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

17. MORTGAGEE'S CONSENT

17.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site 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 in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

18. DATA PROTECTION

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

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

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

19. DISPUTES

19.1 The provisions of this clause 19 shall apply to any dispute arising in respect of the provisions in the Second Schedule between the Owners and/or the District Council and/or any other party bound by the terms of the Second Schedule but shall exclude the County Council (“Party”)

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

19.2.1 disputes relating to the construction, interpretation and/or the application of this Agreement shall only be determined by an Expert with the express further agreement of all other Parties and in the absence of such agreement can only be determined by a Court of competent jurisdiction;

19.2.2 any dispute relating to a refusal or failure to determine any application (whether pursuant to Sec 106A of the Act or otherwise) to modify or discharge any provision hereof shall not constitute a dispute to be determined pursuant to this Schedule but in accordance with Section 106B of the Act or Section 84A of the Law of Property Act 1925 or otherwise as appropriate

19.2.3 any dispute relating to a refusal or failure to determine any application (whether pursuant to Sec 106A of the Act or otherwise) to modify or discharge any provision hereof shall not constitute a dispute to be determined pursuant to this Schedule but in accordance with Section 106B of the Act or Section 84A of the Law of Property Act 1925 or otherwise as appropriate

19.3 Any Party may by serving notice on all the other Parties (the Notice) require a dispute to be referred to an Expert (as hereinafter defined) for determination.

19.4 The Notice must:

19.4.1 specify the nature, basis and brief description of the dispute;

19.4.2 identify the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and

19.4.3 propose a person to determine the dispute ('the Expert').

19.5 The Expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Notice is issued pursuant to paragraph **Error! Reference source not found.**9.3 either Party may request that the following nominate the Expert at their joint expense:

19.5.1 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

19.5.2 if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the Expert;

19.5.3 if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;

19.5.4 if such dispute relates to Affordable Housing the Expert shall be nominated by the President of the Royal Town Planning Institute; and

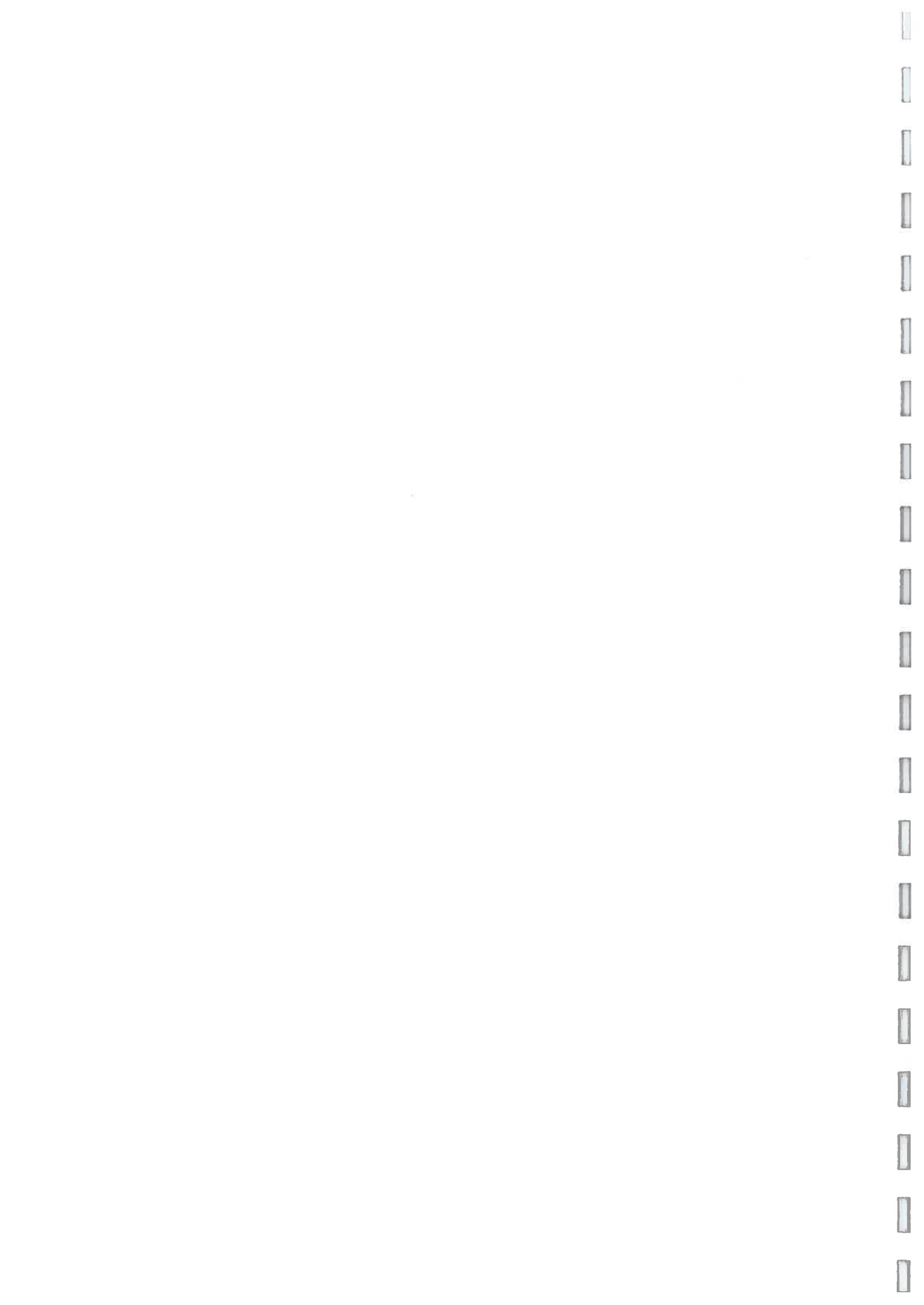
19.5.5 in all other cases, the President of the Law Society to nominate the Expert as he thinks appropriate

19.6 The Parties may agree to appoint joint Experts or (in default of agreement) invite joint Experts to be nominated pursuant to paragraph 19.19.5 and in which case 'Expert' shall mean both or all of them.

- 19.7 If an Expert (including one or more jointly nominated experts) nominated or appointed pursuant to this Schedule shall die or decline to act another Expert may be appointed in his place in accordance with the provisions of paragraph 19.19.5.
- 19.8 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of the notice of his appointment given pursuant to paragraph 19.9.
- 19.9 Notice in writing of the appointment of an Expert pursuant to this Schedule shall be given by the Expert to the Parties and he shall invite each of the Parties to submit to him within ten Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
- 19.10 The Expert shall act as an expert and not as an arbitrator but shall consider any written representation submitted to him within the period specified in this Schedule although he shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 19.11 The Expert shall give notice of his decision in writing
- 19.12 If the Expert consists of more than one person the decision shall be a joint decision approved by all such persons and the decision will (in the absence of manifest error) be final and binding on the Parties hereto.
- 19.13 If for any reason the Expert fails to make a decision and give notice thereof in accordance with this Schedule the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
- 19.14 The Expert's costs shall be in the Expert's award or in the event that no determination as to costs is made, such costs will be borne by the parties to the Dispute in equal shares.

19.15 Nothing in this Clause shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

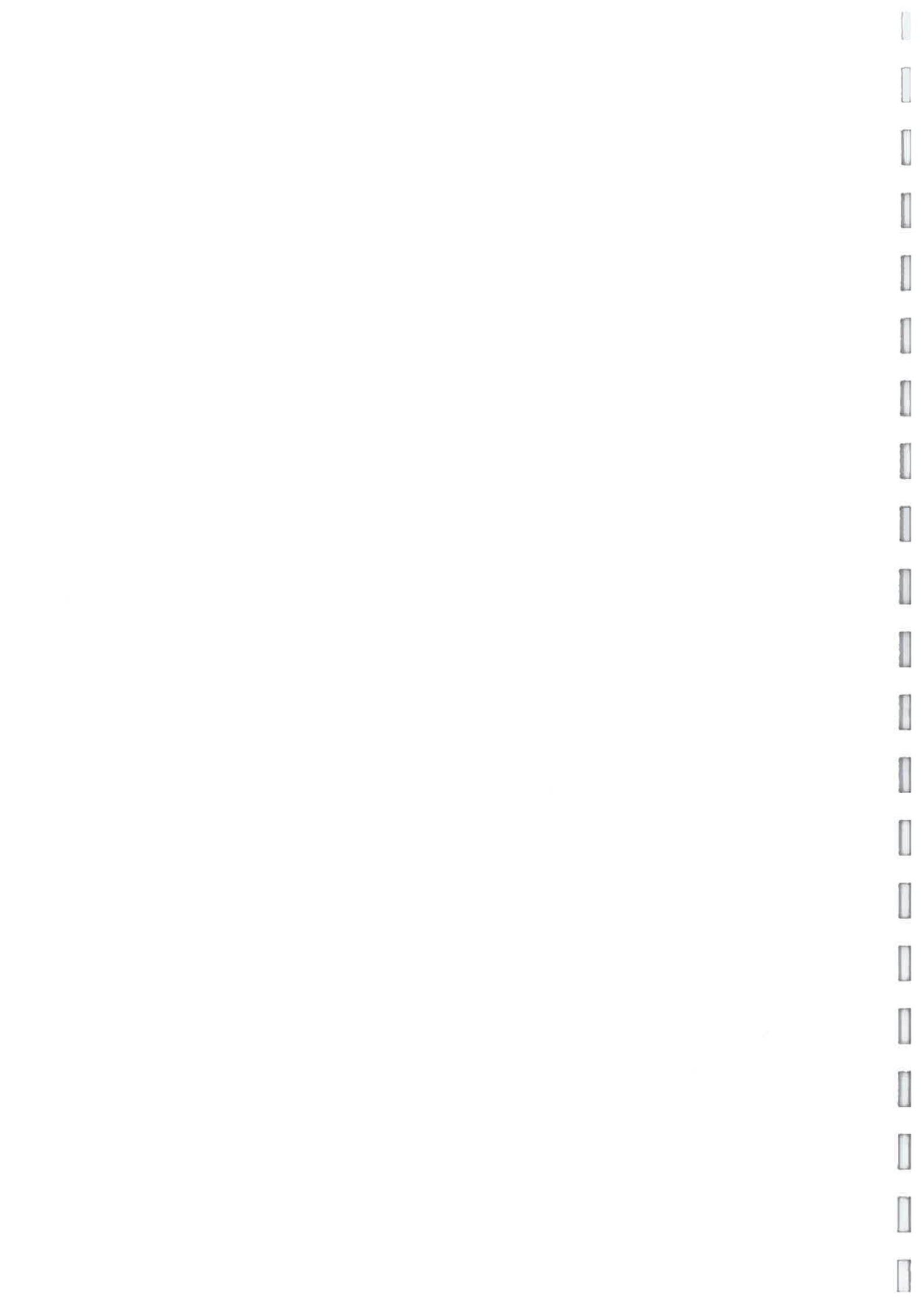
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

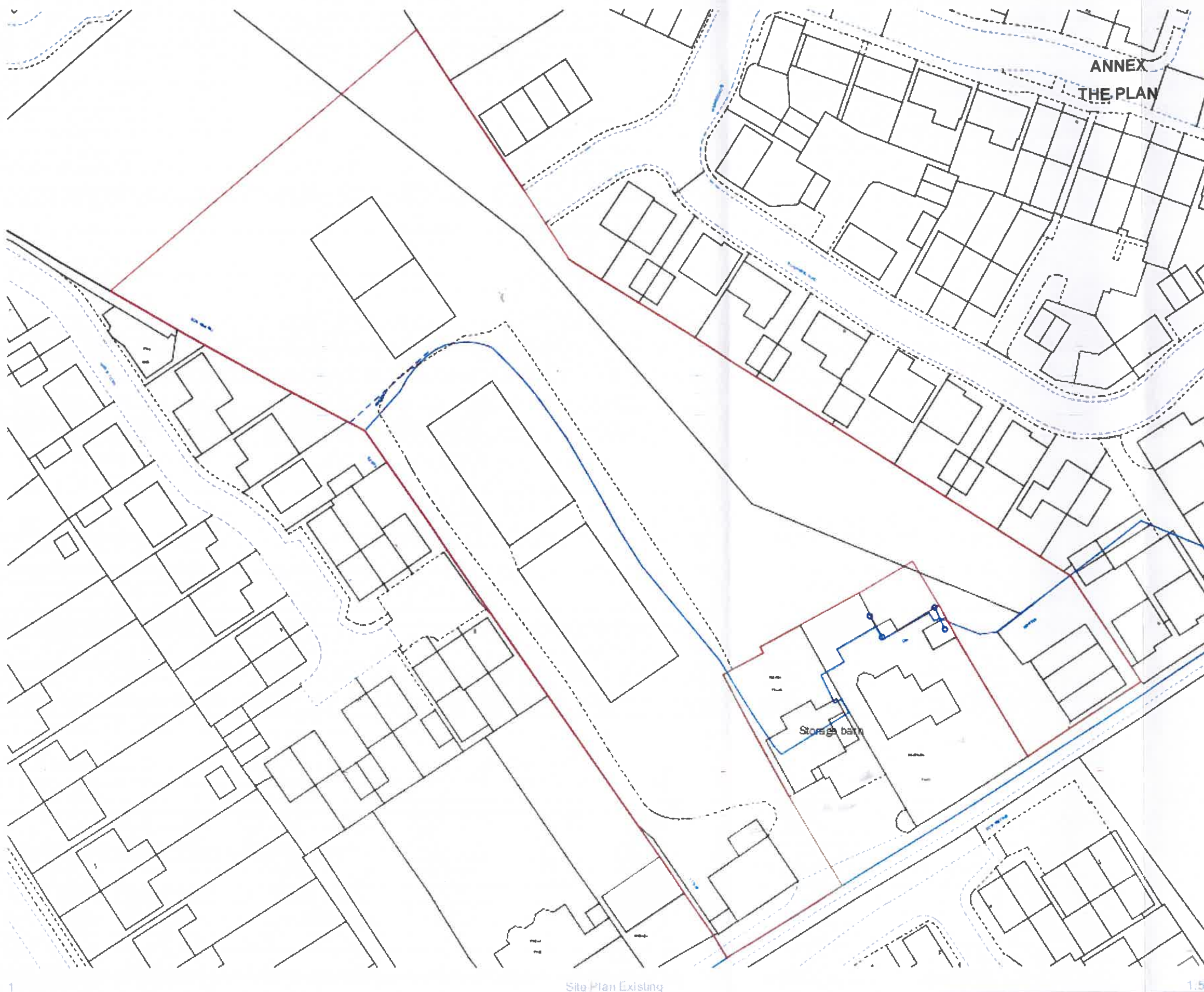


FIRST SCHEDULE

DETAILS OF THE OWNERS' TITLE, AND DESCRIPTION OF THE SITE

All that part of the Site the freehold to which is registered at HM Land Registry under title ON217478 and shown edged red on the HM Land Registry filed plan appended to this deed





ANNEX
THE PLAN

Title			
The copyright in this document is reserved by the author			
Author	Date	Drawn	Check

[Signature]
 x N. Mansfield
 x C. Marry CM

HSBC UK Bank plc
 Sheffield Securities
 Processing Centre

[Signature]
 Bank Official

REDUCED FROM A2

N



[Signature]
 SCALE 1:500

SHIRAZ SHEKH CPC 20892

auth	CPC 20892
name	Mr Nigel Morris
prop	Land at Deerfields Farm Canal Lane Banbury
desc	Site Plan Existing
date	27.09.19
scale	1:500
drawn	GR
checked	

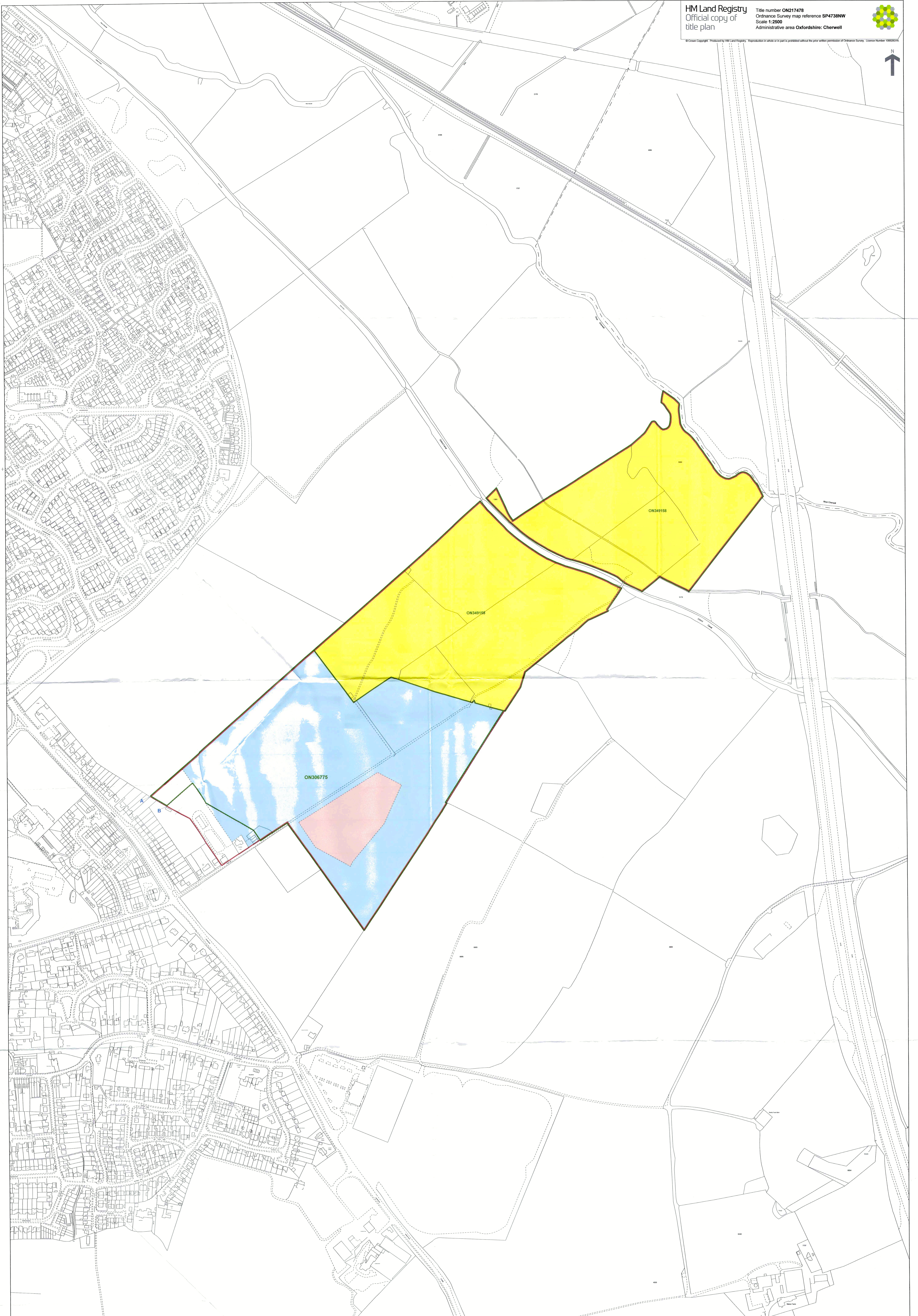
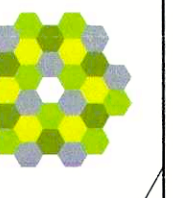
BROWN & CO

ARCHITECTURE + PLANNING

100 High Street Banbury OX12 2JG
 Banbury, Oxfordshire OX12 2JG
 Tel: 01235 534444 Fax: 01235 534445
 Email: info@brownandco.co.uk
 Website: www.brownandco.co.uk

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

1. DEFINITIONS

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

Expression	Meaning
Affordable Housing	housing for sale or rent that will be available for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) and which meets the definition in Annex 2 of the National Planning Policy Framework dated February 2019 (or as may be amended from time to time)
Affordable Housing Dwellings	the Intermediate Housing or Social Rented Housing or such alternative tenure to be agreed with the District Council that shall comprise not less than 30% (thirty per cent) of the total number of Dwellings on the Development
Affordable Housing Indicative Dwelling and Tenure Mix	the mix of tenure and dwelling types whereby not less than 30% (thirty per cent) of the Dwellings within the Development are provided as Affordable Housing as follows and whereby 70% of the Affordable Housing Dwellings shall be provided as Social Rented Housing and the remaining 30% (thirty per cent) shall be Intermediate Housing

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

Expression**Meaning**

Department for Communities and Local Government's technical housing standards

Affordable Rented Housing

rented housing provided by the Registered Provider to households who are eligible for social rented housing and which is not subject to the national rent regime but in line with the District Council's tenancy strategy, the rents shall be no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting whichever is the lower

Allocations Scheme

the District Council's allocation policy from time to time which determines the District Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 166A of the Housing Act 1996 (and any amendment, re-enactment or successor provision)

Chargee

any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it and includes any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 (including a Housing Administrator under the provisions of the Housing and Planning Act 2016) howsoever appointed or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security

Help to Buy Agent

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

Expression

Meaning

Infrastructure

in relation to the Affordable Housing Site:

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

and the following services:

- a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider;
- a water supply connection from the mains (size and termination position to be agreed with the Registered Provider);
- an electricity supply (size and termination position to be agreed with the Registered Provider);
- a gas supply (size and termination position to be agreed with the Registered Provider) (should it be required for the Affordable Housing Dwellings)
- a telephone spur (terminating in a junction box at a location agreed with the Registered Provider);

Expression**Meaning**

- if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a spur to the Affordable Housing Site (final locations to be agreed with the Registered Provider);

PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable Housing Site nor to the Affordable Housing Dwellings

Intermediate Housing

housing at prices and rents above those for social rented housing but below open market prices or rents and for the avoidance of doubt the expression 'Intermediate Housing' includes Shared Ownership, shared equity and low cost homes for sale but does not include Affordable Rented Housing. The Intermediate Housing will be delivered as Shared Ownership Housing unless otherwise agreed between the District Council and the Owners

Mortgage Land

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

Nominations Agreement

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

Expression	Meaning
Qualifying Persons	those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to Social Rented Housing in accordance with this Allocations Scheme and the Nominations Agreement
Registered Provider	a private provider of social housing which is designated in the register maintained by the Regulator or any similar future authority carrying on substantially the same regulatory or supervisory functions pursuant to section 111 of the Housing and Regeneration Act 2008 as a non-profit organisation under subsections 115(1)(a) or 278(2) of the Housing and Regeneration Act or which is designated in that register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008 which is on the District Council's list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and been approved in writing by the District Council
Shared Ownership Housing	ownership under the terms of a lease which accords with the Regulator's Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 10% - 75% of the equity in an Affordable Housing Dwelling from the housing provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity and where the lessee has the option to increase their percentage of ownership through a process of staircasing up to outright ownership

Expression	Meaning
Social Rented Housing	Rented housing owned and managed by Registered Providers for which guideline target rents are determined through a national rent regime as described in Annex 2 of the National Planning Policy Framework dated February 2019
Staircasing	the exercise by the owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the entire interest in the dwelling after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and 'Staircases' or any other derivative thereof shall be construed accordingly
The Regulator	the Regulator of Social Housing constituted pursuant to the Housing and Regeneration Act 2008 (as amended) and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing

2. AFFORDABLE HOUSING COVENANTS

The Owners covenant with the District Council that they:

- 2.1 will submit a detailed scheme for the provision, proposed location and construction programme of the Affordable Housing Dwellings, including details of the proposed Affordable Housing Tenure Mix to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme ;
- 2.2 will not Commence or cause or permit the Commencement of the Development until the Affordable Housing Scheme has been approved in writing by the District Council;
- 2.3 will not Occupy or cause or permit the Occupation of more than fifty per cent (50%) of the Market Dwellings until

- 2.3.1 each area comprising the Affordable Housing Site has been offered to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession on completion and capable of being fully serviced and properly connected to the public highway and a Registered Provider has exchanged a binding contract for the purchase of the Affordable Housing; and
- 2.3.2 there has been provided to the District Council's reasonable satisfaction the Infrastructure to serve each parcel of the Affordable Housing Site and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);
- 2.4 will not cause or permit more than eighty per cent (80%) of the Market Dwellings to be used or Occupied unless and until the Owner has constructed all of the Affordable Housing Dwellings and made the same ready for Occupation in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing Site has been offered to and transferred to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway.
- 2.5 will not use or cause or permit the use of the Affordable Housing Site for any other purpose than for the provision of Affordable Housing in accordance with this Deed unless otherwise specified in this Deed;
- 2.6 will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected thereon except to a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold

interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings; and

- 2.7 will provide the Affordable Housing Dwellings in line with the Affordable Housing Indicative Dwelling and Tenure Mix or such other mix as may be agreed in writing between the Owner and the District Council.

3. **MORTGAGEE EXEMPTION**

The provisions of paragraph 2 are binding on the Chargee PROVIDED THAT they will not be binding on a bona fide purchaser for value from the Chargee exercising its power of sale (other than a purchaser which is a Registered Provider) or the successors in title of such purchaser provided that the provisions below have been complied with.

- 3.1 It is hereby agreed and declared that the proviso contained in paragraph 3 will only apply where the Chargee exercising its power of sale:

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

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

3.1.3 no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed

then upon expiry of the said 3 months the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraph 2 above with the effect that they shall cease to bind any person obtaining title to the Mortgage Land.

PROVIDED ALWAYS that nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained within this Schedule) or all

sums due under the terms of the Chargee's mortgage or charge together with costs and expenses of the sale of the Mortgage Land and interest due under the mortgage

4. ALLOCATION

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

- 4.1 the Social Rented Housing shall only allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement;
- 4.2 the Shared Ownership Housing shall be marketed through the Registered Provider website and where possible via the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the Help to Buy Agent's criteria shall be considered for the Shared Ownership Housing; or
- 4.3 as agreed by the District Council.

5. MISCELLANEOUS

It is agreed that

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

6. 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 Schedule when satisfied that such obligations have been performed.



**THIRD SCHEDULE
CONTRIBUTIONS TO THE COUNTY COUNCIL**

1. DEFINITIONS

1.1 In addition to the definitions provided in Clause 1 of this Deed the following words have the following meanings for the purposes of the Schedule and where a word is defined in Clause 1 of the Deed and also in the Schedule the meaning given in the Schedule shall be applied for the purposes in this Schedule

Expression	Meaning
“Approval (Initial)”	means the approval of a Qualifying Application which first establishes the Composition of the Development
“Approval (Variation)”	means any approval (including an application for approval of Reserved Matters 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 (Initial) or as applicable preceding Approval (Variation)
“Bedroom”	means a room in a Dwelling designed as a bedroom or study/bedroom and <ul style="list-style-type: none">• 1 Bedroom Dwelling means a Dwelling with 1 Bedroom• 2 Bedroom Dwelling means a Dwelling with 2 Bedrooms• 3 Bedroom Dwelling means a Dwelling with 3 Bedrooms• 4 Bedroom Dwelling means a Dwelling with 4 or more Bedrooms
“Composition of the Development”	means the aggregate number of Dwellings comprised in the Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling

Expression	Meaning
“County Contribution”	means together all those payments comprising the “Public Transport Service Contribution” “the Primary and Nursery Education Contribution” and the “Secondary Education Contribution”
“Education Payment”	Any instalment of the “Primary and Nursery Education Contribution” or any instalment of the “Secondary Education Contribution” due to be paid pursuant to paragraph 2 of this Schedule
“Index Linked”	<p>means in relation to:</p> <ul style="list-style-type: none"> • the “Public Transport Service Contribution” adjusted according to any increase occurring between November 2019 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics; and • the “Primary and Nursery Education Contribution” and the “Secondary Education Contribution” and any supplemental payments made under paragraph 4 adjusted according to any increase occurring between index value 333 and the index value for the quarter period in which the contribution is paid in the BCIS All In-Tender Price Index published by the Royal Institution of Chartered Surveyors <p>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 Owners and the County Council</p>

Expression	Meaning
“Matrix (Primary and Nursery)”	<p>means the formula:</p> $\pounds(A \times \pounds 0) + (B \times \pounds 4,096.02) + (C \times \pounds 9,396.74) + (D \times \pounds 12,288.05)$ <p>When</p> <p>A means the number of 1 Bedroom Dwellings;</p> <p>B means the number of 2 Bedroom Dwellings;</p> <p>C means the number of 3 Bedroom Dwellings; and</p> <p>D means the number of 4 (or more) Bedroom Dwellings</p>
“Matrix (Secondary)”	<p>means the formula:</p> $\pounds(A \times \pounds 0) + (B \times \pounds 2,642.09) + (C \times \pounds 6,869.44) + (D \times \pounds 11,096.79)$ <p>When</p> <p>A means the number of 1 Bedroom Dwellings;</p> <p>B means the number of 2 Bedroom Dwellings;</p> <p>C means the number of 3 Bedroom Dwellings; and</p> <p>D means the number of 4 (or more) Bedroom Dwellings</p>
“Notification (Initial)”	<p>means written notification of the Approval (Initial) containing a copy of that approval and details of the Composition of the Development established by that approval</p>
“Notification (Variation)”	<p>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</p>
“Primary and Nursery Education Contribution”	<p>means the sum of Two Hundred and Sixteen Thousand Three Hundred and Sixty Six pounds only (£216,366) or (if higher) the sum calculated by applying the Matrix (Primary and Nursery) to the Composition of the Development as</p>

Expression	Meaning
	<p>identified in the Notification (Initial) towards the expansion of primary school and nursery provision serving the Development payable in two instalments as follows:</p> <ul style="list-style-type: none"> • Primary and Nursery Instalment 1 being 50% of the Primary and Nursery Education Contribution and • Primary and Nursery Instalment 2 being the remaining 50% of the Primary and Nursery Education Contribution <p>The Primary and Nursery Education Contribution will be Index Linked</p>
“Public Transport Service Contribution”	means the sum of Twenty Six Thousand Pounds only (£26,000) Index Linked towards enhancements to public transport serving the Site
“Revised Contribution”	means the Revised Primary and Nursery Contribution and/or the Revised Secondary Contribution (as appropriate)
“Revised Primary and Nursery Contribution”	means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix (Primary and Nursery) where this is higher than the Primary and Nursery Education Contribution or in the event that there is more than one Approval (Variation) the Revised Primary and Nursery Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix (Primary and Nursery) if that sum is higher. The Revised Primary and Nursery Contribution will be Index Linked
“Revised Secondary Contribution”	means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix (Secondary) where this is higher than the Secondary Education Contribution or in the event that there is more than

Expression**Meaning**

one Approval (Variation) the Revised Secondary Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix (Secondary) if that sum is higher. The Revised Secondary Contribution will be Index Linked

“Secondary Education Contribution”

means the sum of One Hundred and Sixty Nine Thousand and Ninety Four Pounds (£169,094) or (if higher) the sum calculated by applying the Matrix (Secondary) to the Composition of the Development as identified in the Notification (Initial) towards the expansion of secondary education provision serving the Development payable in two instalments as follows:

- Secondary Instalment 1 being 50% of the Secondary Education Contribution and
- Secondary Instalment 2 being the remaining 50% of the Secondary Education Contribution

The Secondary Education Contribution will be Index Linked

2. COVENANTS

The Owners covenant with the County Council as follows:

- 2.1 to pay Primary and Nursery Instalment 1 to the County Council prior to Commencement of the Development
- 2.2 not to Commence the Development unless and until Primary and Nursery Instalment 1 has been paid to the County Council
- 2.3 to pay the Public Transport Service Contribution and Primary and Nursery Instalment 2 and Secondary Instalment 1 to the County Council prior to first Occupation of any Dwelling; and

- 2.4 not to cause or permit the Occupation of any Dwelling unless and until it has paid the Public Transport Service Contribution and Primary and Nursery Instalment 2 and Secondary Instalment 1 to the County Council
- 2.5 to pay Secondary Instalment 2 to the County Council prior to first Occupation of more than 10 Dwellings; and
- 2.6 not to cause or permit the first Occupation of more than 10 Dwellings unless and until it has paid Secondary Instalment 2 to the County Council

3. OWNERS' COVENANTS (NOTIFICATION AND ASSESSMENT)

3.1 The Owners covenant with the County Council as follows:-

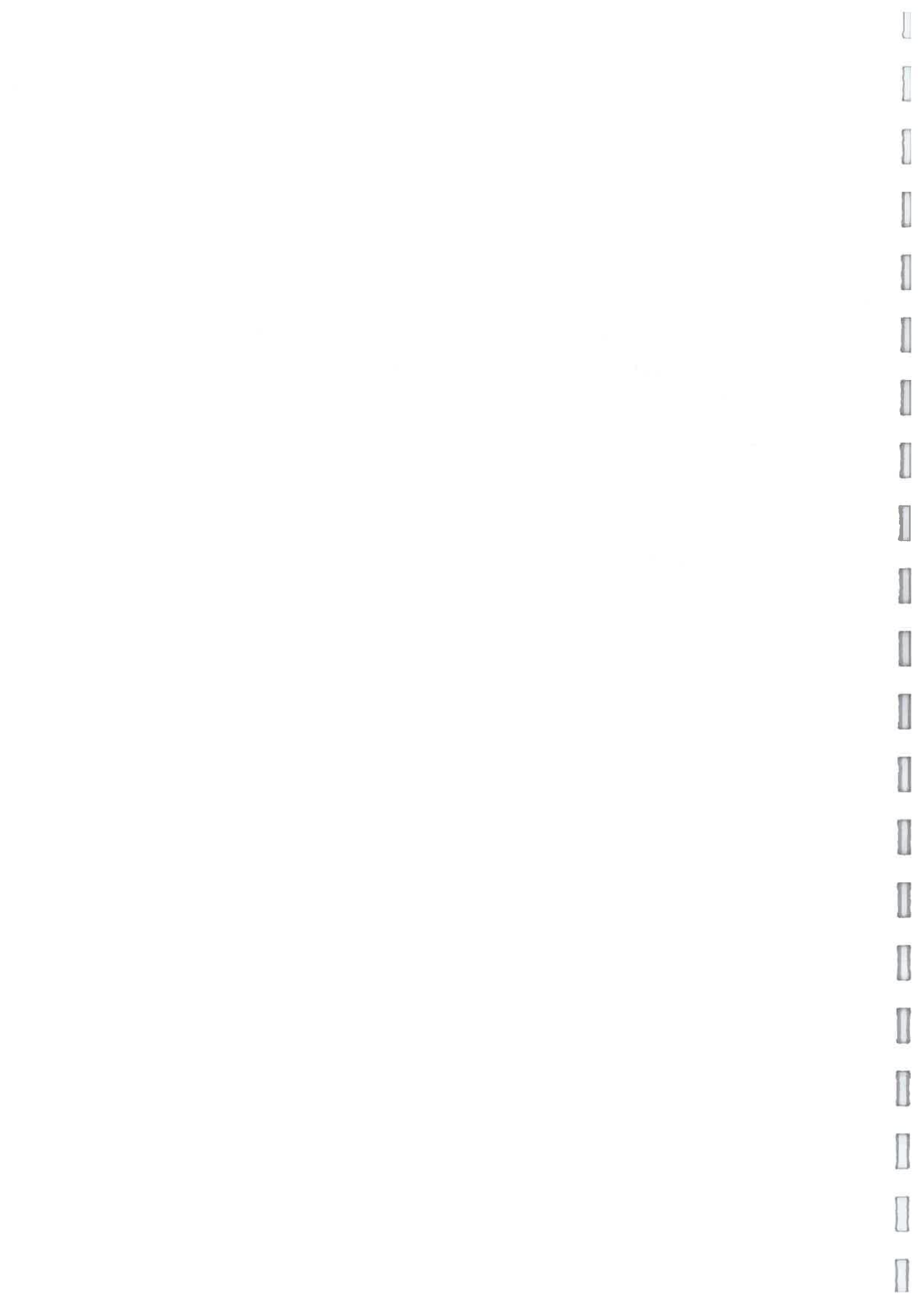
- 3.1.1 to give to the County Council the Notification (Initial) within 14 days of the issue of the Approval (Initial)
- 3.1.2 not to cause or permit Commencement of the Development until the Notification (Initial) has been given to the County Council
- 3.1.3 to give to the County Council a Notification (Variation) within 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 paragraph 3.1.3) and the relevant Approval (Variation) results in the establishment of a Revised Contribution then
 - (a) for the purposes of calculating any Primary and Nursery Education Contribution payment which will payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Primary and Nursery Contribution shall be applied in place of the Primary and Nursery Education Contribution
 - (b) there shall be calculated the difference between any Primary and Nursery Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Primary and Nursery Education Contribution would have been if it had been calculated by

reference to the Revised Primary and Nursery Contribution (in both instances disregarding index linking)

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

4. COVENANTS – PAYMENT (ADDITIONAL COVENANT)

The Owners covenant with the County Council to pay to the County Council any sum calculated further to paragraphs 3.1.4(b) and 3.1.4(d) Index Linked with the next Education Payment subsequent to the date of grant of the relevant Approval (Variation) or if all the Education Payments have been paid to pay such sum Index Linked within 14 days of the grant of the Approval (Variation)



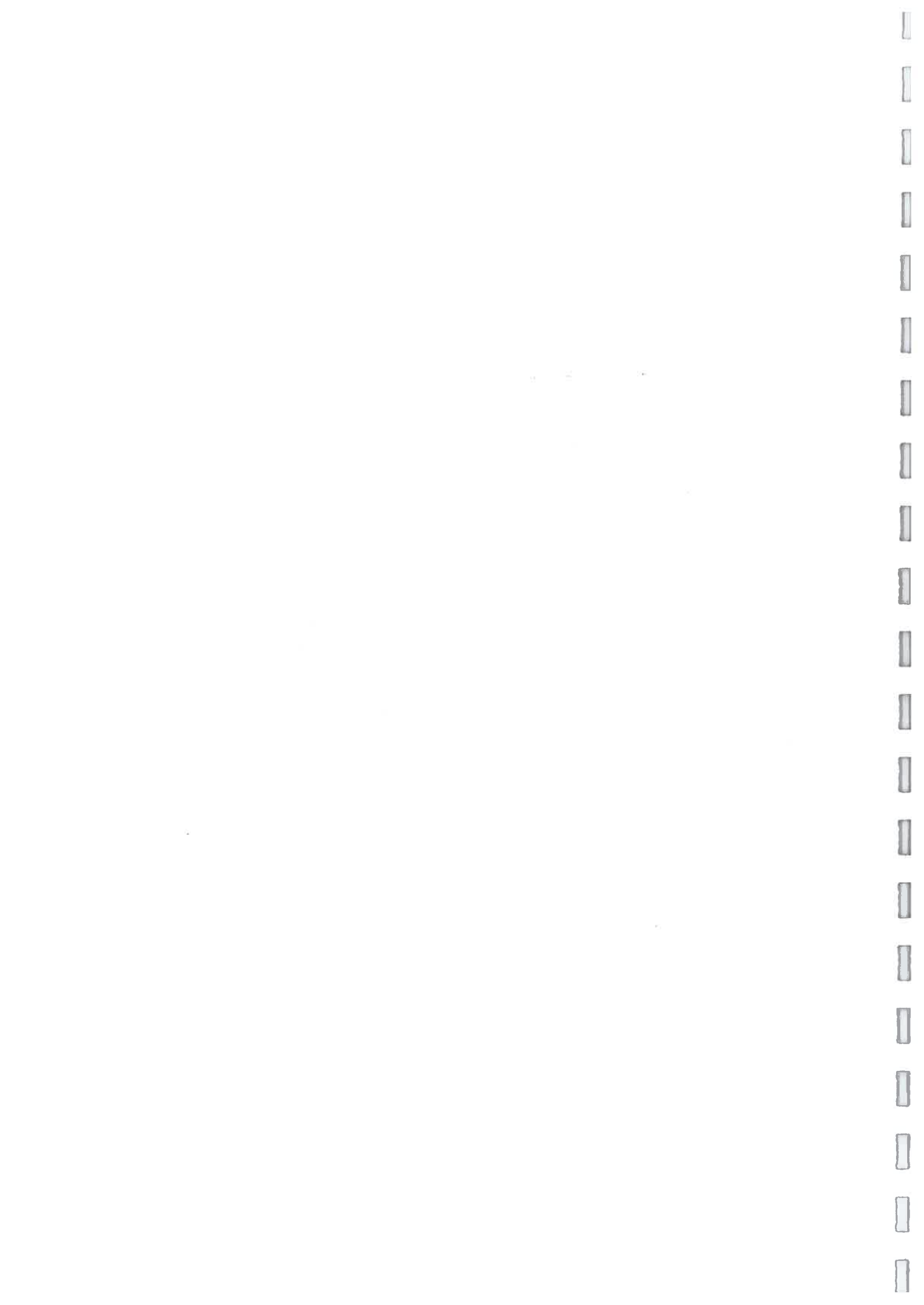
FOURTH SCHEDULE
COUNTY COUNCIL'S COVENANTS WITH THE OWNERS

1. APPLICATION OF MONIES RECEIVED

The County Council shall not apply any of the County Contributions referred to in the Third Schedule for any purpose other than as set out in the definition of each contribution therein in such form and at such time as the County Council shall in its discretion decide or for such other purposes for the benefit of the Development as the Owners and the County Council shall agree

2. REPAYMENT

- 2.1 Following written request from the person who made the relevant contribution the County Council will repay to that person the balance (if any) of such contribution which at the date of the receipt of such written request has not been expended together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request shall be made prior to the expiry of 10 years from the Due Date or the date of receipt by the County Council (whichever is the later) of the last instalment of any such contribution.
- 2.2 Any contribution or part of a contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date



EXECUTION

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



Authorised Signatory
SHIRAZ SNEIKH



CDC 20892

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

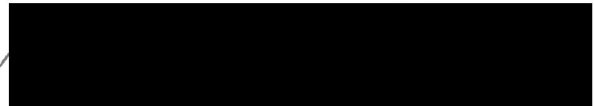


Authorised Signatory



939/22

EXECUTED as a DEED by NIGEL JOHN MORRIS in the presence of



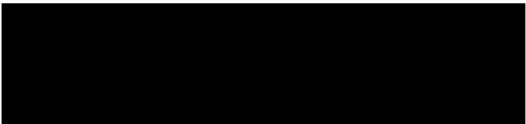
Witness signature
[Redacted]

Witness name
BLOCK CAPS...FRANK WILLIAM OLIVER

Witness address ...WYCHWOOD, 27 THE RIDES,
...BODICOTE, BANBURY, OX15 4EJ

Witness occupation ...DIRECTOR... (CAPRICORN CONTROLS Ltd)

EXECUTED as a DEED by CAROLE MORRIS in the presence of



Witness signature 

Witness name BLOCK CAPS FRANK WILLIAM OLIVER


Witness address WYCHWOOD, 27 THE RIDES, BODICOTE, BANBURY, OX15 4EJ

Witness occupation DIRECTOR (CARRIORN CONTROLS LTD)

EXECUTED as a DEED by *Lisa Maria Rodgers*

as attorney for **HSBC UK BANK PLC** in the presence of



Witness signature 

Witness name BLOCK CAPS RICHARD JAMES ETCHES

Witness address HSBC UK Bank plc
Sheffield Securities
Processing Centre

Witness occupation

Bank Official