

DATED.....1<sup>st</sup> April.....2021

**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**BICESTER GATEWAY LIMITED**

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

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

**relating to land at Bicester Gateway, Business Park, Wendlebury Rd, Chesterton.**

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***Cherwell***  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

IKEN Ref: 013762



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THIS AGREEMENT is dated

1<sup>st</sup> April

2021

## **PARTIES**

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, White Post Road, Bodicote, Banbury, OX15 4AA ("**District Council**");
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall, New Road, Oxford, OX1 1ND ("**County Council**"); and
- (3) **BICESTER GATEWAY LIMITED** (Company Number 11861897) whose Registered Address is at 1 Kings Avenue, London, NS1 3NA ("**Owner**").

## **INTRODUCTION**

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the local highway authority, the county planning authority and the education authority for the area in which the Site is situated.
- (C) The Owner is the freehold owner of the Site free from encumbrances.
- (D) The District Council resolved on 16/07/2020 to grant the Planning Permission subject to the prior completion of this Deed.
- (E) The Works as defined in Sixth Schedule are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act and the parties intend to enter into the Highway Agreement to secure their provision
- (F) The Owner, the District Council and the County Council have agreed that it is necessary in planning terms to enter into this Deed to mitigate the impact of the Development and make it acceptable in the event that the Planning Permission is granted.

**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:

<b>Expression</b>	<b>Meaning</b>
<b>“Act”</b>	the Town and Country Planning Act 1990 (as amended);
<b>“Application”</b>	the application for outline planning permission submitted to the District Council and validated on 04/02/2020 for the Development and allocated reference number 20/00293/OUT and for the purposes hereof includes any Qualifying Application;
<b>“Approval (Initial)”</b>	means the approval of a Qualifying Application which first establishes the Composition of the Development
<b>“Approval (Variation)”</b>	means any approval (further to 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 Planning Permission or as applicable preceding Approval (Variation);
<b>“Bedroom”</b>	means a room in a Dwelling designed as a bedroom or study/ bedroom and: <ul style="list-style-type: none"><li>• 1-Bed Dwelling means a Dwelling with 1 Bedroom; and</li><li>• 2-Bed Dwelling means a Dwelling with 2 Bedrooms; and for the avoidance of doubt a studio unit shall be construed as a 1-Bed Dwelling;</li></ul>

Expression	Meaning
<b>“Commencement of the Development”</b>	<p>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 on a Phase other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none"> <li>• site clearance;</li> <li>• demolition work;</li> <li>• archaeological investigations;</li> <li>• investigations for the purpose of assessing ground conditions;</li> <li>• remedial work in respect of any contamination or other adverse ground conditions;</li> <li>• erection of any temporary means of enclosure;</li> <li>• the temporary display of site notices or advertisements</li> </ul> <p>and <b>“Commence”</b> <b>“Commenced”</b> and <b>“Commencing”</b> or any other derivation of this term shall be construed accordingly;</p>
<b>Composition of the Development</b>	<p>means the aggregate number of Dwellings comprised in the Development (or where the context so admits in a Phase) and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling;</p>
<b>“Construction”</b>	<p>the construction of any building forming part of the Development including footings or foundations and <b>“Construct”</b> and <b>“Constructed”</b> shall be construed accordingly;</p>

<b>Expression</b>	<b>Meaning</b>
<b>“Development”</b>	<p>the development of the Site for</p> <ul style="list-style-type: none"> <li>• up to 4,413 m<sup>2</sup> B1a and B1b gross internal area,</li> <li>• up to 273 residential units (Use Class C3);</li> <li>• gym;</li> <li>• approximately 177 m<sup>2</sup> gross internal area of café space (Use Class A3);</li> <li>• mixed use co-working hub (794 m<sup>2</sup> gross internal area),</li> <li>• multi-storey car park,</li> <li>• amenity space,</li> </ul> <p>and associated infrastructure, parking and marketing boards including access (all other matters reserved) as set out in the Application or as may be approved by any Qualifying Permission;</p>
<b>“Dispute Notice”</b>	<p>a notice served by any Party on all others in accordance with the Ninth Schedule if any approval or consent of another Party pursuant to the provisions of this Deed set out in Clause 20 is refused or is not granted within 20 Working Days of it being requested;</p>
<b>“Due Date”</b>	<p>provided that the notifications required by Clause 12 to be given prior to any event have been duly given the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs but otherwise shall be the date hereof;</p>
<b>“Dwelling”</b>	<p>a flat apartment or maisonette within or part of a building Constructed or proposed to be Constructed on the Site as part of the Development which is self-contained and designed for residential Occupation by a single household pursuant to the Planning Permission and including Affordable Housing (as defined in the Second Schedule);</p>

**Expression****Meaning****“Expert”**

where that term appears in the Ninth Schedule such person as may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Dispute Notice is issued any Party may request that the following nominate the Expert at the joint expense of all Parties:

- if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors;
- if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers;
- if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales;
- if such dispute relates to Affordable Housing the Expert shall be nominated by the President of the Royal Town Planning Institute; and
- in all other cases, the President of the Law Society to nominate the Expert as he or she thinks appropriate;

**“Index”**

means the BCIS All in One Tender Price index published by the Royal Institution of Chartered Surveyors or such other index as may from time to time replace the BCIS All in One Tender Price index or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing;



<b>Expression</b>	<b>Meaning</b>
<b>“Interest”</b>	Interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time;
<b>Notification (Variation)</b>	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;
<b>“Occupation”</b>	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 <b>“Occupied”</b> and <b>“Occupy”</b> shall be construed accordingly;
<b>“Phase”</b>	means part of the Development identified as a phase in the Phasing Plan and where the context admits shall be construed as that part of the Site on which that Phase is to be carried out;
<b>“Phasing Plan”</b>	means the current phasing plan required by a condition attached to the Planning Permission submitted and approved by the District Council that identifies Phases and indicates how the Development will progress;
<b>“Plan”</b>	the plan attached to this Deed at the Annex to the First Schedule;
<b>“Planning Permission”</b>	the outline planning permission subject to conditions to be granted by the District Council pursuant to the Application;
<b>“Qualifying Applications”</b>	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



<b>Expression</b>	<b>Meaning</b>
	Planning Permission or any application for approval of Reserved Matters relating to such permission further to an application under Section 73 of the Act;
<b>“Qualifying Permissions”</b>	approval of Reserved Matters or full planning permission as the case may be issued to a Qualifying Application;
<b>“Reserved Matters”</b>	details of any one or more of appearance, landscaping, layout, phasing and scale reserved under the terms of the Planning Permission (or any Qualifying Permission) for subsequent approval;
<b>“Site”</b>	the land against which this Deed may be enforced as shown edged red on the Plan;
<b>“Trigger Event”</b>	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.
<b>“Working Days”</b>	Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27 <sup>th</sup> and 31 <sup>st</sup> December in any Calendar Year.

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.

- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 **“Including”** means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and **“include”** shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause, permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act Section, 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act.
- 3.3 Those covenants, restrictions and requirements set out in this agreement are enforceable by both the District Council and the County Council but those:

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

3.3.2 set out in the Fifth Schedule and the Sixth Schedule 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.

#### **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 8.1.1, 8.1.4, 12, 16, 17,18 and 19 (legal costs, monitoring and administering, notifications, jurisdiction, delivery, data protection and disputes) and paragraph 4.4 of the Third Schedule (protection of trees/hedgerows) shall come into effect immediately upon completion of this Deed

4.3 The provisions of Clause 8.15, paragraphs 2.1 and 2.2 of the Second Schedule, paragraph 2.1 of the Third Schedule, paragraph 2 of the Fourth Schedule and paragraphs 2.1 and 2.2 of the Sixth Schedule shall come into effect on the grant of the Planning Permission.

#### **5. THE OWNER'S COVENANTS**

5.1 The Owner covenants with the District Council as set out in the Second Schedule, the Third Schedule and the Fourth Schedule.

5.2 The Owner covenants with the County Council as set out in the Fifth Schedule and the Sixth Schedule.

## **6. THE DISTRICT COUNCIL'S COVENANTS**

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

## **7. THE COUNTY COUNCIL'S COVENANTS**

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

## **8. MISCELLANEOUS**

### **8.1 The Owner shall:**

8.1.1 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;

8.1.2 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;

8.1.3 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 Agreement should the need for enforcement arise in the reasonable opinion of the District Council or the County Council; and

8.1.4 on completion of this Deed pay

(a) to the County Council the sum of **£6,000.00** (Six Thousand pounds only); and

(b) to the District Council the sum of **£5,000.00** (Five Thousand pounds only)

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

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

8.3 This Deed shall be registrable as a local land charge by the District Council.

8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and in the case of the District Council or the County Council, any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the following officers or their successors:

8.4.1 the District Council by the Assistant Director: Planning and Development;  
and

8.4.2 the County Council by the Director for Planning and Place.

or such other officer of either the District Council or the County Council as may be notified to the Owner in writing

8.5 Any notices or notifications to be given under this Deed to the District Council or the County Council shall be deemed to have been properly served if delivered by hand or sent by recorded delivery to the address at the beginning of this Deed and

8.5.1 any notice to the District Council shall be addressed to the Assistant Director: Planning and Development of the District Council (Reference 20/00293/OUT);

8.5.2 any notice to the County Council shall be addressed to the Director for Planning and Place of the County Council (Reference 20/00293/OUT)

or to such other person at such other address as the District Council or County Council as appropriate shall direct from time to time

8.6 Pursuant to Clause 8.5 above any notices or notifications to be given shall be deemed to have been delivered:



- 8.6.1 on the second Working Day after posting; or
- 8.6.2 on the Working Day of delivery unless delivered after 1600 hours in which case it shall be deemed delivered at 0930 hours on the following Working Day.
- 8.7 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 the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.8 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 8.9 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development.
- 8.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.11 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.
- 8.12 The obligations in this Deed to make payments to the Council shall not be enforceable against any statutory undertaker who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage or telecommunication services.

8.13 Nothing contained or implied in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission and/or a Qualifying Permission granted (whether or not on appeal) after the date of this Deed.

8.14 If the Planning Permission is

8.14.1 quashed by any Court or Tribunal of competent jurisdiction as a result of any legal proceedings; or

8.14.2 revoked pursuant to Section 97 of the Act; or

8.14.3 expires before the Commencement of the Development; or

8.14.4 rendered incapable of being implemented due to any action or failure to act on behalf of a public authority

then this Deed shall absolutely determine and save for any obligations that were to be undertaken before any of the above events the obligations herein shall terminate and no party shall be under any further duty to comply with them.

8.15 The Owner undertakes to the District Council and separately to the County Council not to construct any Dwellings on the Site other than 1-Bed Dwellings and 2-Bed Dwellings..

## **9. WAIVER**

No waiver (whether expressed or implied) by the District Council (or the County Council) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **10. NO FETTER**

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

## **11. CHANGE OF OWNERSHIP ETC.**

The Owner agrees with the District Council and separately with the County Council to give 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:

11.1 the sale of individual Dwellings on the Development; or

11.2 any disposal of any part or parts of the Site for servicing or utility requirements or to a statutory body or service supply company 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.

## **12. NOTIFICATIONS**

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

12.1.1 to notify the District Council and the County Council in writing:

- (a) no later than 5 Working Days prior to Commencement of the Development on any Phase of the anticipated date of Commencement of the Development and not to Commence until 5 Working Days have passed since service thereof; and
- (b) within 10 Working Days of the date of the Commencement of the Development on the appropriate Phase the date on which such Commencement of Development occurred; and



12.1.2 to notify the District Council and 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:

- (a) first Occupation of any Dwelling on any Phase;
- (b) first Occupation of the 50<sup>th</sup> Dwelling on the Site to be Occupied
- (c) first Occupation of the 100<sup>th</sup> Dwelling on the Site to be Occupied
- (d) first Occupation of the 150<sup>th</sup> Dwelling on the Site to be Occupied
- (e) Occupation of 60% (Sixty per cent) of the Market Dwellings (as defined in the Second Schedule) on a Phase; and
- (f) Occupation of 80% (Eighty per cent) of the Market Dwellings on a Phase

and not to Occupy or cause or permit Occupation as appropriate until ten Working Days have elapsed since the giving of the appropriate notice;

12.1.3 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 each Phase that proposes Dwellings which have been Occupied on that quarter day and their addresses/plot numbers together with a plan showing plot numbers.

### **13. INTEREST**

13.1 If any payment due under this Deed is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.

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

## **14. VAT**

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

## **15. NOTICES**

15.1 Any notice or notification to be given to the District Council under this Deed shall be sent to the District Council attention of the Assistant Director Planning and Development at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall direct from time to time.

15.2 Any notice or notification to be given to the County Council under this Deed shall be sent to the Director of Planning and Place of the County Council at County Hall, New Road, Oxford, OX1 1ND or to such other person at such other address as the County Council shall direct from time to time.

15.3 Any notice to be given to the Owner shall be sent to the registered office of the Owner and addressed to the Company Secretary or to such other person at such address as the Owner shall notify to the District Council and separately to the County Council from time to time.

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

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

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

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

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

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

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

## **16. JURISDICTION**

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

## **17. DELIVERY**

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

## **18. DATA PROTECTION**

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

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

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

## **19. MORTGAGEES**

Any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge of or on any part of the Site shall have no liability under this Deed unless committed or continuing at a time when 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 Owner AND FOR THE AVOIDANCE OF DOUBT save as may otherwise be provided for in this Deed those subsequently obtaining title through a mortgagee shall be bound by the provisions hereof in accordance with Section 106(3) of the Act.]

## **20. DISPUTES**

20.1 The provisions of the Ninth Schedule shall apply to any dispute arising in respect of the provisions in:

20.1.1 Paragraph 2.1 of the Second Schedule; and

20.1.2 Paragraphs 2.1, 6.1, 6.4 and 7.2.1 of the Third Schedule

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

## **FIRST SCHEDULE**

### **DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE SITE**

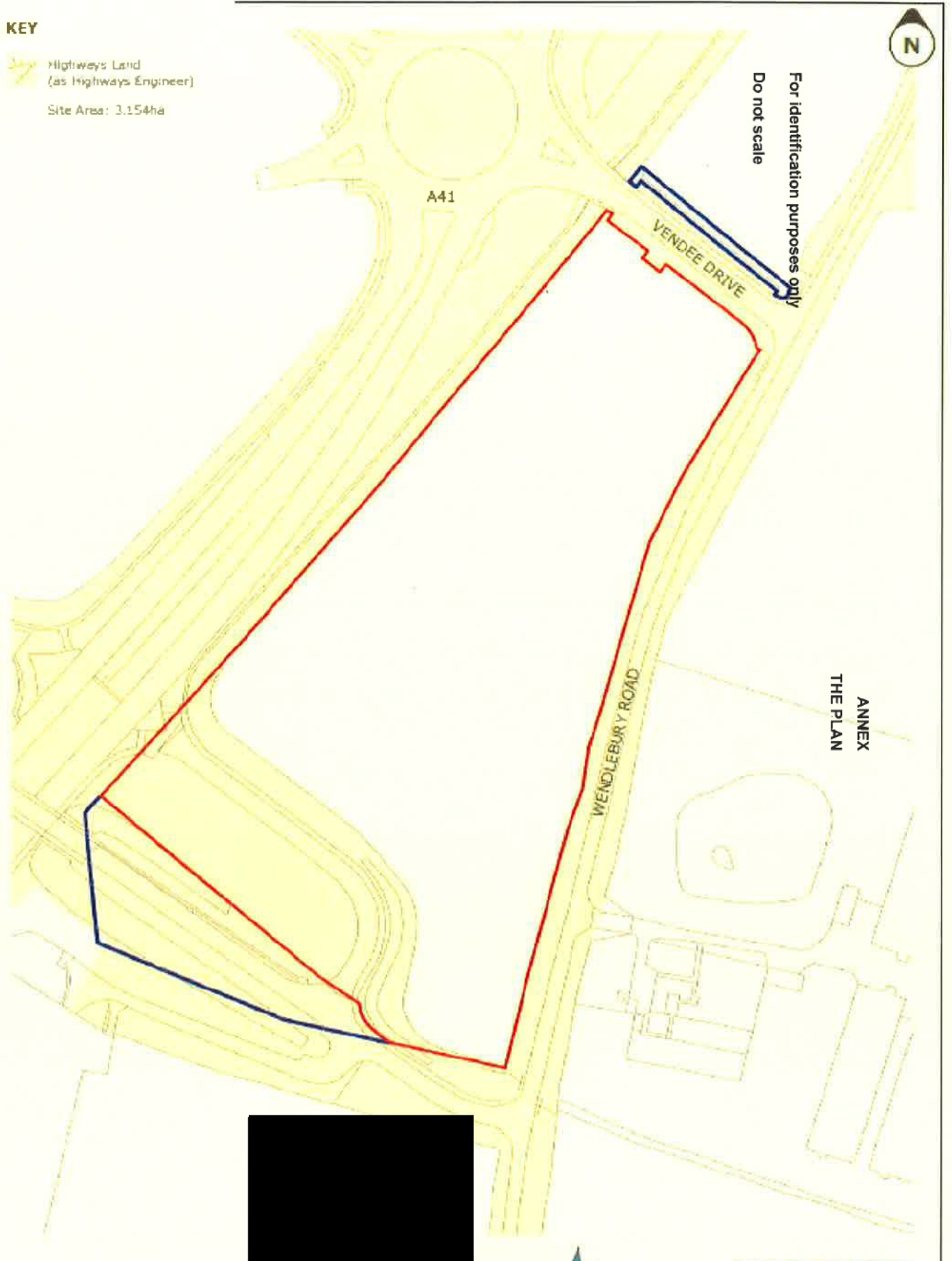
ALL THAT land to the south east of Oxford Road, Bicester being part of the Bicester Gateway Business Park Wendlebury Road Chesterton shown edged in red on the Plan being the freehold land registered at the Land Registry under title number ON302533.



**KEY**

 Highways Land  
(as Highways Engineer)

Site Area: 3.154ha



**Bloombridge**  
Development Partners

**SPACE  
STRATEGY**





## **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):

<b>Expression</b>	<b>Meaning</b>
<b>Affordable Housing</b>	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 one or more of the definitions in Annex 2 of the National Planning Policy Framework dated February 2019 (or as may be amended from time to time);
<b>Affordable Housing Dwellings</b>	the Intermediate Housing or Affordable 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;
<b>Affordable Housing Tenure Mix</b>	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 at least 70% of the Affordable Housing Dwellings shall be provided as Affordable Rented Housing and the remainder shall be Intermediate Housing or such alternative mix of tenure as at any time may be submitted to the District Council for approval in writing;

<b>Expression</b>	<b>Meaning</b>
<b>Affordable Housing Scheme</b>	a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out details of the numbers, locations, types (in terms of the number of bedrooms and accessibility) and external appearance of the Affordable Housing Dwellings; including the timing of construction of the Affordable Housing Dwellings in each Phase that proposes Dwellings;
<b>Affordable Housing Strategy</b>	a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out how the Affordable Housing Tenure Mix is to be achieved across all Phases of the Development that propose Dwellings;
<b>Affordable Housing Site</b>	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;
<b>Affordable Housing Standards</b>	<p>the design criteria with which the Affordable Housing shall comply, namely:</p> <ul style="list-style-type: none"> <li>• (in relation to the Affordable Rented Housing only) 50% to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings;</li> <li>• shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Housing; and</li> <li>• they shall be constructed to the nationally described space standard as set out in the</li> </ul>

Expression	Meaning
	Department for Communities and Local Government's technical housing standards (or such other standards applicable at the time of the submission of Reserved Matters);
<b>Affordable Rented Housing</b>	rented housing provided by the Registered Provider to households who are eligible to rent and occupy such 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
<b>Allocations Scheme</b>	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);
<b>Chargee</b>	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;

**Expression****Meaning****Help to Buy Agent**

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

**Infrastructure**

in relation to the Affordable Housing Site:

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

and the following services:

- a standard fire hydrant supply and fire hydrants on the Site 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);

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>• a telephone spur (terminating in a junction box at a location agreed with the Registered Provider);</li> <li>• 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);</li> </ul> <p>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;</p>
<b>Intermediate Housing</b>	<p>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;</p>
<b>Market Dwellings</b>	<p>that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;</p>
<b>Mortgage Land</b>	<p>the Affordable Housing Site or any part of it which is mortgaged or charged to the Chargee;</p>
<b>Nominations Agreement</b>	<p>an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Rented Dwellings on the Site and which shall guide in conjunction with the Allocations Scheme those persons eligible to be nominated to the Affordable Housing Dwellings;</p>



<b>Expression</b>	<b>Meaning</b>
<b>Qualifying Persons</b>	those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to Affordable Rented Housing in accordance with this Allocations Scheme and the Nominations Agreement;
<b>Registered Provider</b>	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;
<b>Shared Ownership Housing</b>	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 25% - 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;

<b>Expression</b>	<b>Meaning</b>
<b>Staircasing</b>	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;
<b>The Regulator</b>	the Regulator of Social Housing constituted pursuant to the Housing and Regeneration Act 2008 (as amended) and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing;

## **2. AFFORDABLE HOUSING COVENANTS**

The Owner covenants with the District Council that they:

### **2.1 will submit to the District Council for approval:**

2.1.1 a draft Affordable Housing Strategy for the Site no later than the submission of any application for the approval of Reserved Matters; and

2.1.2 in respect of each Phase that includes the provision of Dwellings a draft Affordable Housing Scheme for that Phase, including details of the proposed Affordable Housing Tenure Mix for that Phase before the Commencement of Development on that Phase

which when approved becomes the Affordable Housing Strategy or the Affordable Housing Scheme for that Phase;

### **2.2 will not Commence or cause or permit the Commencement of the Development**

2.2.1 on any Phase that proposes the provision of Dwellings until the Affordable Housing Strategy; and

2.2.2 on any Phase that proposes the provision of Dwellings until the Affordable Housing Scheme for that Phase

has been approved in writing by the District Council;

2.3 will not Occupy or cause or permit the Occupation of more than thirty per cent (30%) of the Market Dwellings on a Phase that proposes Dwellings until;

2.3.1 each area comprising the Affordable Housing Site on that Phase 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 on the appropriate Phase at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);

2.3.3 construct the Affordable Housing Dwellings on a Phase and make the same ready for Occupation in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme to the reasonable satisfaction of the District Council as part of the Development upon the Site prior to use or Occupation of more than 60 per cent (60%) of the Market Dwellings on that Phase.

2.4 will not cause or permit more than 80 per cent (80%) of the Market Dwellings on each Phase to be used or Occupied unless and until the Owner has constructed all of the Affordable Housing Dwellings for that Phase and made the same ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme for that Phase and the Affordable Housing Site for the Phase 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;

- 3.1.3 if upon expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 3.1.1 above and provided the steps detailed in this paragraph have been completed 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**

- 4.1 The Owner covenants not to allocate or cause or permit to be allocated any of the Affordable Housing Dwellings until the provisions of paragraph 2.3.1 above have been complied with and it is AGREED that this provision having been complied with (but not otherwise) the provisions of paragraph 4.2 below shall only apply to an owner that is a Registered Provider.
- 4.2 Once the provisions of paragraph 2.3.1 above have been complied with the Owner of the Affordable Housing further covenants not to allocate or cause or permit to be allocated any of the Affordable Housing Dwellings other than as follows:
- 4.2.1 the Affordable Rented Housing shall only be allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement;
- 4.2.2 the Shared Ownership Housing shall be marketed through the Registered Providers website or other media and if possible through the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the Help to Buy Agent's criteria shall be considered for the Shared Ownership Housing; or
- 4.2.3 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.



### THIRD SCHEDULE

#### PLAY AREAS AND OPEN SPACE INCLUDING SUDS

#### 1. DEFINITIONS

- 1.1 In this Schedule and the Seventh 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):

<b>Expression</b>	<b>Meaning</b>
<b>"Attenuation Tank"</b>	any underground void designed to accommodate excess surface water with the aim of preventing or alleviating the additional flooding risk caused by implementation of the Development that is not located under or within a building;
<b>"Attenuation Tank – Commuted Sum"</b>	means the sum of Thirty Three Thousand and Eight Hundred and Forty Seven Pounds and Sixty Three Pence (£33,847.63) Index Linked per Attenuation Tank proposed in the SUDS Scheme;
<b>"BS5837"</b>	means the British Standard for Trees in relation to design, demolition and construction – Recommendations, the latest version being published in 2012 and applies to all trees that could be affected during the carrying out of the Development
<b>"Combined LAP/LEAP"</b>	means a facility that provides on the Site a LAP and a LEAP combined and if the Play Area Strategy so proposes and is approved includes any number of LAsP or LEAsP located within the Informal Open Space;
<b>"Combined LAP/LEAP – Commuted Sum"</b>	means the sum of One Hundred and Thirty Nine Thousand Four Hundred and Fifty Nine Pounds and Forty Seven Pence (£139,459.47) Index Linked;
<b>"Final Completion Certificate"</b>	means a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space and provision of the SUDS in accordance with the relevant scheme or specification approved pursuant

<b>Expression</b>	<b>Meaning</b>
	to this Deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction;
<b>"Hedgerow"</b>	means any hedgerow whether existing or to be planted identified in the Open Spaces Scheme;
<b>"Hedgerows Commuted Sum"</b>	means Twenty-six pounds and sixty-six pence (£26.66) per linear metre of Hedgerow;
<b>"Index Linked"</b>	means adjusted according to the increase (if any) in the Index between the published figure for the date hereof (or such other date as may be specified herein) and the Due Date;
<b>"Informal Open Space"</b>	means areas of informal open space to be provided on the Development as identified within any Qualifying Permission and/or the Open Space Scheme;
<b>"Informal Open Space Commuted Sum"</b>	means Nine pounds and eighty-two pence (£9.82) per square metre of Informal Open Space as shown in the Open Spaces Scheme;
<b>"LAP"</b>	an equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 6 with a minimum area of 100m <sup>2</sup> and located a minimum of 5m from the nearest Dwelling boundary;
<b>"LAP Commuted Sum"</b>	means the sum of Thirty Thousand Seven Hundred and Two Pounds and Two Pence (£30,702.02). Index Linked for each LAP proposed in the Play Area Strategy;
<b>"LEAP"</b>	an equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 4 to 8 with a minimum area of 400m <sup>2</sup> and where possible located a minimum of 10m from the nearest Dwelling boundary AND 20m from the nearest habitable room façade;



<b>Expression</b>	<b>Meaning</b>
<b>“LEAP Commuted Sum”</b>	means the sum of One Hundred and Twenty Three Thousand Nine Hundred and Fifty Pounds and Eighty Two Pence (£123,950.82) Index Linked for each LEAP proposed in the Play Area Strategy;
<b>"Maintenance Period"</b>	means a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate or such longer period as the District Council may determine if it is not satisfied that any defects identified in the Open Space and/or SUDS have been rectified or if the Open Space and/or SUDS have not been maintained in accordance with the Maintenance Plan during that period;
<b>“Maintenance Plan”</b>	means once approved by the District Council the plan or scheme submitted to the District Council pursuant to paragraph 2.1.3 below that sets out how the Open Space including the SUDS is to be maintained and managed after the issue of a Practical Completion Certificate and until transferred in accordance with paragraph 5 below such plan to be in accordance with and to incorporate the Technical Specification and also to accord with BS5837;
<b>“Management Company”</b>	<p>a body established or appointed by the Owner to carry out the long term management and maintenance of the Open Space on the Residential Area which is to be managed by it in accordance with the provisions of this Agreement and whose objectives shall include (but not be limited to):-</p> <ul style="list-style-type: none"> <li>• setting the level of charges for funding the running of the body and collecting such Service Charges from residents (such term to include but is not limited to owners occupiers lessees and tenants of the Dwellings Index Linked from 1<sup>st</sup> April 2021</li> <li>• ensuring that the level of any charges levied against any Affordable Housing Dwellings that are not owned</li> </ul>

**Expression****Meaning**

outright by Registered Providers shall not materially affect the ability of these Dwellings to remain as Affordable Housing;

- ensuring accountability to residents of the Development; and
- allowing the ability of residents to require the Owners to permit the Open Space to be maintained and managed by the District Council (or its nominee) whether in perpetuity or for a period in the circumstances set out in the Management Company Structure Scheme such petition to be on grounds of dissatisfaction with the maintenance and management responsibilities of the Management Company only and in such circumstance to allow for any accrued Service Charges (or part thereof collected for the purposes of management and maintenance of the Open Space) to be transferred to the District Council or its nominee that will assume management and maintenance;

**"Management Company Default Deposit"**

means the sum (which shall be Index Linked) calculated in accordance with paragraph 1 of Annex 2 to this Schedule (a worked example of which based on the plan at Annex 3 to this Schedule for illustration purposes only is appended to that Annex);

**"Management Company Forward Funding Deposit"**

means the sum (which shall be Index Linked) calculated in accordance with paragraph 2 of Annex 2 to this Schedule (a worked example of which based on the plan at Annex 3 to this Schedule for illustration purposes only is appended to that Annex);

**"Management Company Monitoring Payment"**

the sum of Three Thousand Eight Hundred and Eighty One Pounds and Forty Two Pence (£3,881.42) Index Linked towards the District Council's costs of monitoring the land and facilities transferred to the Management Company;

Expression	Meaning
<b>"Management Company Structure Scheme"</b>	<p data-bbox="651 320 1484 409">a scheme that addresses the following in relation to the Management Company:</p> <ul data-bbox="651 443 1484 1818" style="list-style-type: none"> <li data-bbox="651 443 1484 589">• details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;</li> <li data-bbox="651 622 1484 712">• proposed banking arrangements for the Management Company;</li> <li data-bbox="651 745 1484 947">• procedures and justification that the Management Company will follow for drawing down monies by the Management Company from the ManCo Maintenance Escrow Account</li> <li data-bbox="651 981 1484 1227">• details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of the Open Space against those risks as are reasonable to insure against in the circumstances then prevailing;</li> <li data-bbox="651 1261 1484 1818">• details of the mechanism together with suitable documentation to ensure the transfer of responsibility for management and maintenance of the Open Space that are in the ownership of the Management Company to the District Council or its nominee on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered (likely to be written petition by at least 66% of households occupying the Development) settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer);</li> </ul>

<b>Expression</b>	<b>Meaning</b>
<b>"Management Scheme"</b>	<p>a written scheme for the detailed ongoing management and maintenance of the Open Space (including the maintenance of any balancing ponds and attenuation tanks or other aspects of the SUDS) which shall detail the frequency and standard of maintenance of the facilities that are the subject of the relevant 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 relevant scheme and which may be varied from time to time with the written agreement of the District Council;</p>
<b>"ManCo Default Escrow Account"</b>	<p>an escrow account set up by the Owner in respect of which the following shall apply:</p> <ul style="list-style-type: none"> <li>• it shall hold the Management Company Default Deposit;</li> <li>• monies can be drawn against by the District Council in the circumstances set out in paragraph 9 of this Schedule;</li> <li>• the Management Company Default Deposit and any interest thereon shall be capable of being drawn against by the District Council for the maintenance of the Open Space in the circumstances set out in paragraph 8 below of this Schedule; and</li> </ul> <p>shall be opened and closed in accordance with the provisions of this Schedule;</p>
<b>"ManCo Maintenance Escrow Account"</b>	<p>an escrow account set up by the Owner or Developer in respect of which the following shall apply:</p> <ul style="list-style-type: none"> <li>• it shall hold all payments of the Management Company Forward Funding Deposit;</li> <li>• monies can be drawn against by the Management Company towards the costs of the maintenance of the</li> </ul>

Expression	Meaning
	<p>Open Space where such costs are not otherwise met by the receipts of the Service Charge;</p> <ul style="list-style-type: none"> <li>• it shall be set up to allow the Management Company to draw down such costs every quarter for the costs to be incurred in the following quarter;</li> <li>• the Management Company Forward Funding Sum and any interest thereon shall be capable of being drawn against by the Management Company for the maintenance of the Open Space that are transferred to the Management Company;</li> <li>• monies can be drawn against by the District Council; and</li> <li>• shall be opened and closed in accordance with the provisions of this Schedule;</li> </ul>
<b>"Mature Trees"</b>	means those trees identified as such in the Open Spaces Scheme;
<b>"Mature Trees Commuted Sum"</b>	means two hundred and forty-one pence (£200.41) per Mature Tree;
<b>"Open Spaces Commuted Sum"</b>	the sum calculated by taking the area of the Informal Open Space as calculated from the approved Open Spaces Scheme and/or any Qualifying Permission multiplied by £9.82 Index Linked;
<b>"Open Space"</b>	means the areas within the Site to be provided for recreation and amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include any LAP, LEAP or Combined LAP/LEAP which is to be provided in accordance with the Play Area Strategy, the Informal Open Space, Hedgerows, Mature Trees, Woodland Planting and SUDS;



<b>Expression</b>	<b>Meaning</b>
<b>"Open Space Scheme"</b>	means a scheme for the provision, laying out, landscaping and equipping of the Open Space on each Phase including a timetable to be submitted in writing to the District Council for approval in accordance with paragraph 4 below;
<b>"Play Area Strategy"</b>	means a scheme for the provision of one or more equipped play areas on the Residential Area to be submitted in writing to the District Council for approval in accordance with paragraph 3 below;
<b>"Practical Completion Certificate"</b>	means a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Deed;
<b>"Re-calculation"</b>	the change as a result of the various areas and other measurements;
<b>"Residential Area"</b>	that part of the Site shown encompassed by an orange line on the plan attached hereto as Annex 3 to this Schedule
<b>"Service Charge"</b>	the charge set by the Management Company as a relevant proportion of the costs of managing and maintaining the Open Space transferred to it payable by the occupiers of each Dwelling and which charge may vary depending on the size of each Dwelling;
<b>"SUDS"</b>	means any balancing ponds, attenuation basins, ditches watercourses, swales or similar features, to be provided to form the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme and to be provided on the Development;
<b>"SUDS Commuted Sum"</b>	means the sum of Forty-five pounds and twenty-nine pence (£45.29) per square metre of the area of balancing ponds or attenuation tanks comprised in the SUDS;



<b>Expression</b>	<b>Meaning</b>
<b>“SUDS Scheme”</b>	means a scheme to secure the provision of a sustainable urban drainage system for the Development which is to be submitted in writing to the District Council for approval in accordance with paragraph 5 below;
<b>“Technical Specification”</b>	means the specification set out in the document headed “Cherwell District Council and South Northamptonshire Council Contract for the provision of landscape maintenance services 01 April 2018 - 31 March 2024 Document 3: Technical Specifications available to be downloaded at <a href="https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim_screen_cherwell-dc_gov_uk/Eajlf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE;">https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim_screen_cherwell-dc_gov_uk/Eajlf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE;</a>
<b>“Woodland Commuted Sum”</b>	means the sum of Twenty-seven pounds and seventy pence (£27.70) per square metre of the area of Woodland Planting
<b>“Woodland Planting”</b>	means the woodland (if any) proposed in the Open Spaces Scheme;

## **2. PRE-COMMENCEMENT/OCCUPATION**

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

2.1.1 Play Area Strategy; and

2.1.2 SUDS Scheme

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

2.2 Before Commencing the Development on any Phase there shall be submitted to the District Council the proposed

2.2.1 Open Spaces Scheme for that Phase; and

### 2.2.2 Maintenance Plan for that Phase

and the Development shall not be Commenced on that Phase until the District Council has approved each of them PROVIDED THAT notwithstanding the provisions of any Phasing Plan an Open Spaces Scheme and Maintenance Scheme may be submitted for the entire Development.

## 3. PLAY AREA STRATEGY

3.1 The Play Area Strategy shall provide at a minimum for a LAP and a LEAP or alternatively a Combined LAP/LEAP which together meets the standards set out above.

3.2 The Play Area Strategy must set out the location of each LAP, LEAP (or if proposed the Combined LAP/LEAP) and detail the equipment to be erected thereon.

3.3 The Play Area Strategy shall have regard to:

3.3.1 the standards, policy, design principles and practice referred to in the Fields in Trust publication "Planning and Design for Outdoor Sport and Play" and the Play England publication "Design for Play – A guide to creating Successful Play Spaces" (or later revisions of these publications);

3.3.2 RoSPA's Play Value Assessment and achieve a minimum score rating of 'Good' as measure against that

and evidence of compliance shall be submitted with the draft Play Area Strategy submitted to the Council for approval

## 4. OPEN SPACE

4.1 Each Open Space Scheme shall include:

4.1.1 details of the locations of Informal Open Space, Hedgerows, Mature Trees (and their number) to which the scheme relates; and

4.1.2 a timetable for carrying out the works and the planting comprised in the laying out, landscaping and equipping of the Open Space, and the provision of any LAP, LEAP, or Combined LAP/LEAP provided for in the Play Area Strategy that is to be provided on that Phase.

- 4.2 Each Open Space shall be provided in accordance with the appropriate Open Spaces Scheme
- 4.3 Save as set out in any Open Spaces Scheme and/or the SUDS Scheme and/or the Maintenance Plan and/or BS5387 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of an Open Spaces Scheme or the efficient implementation of the Maintenance Plan and in particular:
- 4.3.1 no materials or equipment shall be stored on;
  - 4.3.2 no services shall be run over, under or through;
  - 4.3.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;
  - 4.3.4 no parking area or temporary roadway shall be created or designated on;
- any part of the Site that is to accommodate an Open Space unless the express prior written permission of the District Council has been requested and given.
- 4.4 All trees and/or hedgerows currently on the Site shall be protected as set out in BS5837 unless shown in an Open Spaces Scheme or a Maintenance Plan as being removed and shall only be disturbed in accordance therewith.
- 4.5 The District Council shall be entitled on reasonable written notice but no less than one Working Days' written notice to enter the Site with workman and contractors to remedy any default in compliance with paragraphs 4.3 and 4.4 above and to recover the cost thereof from the Owner PROVIDED THAT the District Council shall not be entitled to take action under this paragraph nor recover reimbursement unless the District Council before taking action to enforce any of the terms of this Schedule shall have given the Owner a reasonable time period for remedying the breach and shall afford the Owner a reasonable opportunity to remedy the breach in accordance with the steps and time period in the written notice.
- 4.6 Each Open Space shall be constructed laid out and seeded in accordance with the approved Open Space Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing.

## **5. SUDS**

### **5.1 The SUDS Scheme shall contain**

5.1.1 details of the design, location and technical capacity of the features included within it including details of any measures to protect the integrity of any balancing ponds, attenuation basins, ditches watercourses, swales or similar features,

5.1.2 details of measures to protect the public from any hazard presented by any of these features; and

5.2 Notwithstanding anything to the contrary in any Open Spaces Scheme the SUDS shall be provided in accordance with the SUDS Scheme and the timetable approved therein.

5.3 Save as set out in any Open Spaces Scheme and/or the SUDS Scheme and/or a Maintenance Plan and/or with BS5387 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the SUDS Scheme or its efficiency or the efficient implementation of the Management Plan and in particular:

5.3.1 no materials or equipment shall be stored on;

5.3.2 no services shall be run over, under or through;

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

5.3.4 no parking area or temporary roadway shall be created or designated on

any part of the Site that is to accommodate the SUDS or any part of it (save as set out in the SUDS Scheme) without the express prior written permission of the District Council having been requested and given unless such is essential for the creation of the SUDS itself.

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

5.5 The SUDS shall not be used for any purpose:

5.5.1 that may prejudice its function as part of the drainage for the Site: or



5.5.2 subject to 5.5.1 above, as public open space land as an amenity for the occupiers of the Development and surrounding area

but with the prior written consent of the District Council the subsoil of the SUDS may accommodate services provided such services do not prejudice the maintenance and function of the SUDS;

5.6 The District Council shall be entitled on reasonable notice but no less than one Working Days' Notice to enter the Site with workman and contractors to remedy any default in compliance with paragraph 5.3 above and to recover the cost thereof from the Owners.

## **6. COMPLETION OF THE OPEN SPACE AND SUDS ETC.**

6.1 Upon completion of an Open Space the SUDS and the LAP, LEAP or Combined LAP/LEAP if appropriate provided for in the Play Area Strategy the District Council shall be notified and invited to inspect the Open Space within 15 Working Days with a view to either:

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

6.1.2 issuing a notice or notices (Defects Notice) which state that the Open Space or the SUDS (as the case may be) has not been provided in accordance with the Open Spaces Scheme and/or the SUDS Scheme to a standard that satisfies the District Council and sets out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done

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

- 6.2 If a Defects Notice is issued the works specified in the Defects Notice shall be carried out and the District Council invited to re-inspect with a view to securing the issue of the Practical Completion Certificate.
- 6.3 Once the Practical Completion Certificate is issued the Maintenance Period shall begin and the Owners shall then comply with any Defects Notices that the District Council are satisfied may be complied with during the Maintenance Period as soon as reasonably practical and implement the Maintenance Plan.
- 6.4 Upon completion of the Maintenance Period the District Council:
- 6.4.1 if satisfied that all elements of the Open Space have both been maintained throughout the Maintenance Period in accordance with the Maintenance Plan and any minor defects set out in the Practical Completion Certificate have been remedied shall issue a Final Completion Certificate; or
- 6.4.2 if not so satisfied issue a Defects Notice and the provisions of paragraphs 6.2 and 6.3 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate.
- 6.5 No more than 50% (fifty percent) of the Dwellings to be constructed on a phase shall be Occupied until the issue of a Practical Completion Certificate for the Open Space on that Phase and that part of the SUDS to be provided on that Phase.
- 6.6 At all reasonable times and upon reasonable notice officers servants and agents of the District Council may enter onto any necessary part of the Site for the purpose of inspecting the Open Space upon the District Council first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site.

## **7. MANAGEMENT COMPANY**

### **7.1 The Owner covenants with the District Council**

### **7.2 that it shall:**

- 7.2.1 prior to the first Occupation of any Dwelling provide a draft Management Company Structure Scheme to the District Council for its approval;



7.2.2 not Occupy or cause or permit the Occupation of any Dwellings until

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

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

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

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

7.6 thereafter the Management Company shall maintain and manage the Open Space and the SUDS (where appropriate on a Phase) in accordance with the provisions of the Management Plan and Maintenance Plan and generally in accordance with good practice for the maintenance of that type of amenity or recreational space and drainage.

## **8. BOND AND FORWARD FUNDING**

8.1 On or before the Occupation of any Dwelling the Owner shall EITHER

- 8.1.1 provide a bond in the form of the draft at Annex 1 to this Schedule (or in such other form as the Council may agree) in the amount of the Management Company Default Deposit:

OR

- 8.1.2 set up the ManCo Default Escrow Account and pay the Management Company Default Deposit into that account and provide evidence to the District Council that such payment has been made;

AND

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

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

- 8.2.1 the fourteenth anniversary of the date of the first payment of the Management Company Forward Funding Deposit; and

- 8.2.2 the date that 240 of the Dwellings have been Occupied

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

- 8.3 Either:

- 8.3.1 The bond referred to in paragraph 8.1.1 above shall be retained for a period expiring up to 15 (fifteen) years after the date of the first Occupation of any Dwelling;

OR

- 8.3.2 The ManCo Default Escrow Account shall be retained for a period of up to 15 years after the date of the first Occupation of any Dwelling

the bond to be released by the District Council or the ManCo Default Escrow Account closed and any monies whether capital or interest sums remaining in the ManCo Maintenance Escrow Account at that time shall be released to the person who made the payments once 240 of the Dwellings (or if less than 240 Dwellings are proposed pursuant to any Qualifying Application then 95% of the Dwellings approved pursuant to the subsequent Qualifying Permission and if more than one Qualifying Application proposing different numbers of Dwellings 95% of the lowest number of Dwellings approved) have been Occupied and then shall be closed.

## **9. DEFAULT BY MANAGEMENT COMPANY**

### **9.1 In the event that**

9.1.1 the Management Company fails to maintain any part or aspect of the Open Space on the Residential Area in accordance with the approved Management Scheme; or

9.1.2 the Management Company:

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

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

without a replacement management company approved by the District Council pursuant to paragraph 7 being formed and assuming the responsibilities of the Management Company set out in paragraph 7.6 the District Council may enter on to the relevant area of the Open Space within the Residential Area together with relevant personnel and equipment to ensure the performance of the obligations contained in this Schedule and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage or reinstate the relevant area of the Open Space ('Works in Default') and shall be entitled to full reimbursement by the Management Company of all costs and expenses incurred in performing the said obligations.

## 9.2 In the event that the Management Company

9.2.1 shall have failed to maintain any Open Space within the Residential Area in accordance with the approved Management Scheme the District Council will not exercise the right in paragraph 9.1.1 above to carry out Works in Default before having given written notice to the Management Company stating the nature of the failure, the steps required to remedy the failure, and a reasonable

time period for remedying it and shall afford the Management Company the opportunity to remedy the failure in accordance with the steps and time period in the written notice;

9.2.2 shall have failed for whatever reason to reimburse the costs and expenses incurred by District Council in carrying out any Works in Default within 14 days of a written demand therefor, the District Council shall be entitled to EITHER

(a) call on the Bond; OR

(b) draw down from the ManCo Default Escrow Account

to recover such costs and expenses.

9.3 In the event that

9.3.1 the District Council shall have served notice on the Management Company requiring it to remedy any failure to maintain any of the Open Space within the Residential Area in accordance with the approved Management Scheme; and

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

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

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

9.3.3 any of the circumstances set out in paragraph 9.1.2 above shall occur or the Management Company otherwise ceases to be able to carry out its obligations in the Management Scheme.

then the provisions of paragraph 9.4 below shall apply



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

9.4.1 transfer the responsibility for management and maintenance of the Open Space on the Residential Area to the District Council or its nominee; and

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

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

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



**ANNEX 1 TO THE THIRD SCHEDULE  
DRAFT BOND**

**THIS BOND** dated the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]  
is made

**BETWEEN**

(1) **BICESTER GATEWAY LIMITED** (Company Number 11861897) whose Registered Address is at 1 Kings Avenue, London, NS1 3NA ("the Owner")

(2) [ ] (Company number [ ]) whose registered office is situate at [ ] ("the Surety")

(3) **CHERWELL DISTRICT COUNCIL** of Bodicote House, White Post Road, Bodicote, Banbury, OX15 4AA ("the Council")

**Preliminary and Definitions**

1. By an Agreement ("the Agreement") dated the [ ] day of [ ] 20[ ] made pursuant to (inter alia) Section 106 of the Town and Country Planning Act 1990 between the Council and the Oxfordshire County Council and the Owner the Owner is under obligation to execute and complete in accordance with the terms and conditions set out in the Agreement and in particular the Third Schedule thereto certain works in connection with development of land at Bicester Gateway Business Park, Wendlebury Road, Chesterton in the County of Oxfordshire ("the Works")
2. "The Bond Sum" means the sum of [ ]

**NOW THIS DEED WITNESETH** as follows:-

3. The Owner and the Surety are jointly and severally bound to the Council for the Bond Sum

4. If the Owner shall duly perform and observe all the terms provisions conditions and stipulations of the Agreement on its part to be performed and observed according to the true purport intent and meaning thereof or if on default by the Owner the Surety shall satisfy and discharge the established and ascertained damages sustained by the Council up to the amount of the Bond Sum then this Bond shall be null and void **BUT OTHERWISE** this Bond shall be and remain in full force and effect
5. Any claim hereunder shall be accompanied by a statement signed by the Solicitor to the Council that the amount claimed represents the amount payable and such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council. [Without prejudice to the generality of the foregoing none of the following shall be required:
  - a) the Council being obliged to make any enquiry of the Owner or the Surety
  - b) the need to take any legal action against the Owner
  - c) any proof of default or liability on the part of the Owner]
  - d) The Surety shall within 14 days after service of any claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment for any reason notwithstanding any objection by the Owner or any other party provided always that the maximum aggregate liability of the Surety does not exceed the Bond Sum
  - e) The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bond Sum
6. Without prejudice to the generality of clause 5 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:

- a) any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety;
  - b) any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time) or in the extent or nature of the Works;
  - c) any obligation on the part of the Owner being void;
  - d) the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;
  - e) any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary
7. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act
8. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.

**THIS BOND** has been executed as a deed and is delivered the day and year first before written

[EXECUTION BY OWNER, SURETY AND COUNCIL]



## **ANNEX 2 TO THE THIRD SCHEDULE**

### **1. THE MANAGEMENT COMPANY DEFAULT DEPOSIT**

is calculated as follows having regard to the approved Open Spaces Scheme:

- 1.1 The total area of the Informal Open Space includes in metres squared multiplied by £9.82

PLUS

- 1.2 The total area of SUDS swales and aquatic margins in metres squared multiplied by £45.29

PLUS

- 1.3 The length in metres of evergreen hedge multiplied by £26.66

PLUS

- 1.4 The number of Mature Trees multiplied £200.41

PLUS

- 1.5 The area of Woodland Planting in metres squared multiplied by £27.70

PLUS

- 1.6 The appropriate LAP Commuted Sum or Leap Commuted Sum or Combined LAP/LEAP Commuted Sum

Divided by 15 (Fifteen)

PLUS

- 1.7 10% of the capital cost of providing the appropriate LAP/LEAP/Combined LAP/LEAP]

### **2. MANAGEMENT COMPANY FORWARD FUNDING SUM**

is the sum arrived at in paragraph 1 above before adding the figure in sub-paragraph 1.7 above divided by 2.

## APPENDIX TO ANNEX 2 OF THE THIRD SCHEDULE

Typology	Quantity	No/M2/m		Rate (£)	Sub Total (£)
Proposed POS:-			POS Total Area		
Shrubs and Perennials	1355	m2			
Climbing Plants	48	m			
Turf Lawns	2090	m2			
Wildflower Meadow	185	m2			
Pedestrian Surfaces	2050	m2	5728	9.82	56248.96
Proposed SuDS:-			SuDS Total Area		
Swale	290	m2			
Aquatic Margins	130	m2	420	45.29	19021.80
Evergreen Hedge	250	m		26.66	6665.00
Woodland Planting	1154	m2		27.70	31965.80
Mature Trees	3	no		200.41	601.23
Hedgerow Combined	100	m		26.66	2666.00
LAP/LEAP	1	no		139459.47	139459.47
			Total Sum (£)		181357.50
Management Company Default Sum	Total Sum (£)		÷15 (15 Years Maintenance)	Sub Total	MCDF Total (£)
	181357.5		15	12090.50	
(Based on 10% of capital costs of Combined LAP/LEAP for repairs)	Total Capital Cost of Combined LAP/LEAP (£)		10% of Total Capital Cost		
	196326.5		19632.65		31723.15
Management Company Forward Funding Sum	Total Sum (£)		÷15 (15 Years Maintenance)	÷ 2 (6 months)	MCFFS Total (£)
	181357.5		15	2	6045.25



## Landscape Area Schedules

### Employment Zone

Woodland Planting	972m <sup>2</sup>
Boundary Native Hedge	67m
Evergreen Hedge	85m
Shrubs and Perennial Plants	383m <sup>2</sup>
Turf Lawns	770m <sup>2</sup>
Climbing Plants	45m

Pedestrian Surfaces	1494m <sup>2</sup>
Parking Bays	780m <sup>2</sup>
Vehicular Surfaces	1350m <sup>2</sup>

### Residential Zone

#### Ground Level

Mature Trees	8No
Woodland Planting	1154m <sup>2</sup>
Evergreen Hedge	250m
Shrubs and Perennial Plants	1355m <sup>2</sup>
Climbing Plants	48m
Turf Lawns	2090m <sup>2</sup>
Wildflower Meadow	185m <sup>2</sup>
Swale	290m <sup>2</sup>
Aquatic Margins	120m <sup>2</sup>

Pedestrian Surfaces	2050m <sup>2</sup>
Parking Bays	545m <sup>2</sup>
Vehicular Surfaces	1340m <sup>2</sup>
All weather sports surface	400m <sup>2</sup>
Play Safety Surface	56m <sup>2</sup>

### Highways Land

Existing Woodland on bridge embankment	2920m <sup>2</sup>
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#### Landscape Area Schedules

##### Site Boundary

##### Employment Zone

##### Residential Zone

##### Highways Land within the legal site boundary



## ANNEX 3 TO THE THIRD SCHEDULE ILLUSTRATIVE LAYOUT AND 'RESIDENTIAL AREA'

**LEGEND**

- Existing Woodland
- Boundary Native Hedge
- Evergreen Hedge
- Shrubs and Perennial Plants
- Turf Lawns
- Climbing Plants
- Pedestrian Surfaces
- Parking Bays
- Vehicular Surfaces
- All weather sports surface
- Play Safety Surface
- Swale
- Aquatic Margins
- Highways Land
- Bridge Embankment

**SPECIAL FEATURES**

- Existing Woodland
- Boundary Native Hedge
- Evergreen Hedge
- Shrubs and Perennial Plants
- Turf Lawns
- Climbing Plants
- Pedestrian Surfaces
- Parking Bays
- Vehicular Surfaces
- All weather sports surface
- Play Safety Surface
- Swale
- Aquatic Margins
- Highways Land
- Bridge Embankment

**REVISIONS**

NO.	DESCRIPTION	DATE
1	Initial Design	10/10/2005
2	Revised Design	10/10/2005
3	Final Design	10/10/2005

**mca**  
Dissambridge LLP

**Bioester Gateway**  
Landscape Area Schedules

SCALE: 1:1000  
DATE: 10/10/2005

MCA2005 / 04 [B]



**FOURTH SCHEDULE**  
**FINANCIAL CONTRIBUTIONS PAYABLE TO THE DISTRICT COUNCIL**

**1. DEFINITIONS**

- 1.1 In this Schedule and the Seventh 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):

<b>Expression</b>	<b>Meaning</b>
<b>"2Q17"</b>	means the second quarter of 2017 (i.e. July to September 2017);
<b>"Ancillary Gymnasium"</b>	means an indoor sports or physical training facility providing space for health and wellbeing purposes to be provided on site of no less than 27m <sup>2</sup> internal floorspace;
<b>"Biodiversity Contribution"</b>	means a contribution of £6,000 Index Linked from the date hereof to be committed towards an offsite biodiversity scheme planned at Bicester Wetland Reserve;
<b>"Health and Wellbeing Contribution"</b>	<p>means a contribution calculated in accordance with the following:</p> <ul style="list-style-type: none"><li>• £504 for each 1-Bed Dwelling in the Composition of the Development on a Phase; and</li><li>• £720 for each 2-Bed Dwelling in the Composition of the Development on a Phase</li></ul> <p>the resulting sum Index Linked from 2Q17 to be committed towards the expansion of primary care infrastructure in Bicester to serve the needs of those occupying residents of the Dwellings;</p>
<b>"Index Linked"</b>	means adjusted according to the increase (if any) in the Index between the published figure for the specified quarter and the Due Date;

**Expression****“Indoor Sport Contribution”****Meaning**

means a contribution calculated in accordance with the following:

i.) If no Ancillary Gymnasium is proposed as part of the Development:

- £429.21 for each 1-Bed Dwelling in the Composition of the Development on a Phase; and
- £620.34 for each 2-Bed Dwelling in the Composition of the Development on a Phase

ii.) If the Reserved Matters and Play Area Strategy propose to include an Ancillary Gymnasium (which shall be retained thereafter) as part of the Development:

- £273.61 for each 1-Bed Dwelling in the Composition of the Development on a Phase; and
- £395.45 for each 2-Bed Dwelling in the Composition of the Development on a Phase;

in each the resulting sum Index Linked from 2Q17 to be committed towards additional swimming pool capacity at Bicester Leisure Centre;

**“Outdoor Sport Contribution”**

means a contribution calculated in accordance with the following:

i.) £1,036.87 for each 1-Bed Dwelling in the Composition of the Development on a Phase; and

ii.) £1,498.60 for each 2-Bed Dwelling in the Composition of the Development on a Phase

the resulting sum index linked from 2Q17 to be committed towards a project for increased tennis court provision at Whitelands Farm Sports Ground.

## **2. OBLIGATION TO PAY CONTRIBUTIONS**

2.1 The Owners covenants with the District Council that they will pay to the District Council the Biodiversity Contribution before the Commencement of the Development on any Phase.

2.2 The Owners covenants with the District Council that they will pay to the District Council the:

2.2.1 Health and Wellbeing Contribution;

2.2.2 Indoor Sport Contribution; and

2.2.3 Outdoor Sport Contribution

in respect of each Phase before the first Occupation of any Dwelling on the relevant Phase.

2.3 The Owners covenants with the District Council that they will:

2.3.1 not Commence the Development on any Phase until the Biodiversity Contribution is paid in full; and

2.3.2 not to Occupy or permit the first Occupation of any Dwelling on a Phase until the Health and Wellbeing Contribution, Indoor Sport Contribution and Outdoor Sport Contribution

in respect of that Phase has been paid in full.

2.4 If Reserved Matters and Play Area Strategy in respect of any Phase include provision for an Ancillary Gymnasium but at the time of the first Occupation of any Dwelling in the applicable Phase in which it is to be provided the Ancillary Gymnasium has not been completed to the satisfaction of the Council then the Indoor Sport Contribution and/or the Outdoor Sport Contribution for that Phase shall be calculated on the basis that no Ancillary Gymnasium is to be provided as part of that Phase.

## **3. SUPPLEMENTAL PAYMENTS**

The Owner covenants with the District Council as follows:-



- 3.1 to give to the District Council a Notification (Variation) within 14 days of the issue of each Approval (Variation);
- 3.2 where a Notification (Variation) has been given (or is required to be given further to paragraph 3.1 above) and the relevant Approval (Variation) results in the establishment of a Revised Contribution then:
  - 3.2.1 for the purposes of calculating any Contribution with a Due Date subsequent to the date of issue of the relevant Approval (Variation) the Revised Contribution shall be applied in place of the Contribution;
  - 3.2.2 there shall be calculated the difference between any Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Contribution would have been if they had been calculated by reference to the Revised Contribution (in both instances disregarding index linking).

#### **4. COVENANTS – PAYMENT (ADDITIONAL COVENANT)**

- 4.1 The Owner covenants with the District Council to pay to the District Council the sum calculated further to paragraph 3.2.2 above Index Linked with the next instalment of the Contribution payable subsequent to the date of grant of the relevant Approval (Variation) or if all the Contributions have been paid to pay such sum index linked within 14 days of the grant of the Approval (Variation).



**FIFTH SCHEDULE**  
**FINANCIAL CONTRIBUTIONS PAYABLE TO THE COUNTY COUNCIL**

**1. DEFINITIONS**

- 1.1 In this Schedule and the Eighth 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):

<b>Expression</b>	<b>Meaning</b>
<b>Highway Infrastructure Contribution.</b>	means the sum of Two Hundred and Eighty Nine Thousand Five Hundred and Seventy Eight Pounds and Sixty Six Pence (£289,578.66) Index Linked towards the provision of the western section of the South-East Perimeter Road (western section) or an alternative scheme of similar benefit;
<b>Highway Safety Improvement Contribution</b>	means the sum of Twenty Four Thousand One Hundred and Ninety Five Pounds and Ninety Pence (£24,195.90) Index Linked towards the costs of a highway safety improvement scheme at the A41/Vendee Drive roundabout;
<b>Index Linked:</b>	<p>in relation to</p> <ul style="list-style-type: none"><li>• the Highway Infrastructure Contribution and the Highway Safety Improvement Contribution adjusted according to any increase occurring between October 2019 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:</li></ul>

Expression	Meaning
	<ul style="list-style-type: none"> <li>Index 1 Labour &amp; Supervision 25%</li> <li>Index 2 Plant &amp; Road Vehicles 25%</li> <li>Index 3 Aggregates 30%</li> <li>Index 9 Coated Macadam &amp; Bituminous Products 20%</li> <li>the Travel Plan Monitoring Contribution and the TRO Contribution adjusted according to any increase occurring between December 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</li> <li>the Education Contribution and any supplemental payments made under paragraphs 4.1 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</li> </ul> <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 Owner and the County Council;</p>
<b>Education Contribution</b>	means together the Primary Education Contribution and the Secondary Education Contribution;
<b>Primary Education Contribution</b>	<p>the sum determined in accordance with paragraph 5 of this Schedule Index-Linked towards the expansion of primary education capacity at Chesterton Church of England Primary School serving the Site payable in the following instalments:</p> <ul style="list-style-type: none"> <li>Primary Instalment 1 of 50% of the Primary Education Contribution; and</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>Primary Instalment 2 of the final 50% of the Primary Education Contribution;</li> </ul>
<b>Matrix</b>	<p>means the formula:</p> $£(A \times W) + (B \times X)$ <p>When</p> <p>A means the number of 1 Bed Dwellings</p> <p>B means the number of 2 Bed Dwellings</p> <p>W and X are as set out in Part 2 to this Schedule;</p>
<b>Revised Education Contribution</b>	<p>means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix where this is higher than the Education Contribution or in the event that there is more than one Approval (Variation) the Revised Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix if that sum is higher in all cases disregarding Index linking</p>
<b>Secondary Education Contribution</b>	<p>the sum determined in accordance with paragraph 5 of this Schedule determined in accordance with paragraph 5 of this Schedule Index-Linked towards the cost of building a new secondary school in Bicester payable in the following instalments:</p> <ul style="list-style-type: none"> <li>Secondary Instalment 1 being 50% of the Secondary Education Contribution; and</li> <li>Secondary Instalment 2 being the final 50% of the Secondary Education Contribution;</li> </ul>
<b>“Travel Plan Monitoring Contribution”</b>	<p>means the sum of £4,691.28 Index Linked towards the cost of monitoring the travel plan for the Development;</p>

<b>Expression</b>	<b>Meaning</b>
<b>TRO Contribution</b>	means the sum of £3,120 Index Linked towards the promotion, consultation and if appropriate the making of a traffic regulation order to enable the relocation of the existing 40mph/National speed limit on Wendlebury Road from its committed location to a point circa 150m south of the southern access to the Site;

## 2. COVENANTS

The Owner covenants with the County Council:

- 2.1 to pay Primary Instalment 1 to the County Council prior to the first Occupation of any Dwelling on the Development; and
- 2.2 not to cause or permit the first Occupation of any Dwelling on the Development until it has paid the Primary Instalment 1 to the County Council.
- 2.3 to pay Primary Instalment 2 to the County Council prior to the Occupation of more than 50 Dwellings on the Development;
- 2.4 not to cause or permit the first Occupation of more than 50 Dwellings on the Development until it has paid Primary Instalment 2 to the County Council;
- 2.5 to pay the Highway Safety Improvement Contribution, the Travel Plan Monitoring Contribution and the TRO Contribution to the County Council prior to first Occupation of any Dwelling; and
- 2.6 not to cause or permit the first Occupation of any Dwelling until it has paid the Highway Safety Improvement Contribution, the Travel Plan Monitoring Contribution and the TRO Contribution to the County Council
- 2.7 to pay the Highway Infrastructure Contribution to the County Council on the earlier of:
  - 2.7.1 the first Occupation of more than 150 Dwellings; or
  - 2.7.2 on the completion of any employment building or phase of development that takes the overall employment floorspace to 3,000 m<sup>2</sup>

- 2.8 not to cause or permit the first Occupation of more than 150 Dwellings until it has paid Highway Improvement Contribution to the County Council
- 2.9 to pay Secondary Instalment 1 to the County Council prior to first Occupation of more than 100 Dwellings; and
- 2.10 not to cause or permit the first Occupation of more than 100 Dwellings until it has paid Secondary Instalment 1 to the County Council;
- 2.11 to pay Secondary Instalment 2 to the County Council prior to first Occupation of 150 Dwellings; and
- 2.12 not to cause or permit the first Occupation of more than 150 Dwellings until it has paid Secondary Instalment 2 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 a Notification (Variation) within 14 days of the issue of each Approval (Variation);
- 3.1.2 where a Notification (Variation) has been given (or is required to be given further to clause 3.1.1) and the relevant Approval (Variation) results in the establishment of a Revised Education Contribution then:
  - (a) for the purposes of calculating any Education Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Education Contribution shall be applied in place of the Education Contribution;
  - (b) there shall be calculated the difference between any Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Education Contribution would have been if they had been calculated by reference to the Revised Education Contribution (in both instances disregarding index linking).



#### **4. COVENANTS – PAYMENT (ADDITIONAL COVENANT)**

- 4.1 The Owner covenants with the County Council to pay to the County Council the sum calculated further to clause 3.1.2(b) Index Linked with the next instalment of the Education Contribution payable subsequent to the date of grant of the relevant Approval (Variation) or if all the Education Contributions have been paid to pay such sum index linked within 14 days of the grant of the Approval (Variation).

#### **5. DETERMINATION OF THE EDUCATION CONTRIBUTION**

- 5.1 The Owner covenants with the County Council that

5.1.1 in the event that the Dwellings comprised in the Development are brought forward in a single Phase as part of a Qualifying Application then;

- (a) the Primary Education Contribution shall be sum calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Application where W and X are the Primary figures set out in the first line of the table at Part 2 of this Schedule and
- (b) the Secondary Education Contribution shall be sum calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Application where W and X are the Secondary figures in the second line of the table at Part 2 of this Schedule

5.1.2 in the event that the Dwellings comprised in the Development are brought forward in more than one Phase then:

- (a) the Primary Education Contribution shall be the sum of Three Hundred and Eight Thousand Five Hundred and Ninety-Two pounds only (£308,592)
- (b) the Secondary Education Contribution shall be the sum of Three Hundred and Twenty Six Thousand One Hundred and Ten pounds only (£326,110)

#### **Part 2**



	<u>1 Bed</u>	<u>2 Bed</u>
Primary	£0.00	£3,248.34
Secondary	£0.00	£3,432.74
<b>TOTALS</b>	<b>W= £0</b>	<b>X=£6,681.08</b>



## **SIXTH SCHEDULE**

### **HIGHWAYS**

#### **PART 1**

#### **PRELIMINARIES**

##### **1. DEFINITIONS**

- 1.1 In this Schedule and the Ninth 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):

<b>Expression</b>	<b>Meaning</b>
<b>“1980 Act”</b>	means the Highways Act 1980 (as amended);
<b>“Highway Agreement”</b>	means an agreement under section 278 (and if appropriate section 38) of the 1980 Act which provides for the execution of the Works by the Owner at the Owner’s expense and to be substantially in the form of the draft agreement (subject to any amendments that the circumstances may reasonably and properly require) in Annex 1 to this Schedule and which provides for the execution of the Works by the Owner at the Owner’s expense;
<b>“Works Plan”</b>	means the drawings number reference 46463/5501/001 Rev C and Revised Access Option drawing ref: <i>PL 06</i> attached to this Deed as Annex 2 to this Schedule;
<b>Works</b>	means the works described in Part 2 of this Schedule which the County Council is authorised to execute by virtue of Part V of the 1980 Act;

##### **2. WORKS OBLIGATIONS**

- 2.1 The Owner covenants with and undertakes to the County Council.

2.1.1 not to cause or permit the Occupation of any Dwelling on the Site until:

- (a) 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 set out in the County Council's Section 278 Application Form as adjusted from time to time;
- (b) 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;
- (c) 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;
- (d) The Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 2.1(a) to 2.1(c) 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.

2.1.2 not to cause or permit any Dwelling on the Site to be Occupied before the Works have been completed pursuant to and in accordance with the Highway Agreement;

## **PART 2**

### **THE WORKS**

#### **3. PRINCIPAL WORKS**

The provision and construction of the following works as shown indicatively on Plan 46463/5501/001 Rev C attached as Annex 2 ("the Principal Works"):

- (a) Two bell-mouth accesses with minimum radii of 5m wide to provide vehicular access to the development;

- (b) Unless otherwise agreed in writing by the County Council a 3m wide shared use footway/cycleway along the western frontage of the Site linking Charles Shouler Way and the unnamed road leading to Chesterton to the south via the disused slip road. This would also provide a pedestrian and cycle infrastructure to enable safe crossing of Charles Shouler Way;
- (c) Relocation of 40mph sign on Wendlebury Road to a location south of the proposed development accesses to be agreed as part of a traffic regulation order;
- (d) pedestrian/cyclist connectivity onto existing infrastructure on Wendlebury Road as illustrated per Space Strategy drawing titled, Revised Access Option drawing ref: *PL 06*.

#### **4. 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.

## **5. 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.



ANNEX 1  
DRAFT 278/38 AGREEMENT

OXFORDSHIRE COUNTY COUNCIL

-and-

and

(DEVELOPER)

draft

1 to be undertaken

Sukdave Ghuman  
Head of Legal Services and Deputy Monitoring Officer  
Oxfordshire County Council  
County Hall

**THIS DEED** is made on the \_\_\_\_\_ day of \_\_\_\_\_

Two Thousand and [ \_\_\_\_\_ ]

**BETWEEN:-**

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) \_\_\_\_\_ ("the Owner")
- (3) \_\_\_\_\_ (company registration  
number) \_\_\_\_\_ ("the Developer")
- (4) \_\_\_\_\_

**1. Interpretation**

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





- 1.19 "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] 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

2.8 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 .

### 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 not to apply for the issue of the Certification of Completion until it has paid the Maintenance Costs to the Council
- 3.7 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

3.8 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 payment<sup>1</sup>

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 [and [ ] towards the costs of administering and monitoring the provisions of this Deed relating to the Contribution]
- 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

# OXFORDSHIRE COUNTY COUNCIL

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

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Sukdave Ghuman  
Head of Legal and Deputy 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 H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 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
<b>Detailed plans</b> (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 <b>3 months before any tender is invited</b> 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

<b>A detailed programme</b> 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 <b>2 weeks after the acceptance of any tender</b> for the execution of the Works	Significant programme changes to be identified not less than 2 weeks prior to the change
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## 9.3

<b>(a) Measures for the control of vehicles and plant</b> 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>(b) traffic safety measures and measures</b> 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	
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## 9.4

<b>Safety Audit Stage 2 Report</b>	No later than <b>3 months before any tender is invited for the execution of the Works</b>	
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## 9.5

Details in accordance with Condition 15 of the <b>persons proposed to be invited to tender.</b>	No later than <b>1 month before any tender is invited</b> for the execution of the Works.	
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## Other Matters

### 9.6

Details of the <b>bondsman</b> 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 <b>1 month before the Works are expected to commence.</b>	
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### 9.7

Details of the <b>insurances</b> required by Condition 14.	No later than <b>1 month before the Works are expected to commence.</b>	
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### 9.8

<p><b>Part 1</b>  <b>Noise survey and assessment and modelling</b> 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><b>Part 2</b>          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. <sup>1</sup></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 <b>1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</b></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>
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<sup>1</sup> 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

<b>Condition survey</b> (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 <b>1 month before the Works are expected to commence.</b>	
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## 9.10

Notification of the <b>identity of the contractor</b> who has submitted a successful tender.	No later than <b>2 weeks after the acceptance of any tender</b> for the execution of the Works.	
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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)<sup>2</sup>:-

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;

<sup>2</sup> 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 function<sup>3</sup> ;
  - 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 function<sup>4</sup>; 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.

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<sup>3</sup> This relates to for example Section 127HA.

<sup>4</sup> 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 9% of the amount of the Bond, subject to a minimum payment of £2,150

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).

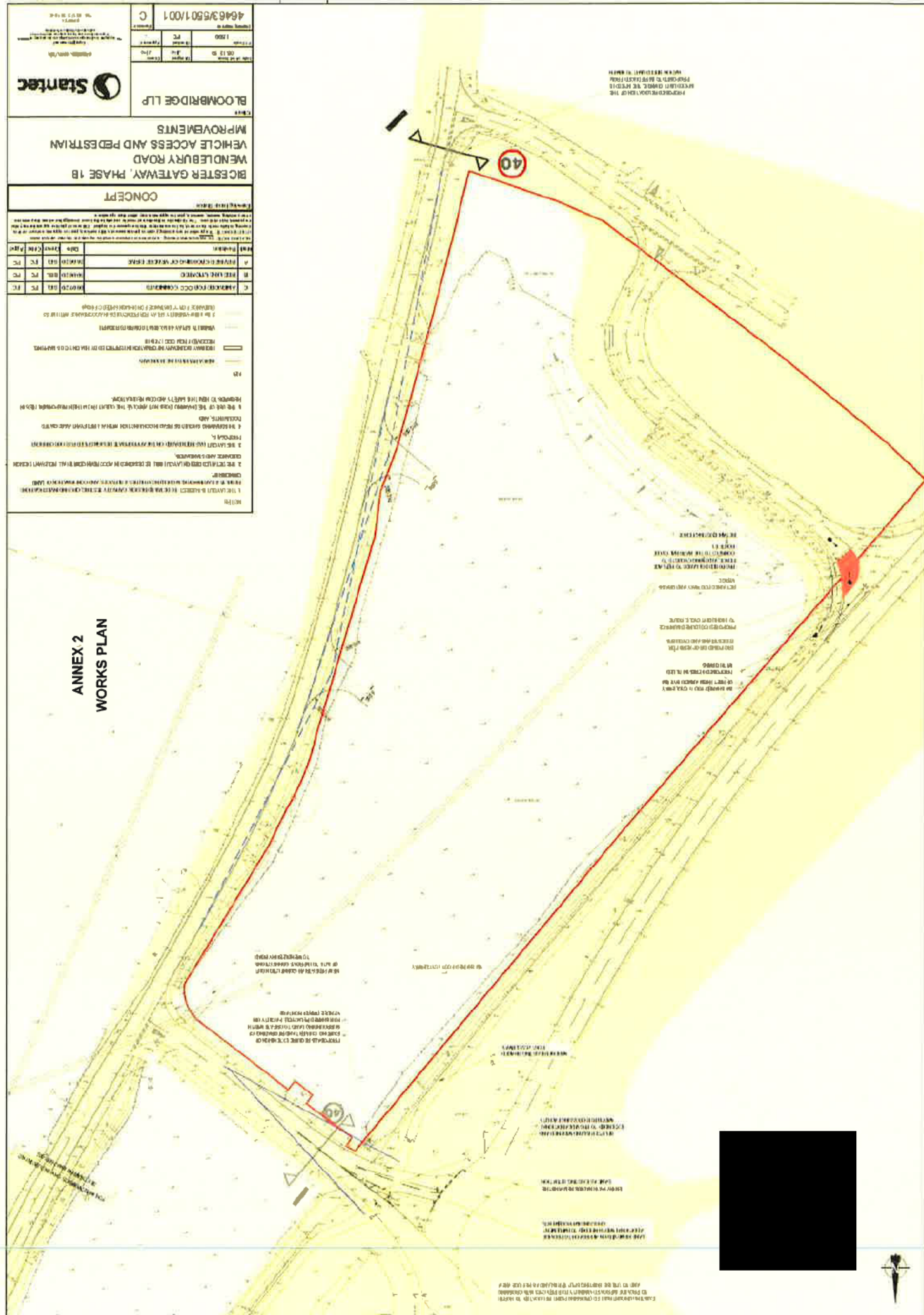
**35. STAGE 4 ROAD SAFETY AUDIT**

- 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

## ANNEX 2

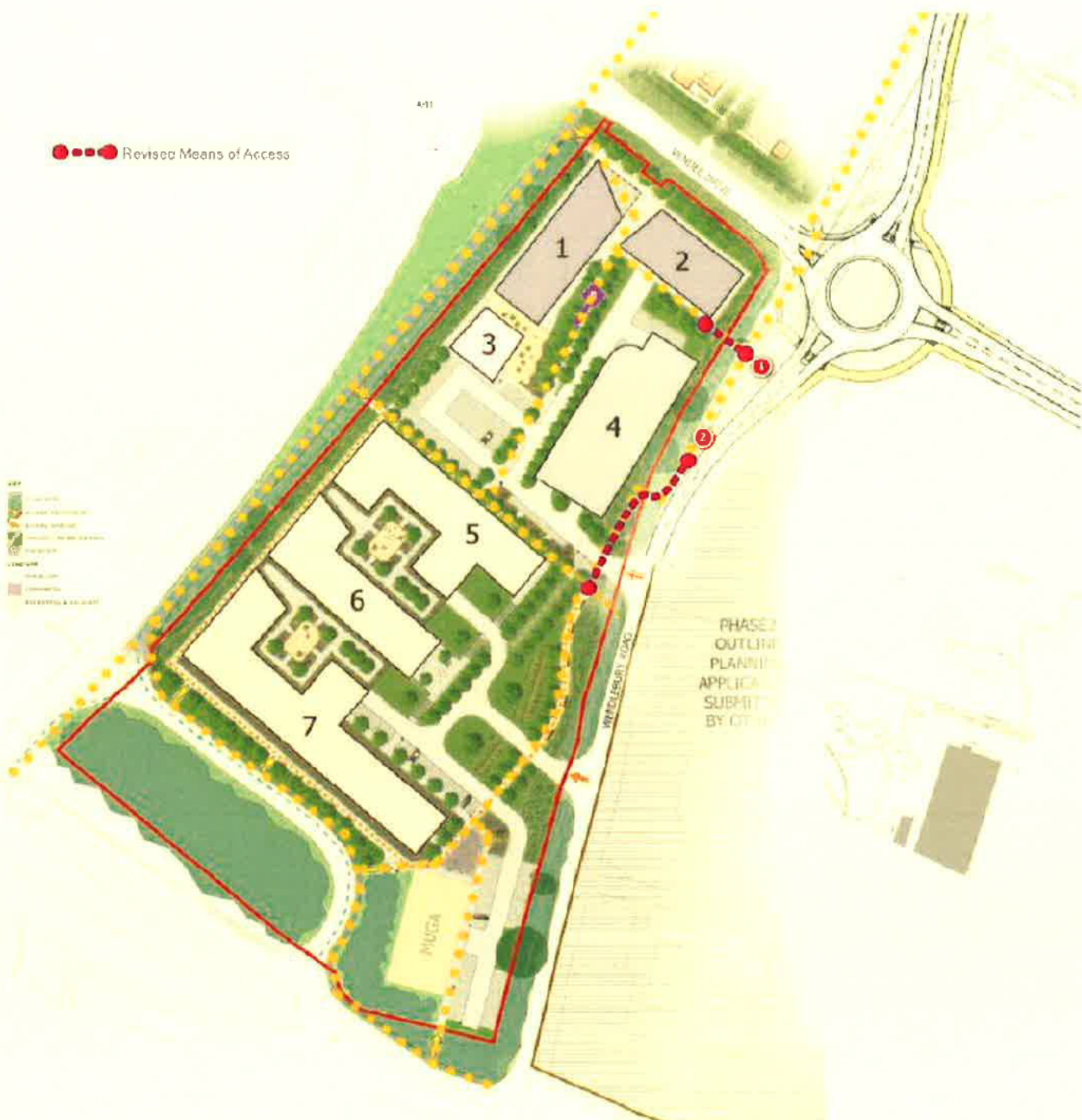


the proportion of the Works that have been executed and completed at such time.





●●●●● Revised Means of Access



**Bloombridge**   
Development Partners

**SPACE  
STRATEGY**







**SEVENTH SCHEDULE**  
**DISTRICT COUNCIL'S COVENANTS WITH THE OWNER**

**1. REPAYMENT OF CONTRIBUTIONS**

- 1.1 The District Council covenants with the Owner to use all sums received from the Owner under the terms of the Fourth Schedule for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree.
- 1.2 The District Council covenants with the Owner that following written request from the person who made the relevant payment the District Council will repay to that person the balance (if any) of any payment made by that person to the District Council under the terms of the Fourth Schedule in accordance with the provisions of this Deed which has not been expended or committed at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of ten years of the date of receipt by the District Council of such payment. Any contribution or part of a contribution which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the District Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph 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 Any payment or part thereof which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been committed by the District Council prior to that date.
- 1.4 The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of the Fourth Schedule upon a written request by the Owner such request not to be made more than once in any year.

## **2. DISCHARGE OF OBLIGATIONS**

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

**EIGHTH SCHEDULE**  
**COUNTY COUNCIL'S COVENANTS WITH THE OWNER**

**APPLICATION OF MONIES RECEIVED**

- 1.1 The County Council shall not apply any of the contributions referred to in the Fifth Schedule for any purpose other than as set out in the definition of each contribution therein in such form and at such time as the County Council shall in its discretion decide.

**REPAYMENT**

- 1.2 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.
- 1.3 Any contribution or part of a contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date.
- 1.4 The County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of the Fifth Schedule upon a written request by the Owner such request not to be made more than once in any year.





## **NINTH SCHEDULE DISPUTES**

1. A dispute in the context of this agreement arises where any Party requires or seeks the approval or consent of another Party pursuant to the provisions of this Deed referred to in clause 20 and that approval or consent is refused or is not given within 20 Working Days but FOR THE AVOIDANCE OF DOUBT:
  - 1.1. disputes relating to the construction, interpretation and/or the application of this Agreement shall only be determined by an Expert with the express further agreement of all other Parties and in the absence of such agreement can only be determined by a Court of competent jurisdiction;
  - 1.2. any dispute relating to a refusal or failure to determine any application (whether pursuant to Sec 106A of the Act or otherwise) to modify or discharge any provision hereof shall not constitute a dispute to be determined pursuant to this Schedule but in accordance with Section 106B of the Act or Section 84A of the Law of Property Act 1925 or otherwise as appropriate.
2. Any Party may by serving a Dispute Notice on all the other Parties require a dispute to be referred to an Expert for determination.
3. The Notice must:
  - 3.1. specify the nature, basis and brief description of the dispute;
  - 3.2. identify the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
  - 3.3. propose a person to determine the dispute ('the Expert').
4. The Parties may agree to appoint joint Experts or (in default of agreement) invite joint Experts to be nominated pursuant to paragraph 3.3 and in which case 'Expert' shall mean both or all of them.
5. If an Expert (including one or more jointly nominated experts) nominated or appointed pursuant to this Schedule shall die or decline to act another Expert may be appointed in his place in accordance with the provisions of paragraph 3.

6. 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 3.
7. 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.
8. 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.
9. The Expert shall give notice of his decision in writing.
10. 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.
11. 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).
12. 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.
13. Nothing in this Schedule shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

EXECUTION

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



Authorised Signatory



cdc/2047

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



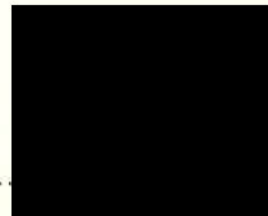
Authorised Signatory

(the officer appointed for this purpose)



14/00/20

EXECUTED AS A DEED by BICESTER  
GATEWAY LIMITED acting by a Director  
in the presence of:



Director

Name..... Bence Usher .....

Witness signature



Witness name

(BLOCK CAPS)..... JENNIFER CROUCH .....

Address

..... COUNTY HALL .....

..... NEW ROAD, OXFORD .....

Occupation

..... SOLICITOR .....



