

**DATED** 26 MARCH **2021**

**OXFORDSHIRE COUNTY COUNCIL**

and

**GALLAGHER ESTATES LIMITED**

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**DEED OF VARIATION**

Under Sections 106 and 106A of the Town and Country Planning Act 1990 (as amended)

Land TO THE EAST OF Bloxham Road (A361) and south of Salt Way, Bodicote, Banbury, Oxfordshire

Planning reference: 21/00653/M106

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 **SHAKESPEARE**MARTINEAU

Waterfront House  
Waterfront Plaza  
35 Station Street  
Nottingham  
NG2 3DQ

File Ref: PAW 600006.2360

**THIS DEED OF VARIATION** is made the 26<sup>th</sup> day of March 2021

**BETWEEN**

1. **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall New Road Oxford OX1 1ND ("**the County Council**")
2. **GALLAGHER ESTATES LIMITED** (Company registration number 03035968) whose registered office is situated at Gallagher House Gallagher Way, Gallagher Business Park, Heathcote, Warwick, England, CV34 6AF ("**the Owner**")

**WHEREAS**

- (A) This Deed is supplemental to and varies the Original Agreement
- (B) The District Council and the County Council are local authorities for the purposes of the 1972 Act and the 2011 Act for the area in which the Site is situated and for the purposes of the 1990 Act the County Council is the county planning authority for the area in which the Site is situated
- (C) The Owner acquired the Site on 28 February 2020 and the title to the Site is pending registration at the registered at the Land Registry under title number ON357599
- (D) On 19 December 2019 the District Council granted the Planning Permission subject to the Original Agreement
- (E) The obligations contained in the Original Agreement to which this Deed relates are not enforceable by the District Council and consequently the District Council are not a party to this Deed in accordance with the provision of section 106A(1)(a) of the 1990 Act.
- (F) The Original Agreement provided for the delivery of the Link Road in accordance with a timetable contained therein and the parties hereto have agreed that the timetable for the delivery of the Link Road should be varied in accordance with the provisions contained within this Deed of Variation

## 1. INTERPRETATION

### 1.1 In this Deed the following definitions shall have the following meanings:

"the 1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"the District Council"	Cherwell District Council of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA
"the Original Agreement"	the Agreement dated 18 December 2019 relating to land to the east of Bloxham Road (A361) and south of Salt Way, Bodicote, Banbury, Oxfordshire and made between Cherwell District Council (1) Oxfordshire County Council (2) John Henry Colegrave (3) Patricia Joan Colegrave & John Henry Colegrave (4) and Gallagher Estates Limited (5)
"Planning Permission"	means the planning permission granted by the District Council under reference number 14/01932/OUT on 19 December 2019
"the Site"	means the land previously registered at the Land Registry under title numbers ON207487 ON277620 ON277979 and ON296005 and currently pending registration under title number ON357599

### 1.2 In interpreting this Deed:

- 1.2.1 Definitions used in this Deed shall have the same meaning as given in the Original Agreement unless the context otherwise requires
- 1.2.2 Subject to the amendments contained herein the Original Agreement shall otherwise remain in full force and effect
- 1.2.3 The parties hereto do not intend that this Deed should give rights hereunder to a third party arising solely by virtue of the Contract (Rights of Third Parties) Act 1999

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

- 2.1 This Deed is made under the provisions of Sections 106 and 106A(1)(a) of the 1990 Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the County Council as planning authority against the Owner
- 2.3 Insofar as any of the covenants contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.4 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
- 2.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.6 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner

- 2.7 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 against each individually unless there is an express provision otherwise
- 2.8 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
- 2.9 Subject to clause 9.9 of the Original Agreement (as varied pursuant to this Deed) references to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council the successors to its statutory functions
- 2.10 If any provision of this Deed is found to be in whole or part invalid illegal or unenforceable then it will be deemed to be deleted and it will not affect the validity legality or enforceability of the remaining provisions of this Deed

### **3. The Owner's Covenants**

- 3.1 The Owner covenants with the County Council:
- a) to comply with its obligations in the Original Agreement as amended in Schedule 1 of this Deed
  - b) to comply with its obligations as set out in the Original Agreement insofar as they are unamended by this Deed
  - c) to pay to the County Council on completion of this Deed their reasonable legal costs in preparing negotiating and completing this Deed

### **4. Jurisdiction**

The construction validity and performance of this Deed shall be governed by English law

**5. Local Land Charge**

This Deed is registrable as a local land charge

**6. Effective Date**

This Deed shall come into effect immediately upon the date of completion of this Deed.

**7. Declarations**

The parties to this Deed agree that the Original Agreement shall be varied as set out in Schedule 1 to this Deed. In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

**8. Counterparts**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

## SCHEDULE 1

### VARIATIONS TO THE ORIGINAL AGREEMENT

IT IS HEREBY AGREED and DECLARED between the parties to this Deed that from the date of this Deed the County Council and the Owner agree that the Original Agreement shall be varied as follows:

1. Paragraph 2.2 of the Seventeenth Schedule of the Original Agreement shall be deleted and replaced as follows:

"2.2. not to cause or permit Construction of any Commercial Units or Dwellings until:

2.2.1 there have been submitted to the County Council and approved in writing by it in respect of items:

- (a) in principle drawings of the Link Road;
- (b) duration of construction of the Link Road and the long stop date for its completion;
- (c) commuted maintenance sums in respect of the cost of future maintenance of the Link Road; and
- (d) a plan identifying the land to be dedicated for the purposes of the Link Road;

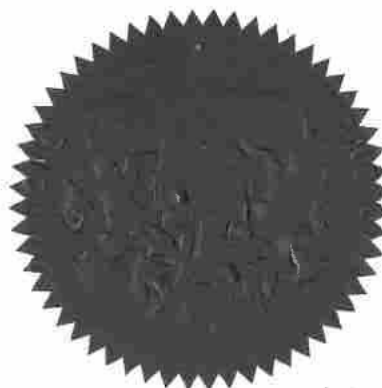
2.2.2 title has been deduced to the satisfaction of the County Council in respect of any land to be dedicated for the purpose of the Link Road and any mortgagee of such land has released it from its charge; and

2.2.3 a Section 38 Agreement incorporating the matters agreed and approved as set out in paragraph 2.2.1 has been entered into by the Owner and all parties with an interest in any land to be dedicated have also joined in such agreement"

IN WITNESS WHEREOF this Deed is executed as a DEED in the manner  
hereinafter appearing the day and year first before written

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

County Solicitor/Designated Office



1659/20

**EXECUTED** as a **DEED** by )  
**GALLAGHER ESTATES LIMITED** )  
acting by one director )  
in the presence of a witness )

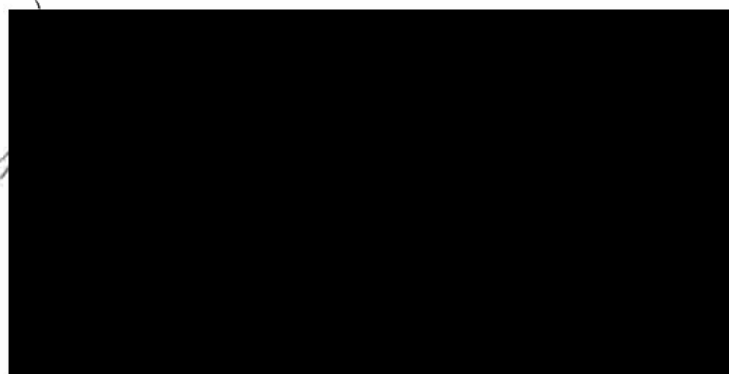
Director

Witness Signature

Witness Name

Witness Address

Witness Occupation



Donna Elkin  
52 Alderbrook Road  
Solihull  
B91 1NW  
office Manager