
Dated: 7 DECEMBER 2021

- (1) CHERWELL DISTRICT COUNCIL
- (2) OXFORDSHIRE COUNTY COUNCIL
- (3) ELMSBROOK (CREST A2D) LLP
- (4) CREST NICHOLSON OPERATIONS LIMITED & A2DOMINION DEVELOPMENTS LIMITED

Deed

under section 106 of the Town and Country Planning Act 1990 (as amended) relating to land Phase 4 Bicester Eco Town Exemplar Site Banbury Road Bicester

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BETWEEN

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA ("**District Council**");
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall New Road Oxford OX1 1ND ("**County Council**");
- (3) **ELMSBROOK (CREST A2D) LLP** (company registration number OC418100) whose registered office is situate at The Point, 37 North Wharf Road, London W2 1BD ("**Owner**"); and
- (4) **CREST NICHOLSON OPERATIONS LIMITED** (company registration number 01168311) whose registered office is situate at Crest House, Pyrcroft Road, Chertsey, Surrey, KT16 9GN and **A2DOMINION DEVELOPMENTS LIMITED** (company registration number 05585321) whose registered office is situate at The Point, 37 North Wharf Road, London, W2 1BD ("**Mortgagee**")

BACKGROUND

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Application Site and the Wider Site are situated.
- (B) The County Council is the county planning authority for the purposes of the Act and has for the area in which the Application Site and the Wider Site are located sundry powers and duties in respect of education, the provision of library facilities, museums, waste disposal and social and health care and in respect of highways and the regulation of traffic.
- (C) The Owner is the freehold owner of the Application Site which is registered at the Land Registry under Title Number ON339195, subject to a charge in favour of the Mortgagee but otherwise free from encumbrances which would otherwise prevent the Owner from entering into this Deed.
- (D) The Mortgagee is the registered proprietor of the charge dated 21 November 2018 referred to in entry number 10 of the Charges Register of Title Number ON339195.
- (E) On 9 July 2012 the District Council (1) the County Council (2) SGR (Bicester 1) Limited (3) SGR (Bicester 2) Limited (4) and Home Farm Exemplar Limited (5) entered into the Principal Agreement to control the development of the Wider Site pursuant to the Original Permission which agreement has been varied by the First Deed of Variation, the Second Deed of Variation and continues to bind the Wider Site.
- (F) On 12 July 2021 the District Council (1) the County Council (2) A2Dominion South Limited (3) and A2Dominion Developments Limited entered into the Supplemental Agreement.
- (G) The Parties agree that in order to avoid duplication the Principal Agreement will continue to apply to the Development provided that there is no intention to discharge or perform any obligation in the Principal Agreement more than once.
- (H) The Application has been submitted to the District Council by the Owner and the District Council has resolved to grant planning permission for the Development subject to conditions and the prior completion of this Deed which is required to mitigate the impact of the Development.

OPERATIVE PROVISIONS**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following words and expressions have the following meanings:

Act	means the Town and Country Planning Act 1990 (as amended)
Application	means the application for full planning permission for "57 dwellings and associated infrastructure" and allocated reference number 21/01227/F, being a 're-plan' of 54 Dwellings previously authorised pursuant to the 'full' element of the Original Permission on the Application Site, plus an additional 3 Dwellings
Application Site	means the land shown edged red on the Site Plan
Burial Site Contribution	means the sum of £30.18 (thirty pounds and eighteen pence) Index Linked (BCIS) from Quarter 2 2017 payable by the Owner to the District Council towards the provision of a burial site to serve the needs of the population that arises as part of the North West Bicester Development
Commencement of Development	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the development pursuant to the Local Centre Planning Permission begins to be carried out
Community Hall Contribution	means the sum of £3,152.82 (three thousand one hundred and fifty two pounds and eighty two pence) Index Linked (BCIS) from Quarter 2 2017 payable by the Owner to the District Council towards the provision of a community hall to the north of the railway line running through the North West Bicester Development
Community Sports Facilities Contribution	means the sum of £1,494.00 (one thousand four hundred and ninety four pounds) Index Linked (BCIS) from Quarter 2 2017 payable by the Owner to the District Council towards the provision of enhanced community sporting facilities at the existing Bicester Leisure Centre which are reasonably expected to be used by residents of the Development
Deed	means this section 106 agreement made between the Parties
Development	means the development of the Application Site authorised by the Planning Permission
District Contributions	means the Burial Site Contribution the Community Hall Contribution the Community Sports Facilities Contribution the Health Facility Contribution the Neighbourhood Police Contribution the Refuse and Recycling Contribution the Sports Pitch Capital Contribution and the Sports Pitch Maintenance Contribution or any one of them as the context so requires and " District Contribution " shall be construed accordingly
District Council Monitoring Fee	means the sum of £500 (five hundred pounds) Index Linked (CPIX) from the date of this Deed to the date of payment towards the District Council's costs of monitoring and administration of this Deed

Due Date	means the date on which any payment is to be paid in accordance herewith or if a payment has to be paid before an event then the Working Day before that events occurs
Dwelling	means a building (including a house flat or maisonette) or such part of a building designed for residential occupation by a single household to be constructed pursuant to the Planning Permission
First Deed of Variation	means the agreement to vary the Principal Agreement entered into by the District Council (1) the County Council (2) and Dominion Developments (2005) Limited (3) pursuant to sections 106 and 106A of the Act and other enabling powers dated 31 March 2014
Health Facility Contribution	means the sum of £778.38 (seven hundred and seventy eight pounds and thirty eight pence) Index Linked (BCIS) from Quarter 2 2017 payable by the Owner to the District Council towards the build cost of a health facility to serve the needs of the population that arises as part of the North West Bicester Development
Implementation	means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements
Index Linked (BCIS)	means adjusted according to any increase occurring in the BCIS (all items) Index made available through the Royal Institution of Chartered Surveyors from the date specified in the Schedules hereto in respect of each contribution due to the District Council and in all cases until the month before the month in which the relevant payment is made and applied to the relevant contribution up to the date of its payment
Index Linked (CPIX)	means adjusted according to any increase occurring between the relevant date identified in the relevant Schedule or clause and the date of payment of the relevant contribution to the District Council in the All Items Consumer Prices Index published by the Office for National Statistics
Interest	means interest at 4% per annum above the base rate of the Bank of England from time to time and compounded annually from the date on which it falls due to the date of actual payment
Local Centre Planning Permission	the planning permission granted by the District Council under reference 19/01036/HYBRID for <i>'full planning permission for local centre community floorspace (Use Class D1), café (Use Class A1/A3)</i>

with a total GIA of 542 sqm and 16 residential units (Use Class C3) with associated access servicing landscaping and parking and for outline planning permission for local centre retail, community or commercial floorspace (flexible Use Class A1/A2/A3/A4/A5/B1/D1)'

Neighbourhood Police Contribution

means the sum of £453.90 (four hundred and fifty three pounds and ninety pence) Index Linked (CPIX) from Quarter 2 2017 payable by the Owner to the District Council as a financial contribution towards the increase in capital costs of providing neighbourhood policing as part of the North West Bicester Development

North West Bicester Development

means development of the site at North West Bicester which has been allocated for a mixed use development including up to 6000 homes pursuant to Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and of which the Wider Site and Application Site forms part

Occupation

means occupation for the purposes permitted by the Planning Permission but not including occupation for construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "**Occupy**" and "**Occupied**" shall be construed accordingly

Original Permission

means the planning permission issued for development at the Wider Site granted on 10 July 2012 by the District Council with reference 10/01780/HYBRID

Parties

means the parties to this Deed and any one of them as the context so requires

Planning Permission

means the planning permission subject to conditions to be granted by the District Council pursuant to the Application

Principal Agreement

means the agreement entered into by the District Council (1) the County Council (2) SGR (Bicester1) Limited and SGR (Bicester 2) Limited and (3) Home Farm Exemplar Limited pursuant to section 106 of the Act 1990 and other enabling powers dated 9 July 2012 (as varied by the First Deed of Variation and the Second Deed of Variation and which may be further varied from time to time)

Refuse and Recycling Contribution

means the sum of £333.00 (three hundred and thirty three pounds) payable by the Owner to the District Council as a contribution towards the provision of refuse and recycling receptacles for each Dwelling as part of the Development and towards collection vehicle provision and recycling banks within the vicinity of the Wider Site

Second Deed of Variation

means the agreement to vary the Principal Agreement as varied by the First Deed of Variation entered into by the District Council (1) the County Council (2) and A2Dominion Developments Limited

(3) pursuant to sections 106 and 106A of the Act and other enabling powers dated 28 July 2016

Site Plan

means the plan attached to this Agreement at **Appendix 1**

Sports Pitch Capital Contribution

means the sum of £683.04 (six hundred and eighty three pounds and four pence) Index Linked (CPIX) from Quarter 2 2017 payable by the Owner to the District Council as a contribution towards the capital cost of providing permanent sports pitches as part of the North West Bicester Development which are reasonably expected to be used by the occupants of the Development

Sports Pitch Maintenance Contribution

means the sum of £751.05 (seven hundred and fifty one pounds and five pence) Index Linked (CPIX) from Quarter 2 2017 payable by the Owner to the District Council as a contribution towards the maintenance cost of the permanent sports pitches to be provided as part of the North West Bicester Development which are reasonably expected to be used by the occupants of the Development

Supplemental Agreement

means the agreement entered into by the District Council (1) the County Council (2) A2Dominion South Limited (3) and A2Dominion Developments Limited pursuant to section 106 of the Act relating to land at Charlotte Avenue Bicester for the provision of the local centre to serve the Wider Site pursuant to the Local Centre Planning Permission dated 12 July 2021

Wider Site

means the land defined as "the Site" in the Principal Agreement of which the Application Site forms part

Working Day

means any Monday to Friday (other than bank or public holidays)

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/or 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 Reference to any party to this Deed shall include the successors in title to that party and to any 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 and any duly appointed employee or agent of the District Council and County Council or such successor.

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 insofar as it may be construed as modifying or varying the obligations contained in the Principal Agreement pursuant to Section 106A of the Act and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed in respect of the Application Site create planning obligations pursuant to Section 106 of the Act and those planning obligations contained in **Schedule 1** are enforceable by the District Council as local planning authority against the Owner.

4. **CONDITIONALITY**

4.1 Save for the provisions of **Clause 5, Schedule 1** and **Schedule 2** (which are conditional upon the grant of the Planning Permission), this Deed shall come into effect immediately on the date hereof.

5. **COVENANTS**

5.1 The Owner covenants:

5.1.1 with the District Council as set out in **Schedule 1**; and

5.1.2 with the District Council and the County Council to comply with the covenants and obligations contained in the Principal Agreement as if the reference therein to 'Development' includes and incorporates reference to development undertaken pursuant to the Planning Permission and the Occupation of Dwellings pursuant to the Planning Permission shall count towards the number of Occupations specified in the obligations in the Principal Agreement and compliance therewith SAVE insofar as those obligations have already been fully complied with and PROVIDED THAT the Parties do not intend the Owner would have to perform or discharge the same obligations more than once AND FOR THE AVOIDANCE OF DOUBT the obligations in Schedule 1 are in addition to the obligations in the Principal Agreement.

5.2 The District Council covenants with the Owner as set out in **Schedule 2**.

6. **THE PRINCIPAL AGREEMENT**

6.1 The Parties hereby declare and agree that

6.1.1 in the event of Commencement of Development pursuant to the Local Centre Planning Permission the Owner shall be released from the covenants and obligations contained in the Eighth Schedule to the Principal Agreement which shall no longer be enforceable against any of the land registered under title number ON339195, including for the avoidance of doubt, the Application Site or any Dwellings constructed upon it

- 6.1.2 save as may be considered varied by clause 6.1.1 above the Principal Agreement shall continue in full force and effect

7. MORTGAGEE CONSENT

- 7.1 The Mortgagee consent to the completion of this Deed and declare that its interest in the Application Site shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of its interest in the Application Site.
- 7.2 The Mortgagee shall have no liability under this Deed in respect of its interest in the Application Site unless it takes possession of the Application Site (in whole or in part) as a mortgagee in possession in which case it will be bound by the obligations in this Deed as if it were a person deriving title from the Owner.

8. MISCELLANEOUS

- 8.1 The Owner will on completion of this Deed pay
- 8.1.1 to the District Council its reasonable legal costs incurred in connection with the preparation and completion of this Deed so far as such costs have not been paid prior to the completion of this Deed;
 - 8.1.2 the sum of two hundred and eighty pounds (£280) to the District Council as a contribution towards the District Council's costs of administration of this Deed;
 - 8.1.3 to the County Council its reasonable legal costs incurred in connection with the preparation and completion of this Deed so far as such costs have not been paid prior to the completion of this Deed; and
 - 8.1.4 the sum of three hundred pounds (£300) as a contribution towards the County Council's costs of administration of this Deed.
- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the Parties and their successors in title and assigns and any successor to the District Council's or the County Council's functions).
- 8.3 This Deed shall be registered as a local land charge by the District Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction of any party is required under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.5 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party and any notice or notification to be given under this Deed to the County Council shall be sent to the Director for Planning & Place of the County Council (Reference [21/01227/F]) 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 and to the District Council shall be sent to 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.
- 8.6 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall note this in the Register of Local Land Charges in respect of this Deed.
- 8.7 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.

- 8.8 This Deed shall cease to have effect if the Planning Permission shall be quashed, revoked or otherwise withdrawn at any time or the Planning Permission shall expire before Implementation has occurred PROVIDED THAT if the Planning Permission has been modified at any time this Deed shall be modified in order to take proper and reasonable account of this.
- 8.9 No person shall be liable for any breach of any of the planning obligations or other provisions in this Deed and/or its Schedules after it shall have parted with its entire interest in the Application Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.10 This Deed shall not be enforceable against:
- 8.10.1 any statutory undertaker who acquires an interest in the Application Site for the purpose of providing services to the Application Site; or
- 8.10.2 any owner, tenant or occupier of a Dwelling nor against those deriving title from them nor against any mortgagee of such Dwelling save for any provision hereof that restricts or prevents any Dwelling being Occupied or prevents a number of Dwellings being Occupied until an obligation is complied with.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 8.12 Nothing in this Deed prohibits or limits the right to develop any part of the Application Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.

9. WAIVER

- 9.1 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

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

11. CHANGE OF OWNERSHIP

- 11.1 The Owner agrees with the District Council and the County Council:
- 11.1.1 to give the District Council and the County Council written notice within ten Working Days of any change in ownership of its interest in the Application Site 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 Application Site purchased by reference to a plan FOR THE AVOIDANCE OF DOUBT this does not apply to the transfer of ownership in relation to a Dwelling; and
- 11.1.2 to notify the District Council and the County Council separately in writing within ten Working Days of the occurrence of each of the following events and to specify in the notification the date on which it occurred:
- 11.1.2.1 the date of Implementation; and

11.1.2.2 the date of Occupation of the first Dwelling;

12. **INTEREST**

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

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

13. **VAT**

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

14. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the courts of England in relation to any disputes between the Parties arising out of or related to this Deed.

15. **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.

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

SCHEDULE 1

District Contributions

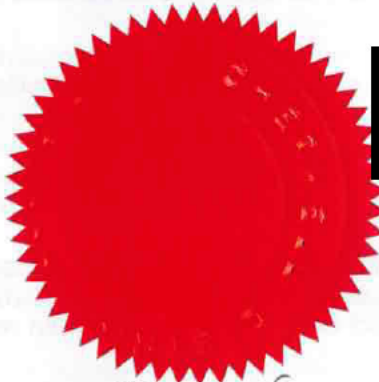
1. The Owner covenants and undertakes with the District Council that it will:
 - 1.1 pay the District Council Monitoring Fee on completion of this Deed;
 - 1.2 pay each and every District Contribution to the District Council prior to Occupation of any Dwelling;
 - 1.3 not Occupy or cause or permit Occupation of any Dwelling unless and until each and every District Contribution has been paid to the District Council in full.

SCHEDULE 2

The District Council's Covenants to the Owner

1. The District Council covenants with the Owner as follows:-
 - 1.1 to use all District Contributions received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or such purposes for the benefit of the Development as the Owners and the District Council shall otherwise agree;
 - 1.2 to repay to the party that made the payment any unspent or uncommitted monies received by them pursuant to this Deed after the expiry of 15 (fifteen) years from the date of receipt of payment of each District Contribution upon written request to do so by the Owner PROVIDED THAT:
 - 1.2.1 any contribution or deposit or part thereof which the District Council has contracted to expend prior to the date 15 (fifteen) years following the date of receipt of the contribution or instalment shall be deemed to have been expended prior to that date; and
 - 1.2.2 if capital works have been carried out then commuted sums for maintenance will not be returnable under this clause.

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



CPC 20606



Authorised Signatory

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

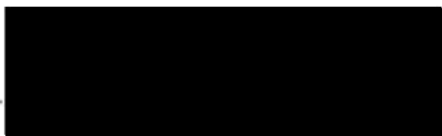


1580/21



Director of Law and Governance/Designated Officer

EXECUTED as a **DEED** by **ELMSBROOK (CREST A2D) LLP** acting by two Members:



Authorised signatory



Name of Authorised signatory in print

.....

Authorised signatory



DEAN TUFTS

.....
Name of Authorised signatory in print

2021-32720

EXECUTED as a DEED by Suzanne Michelle Gatward

for **CREST NICHOLSON OPERATIONS LIMITED** pursuant to

a power of attorney dated 23 August 2021

[REDACTED]
Attorney Signature

[REDACTED]
Attorney Name

In the presence of: [REDACTED]

[REDACTED]
Witness Name

5 Fleet Place
EC4M 7D London
Witness Address

**THE COMMON SEAL OF A2 DOMINION
DEVELOPMENTS LIMITED** was affixed to
this Deed in the presence of:

[REDACTED]
Authorised signatory:

[REDACTED]
Authorised signatory:

2021-32720



APPENDIX 1

Site Plan



