

DATED

21 July

2022

OXFORDSHIRE COUNTY COUNCIL

-and-

GRAVEN HILL VILLAGE DEVELOPMENT COMPANY LIMITED

-and-

BICESTER HC DEVELOPMENT LIMITED

-and-

CHERWELL DISTRICT COUNCIL

PLANNING OBLIGATION BY DEED OF AGREEMENT

under Section 106 of the Town and Country Planning Act 1990

relating to Land at former Rodney House, Graven Hill, Bicester,
Oxfordshire (Bicester health hub)

DLM/~~56203~~

56213

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

DATE

21st July

2022

PARTIES

- (1) **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall, New Road, Oxford OX1 1ND ("the County Council")
- (2) **GRAVEN HILL VILLAGE DEVELOPMENT COMPANY LIMITED** (Company Registration Number 09102699) whose registered office is at Graven Hill Site Office Building E25, Graven Hill Road, Bicester, Oxfordshire OX25 2BF ("the Owner")
- (3) **BICESTER HC DEVELOPMENT LIMITED** (Company Registration Number 12421750) whose registered office is at The Brew House, Greenalls Avenue, Warrington WA4 6HL ("the Developer")
- (4) **CHERWELL DISTRICT COUNCIL** of Bodicote House White Post Road Bodicote Banbury OX15 4AA ("the Mortgagee")

INTRODUCTION

1. The Owner is the freehold owner of the Site falling within title number ON314543 subject to a conditional contract for sale dated 29 March 2021 in favour of the Developer and a legal charge dated 11 August 2014 in favour of the Mortgagee but otherwise free from incumbrances as the Owner hereby warrants.
2. For the purposes of the Act the County Council is the county planning authority for the area which includes the Site and for the purposes of the Highways Act 1980, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the County Council is the highway authority and the traffic authority for certain highways in the area which includes the Site.
3. The Developer's shareholder Apollo Capital Projects Development Limited has submitted the Application to the district planning authority
4. The district planning authority is minded to grant planning permission for the Development subject inter alia to the completion of this Deed which is required to mitigate the impact of the Development.
5. For the avoidance of doubt Cherwell District Council is party to this Deed in its capacity as mortgagee only and not as district planning authority

NOW THIS DEED WITNESSES AS FOLLOWS

OPERATIVE PART

1. DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the application for planning permission submitted to the district planning authority for the Development and allocated reference number 21/01454/F
"Development"	the development of the Site by the construction of a health and wellbeing hub as referred to in the Application
"Implementation"	the carrying out of any material operation (as defined in Section 56(4) of the Act) pursuant to the Planning Permission or a Section 73 Permission 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, provision of site access and temporary internal roads, the temporary display of site notices or advertisements and "Implement" "Implemented" and "Implementing" shall be construed accordingly

"Interest"	interest at 4% per annum above the base lending rate of Lloyds Bank plc from time to time
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission or a Section 73 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 "Occupy" and "Occupied" shall be construed accordingly
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the district planning authority pursuant to the Application as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the Act
"Section 73 Permission"	a planning permission which may be granted by way of approval of an application under Section 73 of the Act permitting the Development subject to conditions which differ from the conditions of the Planning Permission as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the Act
"the Site"	the land at the former Rodney House, Graven Hill, Bicester, Oxfordshire against which this Deed may be enforced as shown edged red on the Plan

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 person deriving title through or under that party and in the case of the County Council the successors to its statutory functions and any duly appointed employee or agent of the County Council or such successor.

3. LEGAL BASIS

- 3.1 This Deed (which the County Council is satisfied will be of benefit to the public) is made pursuant to Section 106 of the Act, Section 278 of the Highways Act 1980, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 To the extent that the covenants, restrictions and requirements imposed upon the Owner and the Developer under this Deed fall within the terms of Section 106 of the Act such covenants, restrictions and requirements are planning obligations pursuant to Section 106 of the Act which bind the Site and are, subject to the exceptions set out in

this Agreement, enforceable by the County Council as planning authority against the Owner and the Developer in respect of the Site.

- 3.3 To the extent that any of the covenants restrictions and requirements contained in this Deed are not planning obligations within the terms of Section 106 of the Act they are entered into pursuant to Section 111 Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) Implementation

save for the provisions of Clauses 7, 8, 9, 10, 13, 14, 15 and 16 (miscellaneous, waiver, no fetter, notifications, mortgagees consent, jurisdiction, delivery and data protection) which shall come into effect immediately upon completion of this Deed and paragraph 1.1 of the First Schedule which shall come into effect upon the grant of the Planning Permission.

5. OWNER'S AND DEVELOPER'S COVENANTS

- 5.1 The Owner and the Developer covenant with the County Council as set out in the First Schedule.

6. COUNTY COUNCIL'S COVENANTS

- 6.1 The County Council covenants with the Owner and the Developer as set out in the Second Schedule.

7. MISCELLANEOUS

- 7.1 The Developer will:

7.1.1 on completion of this Deed pay to the County Council its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed; and

7.1.2 on completion of this Deed pay to the County Council the sum of Four Thousand Five Hundred and Fifty Pounds (£4,550) as a contribution towards the cost of monitoring and administration of this Deed;

- 7.1.3 reimburse the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with the enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the County Council.
- 7.2 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 County Council's functions).
- 7.3 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.
- 7.4 Any notice required to be given under this Deed shall be in writing and 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, or as specified by notice in writing to the other parties and shall be deemed to be delivered the second working day after posting and any notice or notification to be given under this Deed to the County Council shall be sent to the Corporate Director for Environment & Place of the County Council (Reference 21/01454/F) or to such other person at such other address as the County Council shall direct from time to time.
- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission and all Section 73 Permissions shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) they are modified by any statutory procedure or expire prior to Implementation PROVIDED ALWAYS that the Planning Permission and any Section 73 Permissions have not been Implemented.
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.8 This Deed shall not be enforceable against any public utility company or statutory undertaker having an interest in the Site for the sole purpose of providing utility services to the Site.

7.9 Nothing 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 or a Section 73 Permission granted (whether or not on appeal) after the date of this Deed

8. WAIVER

No waiver (whether expressed or implied) by 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 County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. NO FETTER

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

10. NOTIFICATIONS

10.1 The Owner agrees with the County Council:

10.1.1 to give the County Council written notice within ten working days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's/lessee'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/leased by reference to a plan PROVIDED THAT this obligation does not apply to any disposal of any part or parts of the Site to any public utility company or statutory undertaker for the sole purpose of providing utility services to the Site; and

10.1.2 to notify the County Council 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:

10.1.2.1. Implementation; and

10.1.2.2. first Occupation of the Development or any part of the Development.

11. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12. VAT

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

13. MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of its mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

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.

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.

16. 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:

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; and

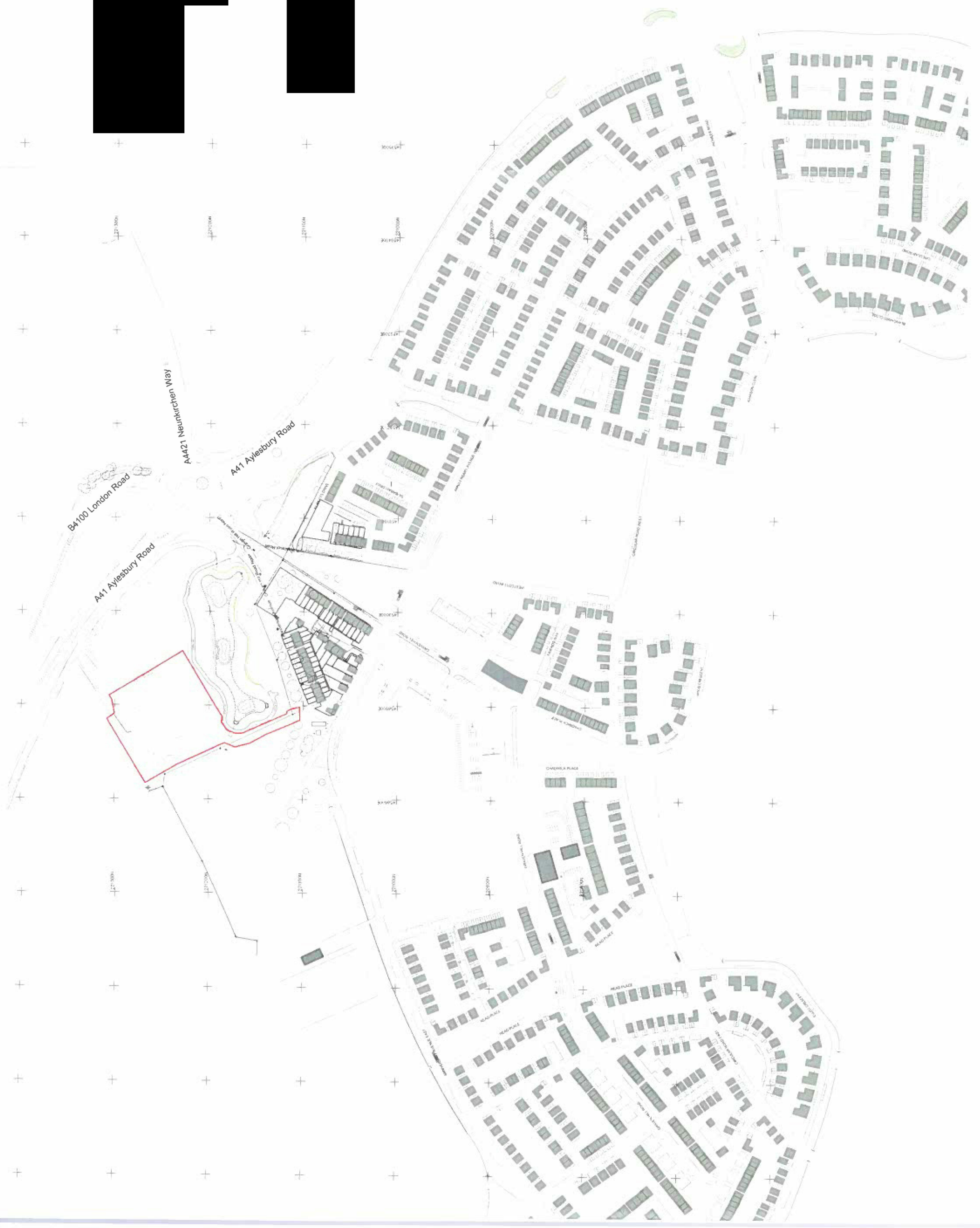
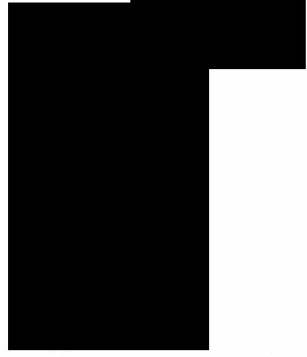
any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000.

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

1. The drawing is a plan view of the proposed development. It is not a site plan and does not show the actual layout of the buildings. It is a schematic representation of the proposed development. The drawing is not to scale and is not intended to be used for construction purposes. It is a planning document and is subject to change without notice.

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FIRST SCHEDULE

COVENANTS WITH THE COUNTY COUNCIL – CONTRIBUTIONS

Definitions

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

"Index Linked"	in relation to the Public Transport Contribution and the Travel Plan Monitoring Fee adjusted according to any increase occurring between January 2020 and the date of payment in the All Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office for National Statistics
"Public Transport Contribution"	the sum of £310,262 Index Linked towards the improvement of bus services serving Graven Hill
"Travel Plan Monitoring Fee"	the sum of £2,336 Index Linked towards the monitoring of the travel plan(s) associated with the Development

Owner's and Developer's Covenants

1. The Owner and the Developer covenant with the County Council as follows:

Contributions

- 1.1 Not to cause or permit Implementation of the Development until the Public Transport Contribution and the Travel Plan Monitoring Fee have been paid to the County Council and to pay the Public Transport Contribution and the Travel Plan Monitoring Fee to the County Council prior to Implementation of the Development.

SECOND SCHEDULE

COUNTY COUNCIL'S COVENANTS

1. Application of Monies Received

The County Council shall not apply the Public Transport Contribution for any purpose other than as set out in the definition of that contribution.

2. Repayment

Following written request from the person who paid the Public Transport Contribution the County Council will repay to that person the balance (if any) of such contribution which at the date of 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 for payment or the date of receipt by the County Council (whichever is the later) of such contribution. 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.

THE COMMON SEAL of)
OXFORDSHIRE COUNTY COUNCIL)

was affixed to this Deed in the presence of:-

Director of Law and Governance/Designated Officer:



95/22

EXECUTED AS A DEED by)
GRAVEN HILL VILLAGE DEVELOPMENT COMPANY)
LIMITED)

acting by a director)

Director Signature

Director Full Name

in the presence of

Witness Signature

Witness Name

Witness Address

Reception Assistant
Witness Occupation

EXECUTED AS A DEED by)
BICESTER HC DEVELOPMENT LIMITED)
acting by a director)

[Redacted Signature]
Director Signature

[Redacted Name]
Director Full Name

in the presence of
[Redacted Signature]
Witness Signature

GILL MARNELL
Witness Name

[Redacted Address]
Witness Address

RECEPTIONIST
Witness Occupation

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

[Redacted Signature]
Authorised Signatory:

