

DATED.....23 NOVEMBER.....2023

**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**BDW TRADING LIMITED**

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

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

**relating to Os Parcels 6741 And 5426 West Cricket Field North Wykham Lane Bodicote**

**Reference 21/03639/F**

## TABLE OF CONTENT

<b><u>PARTIES</u></b> .....	3
<b><u>INTRODUCTION</u></b> .....	3
<b><u>OPERATIVE PART</u></b> .....	4
1. <u>DEFINITIONS</u> .....	4
2. <u>CONSTRUCTION OF THIS DEED</u> .....	11
3. <u>LEGAL BASIS</u> .....	12
4. <u>CONDITIONALITY</u> .....	13
5. <u>THE COVENANTS BY OWNER</u> .....	13
6. <u>THE DISTRICT COUNCIL'S COVENANTS</u> .....	13
7. <u>THE COUNTY COUNCIL'S COVENANTS</u> .....	14
8. <u>MISCELLANEOUS</u> .....	14
9. <u>WAIVER</u> .....	17
10. <u>NO FETTER</u> .....	17
11. <u>CHANGE OF OWNERSHIP</u> .....	17
12. <u>NOTIFICATIONS</u> .....	17
13. <u>INTEREST</u> .....	18
14. <u>VAT</u> .....	19
15. <u>INDEXATION</u> .....	19
16. <u>NOTICES</u> .....	19
17. <u>GOVERNING LAW AND JURISDICTION</u> .....	20
18. <u>DELIVERY</u> .....	20
19. <u>DISPUTE RESOLUTION</u> .....	21
<b><u>FIRST SCHEDULE DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF     THE SITE</u></b> .....	23
<b><u>ANNEX I PLAN</u></b> .....	24
<b><u>SECOND SCHEDULE AFFORDABLE HOUSING</u></b> .....	25

THIRD SCHEDULE FINANCIAL CONTRIBUTIONS PAYABLE TO THE DISTRICT COUNCIL ..... 37

FOURTH SCHEDULE COVENANTS TO THE COUNTY COUNCIL ..... 40

FIFTH SCHEDULE DISTRICT COUNCIL’S COVENANTS WITH THE OWNER .... 45

SIXTH SCHEDULE COUNTY COUNCIL’S COVENANTS WITH THE OWNER ..... 47

THIS AGREEMENT is dated

23 NOVEMBER

2023

## PARTIES

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House White Post Road Bodicote Banbury in Oxfordshire OX15 4AA ("**District Council**")
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall New Road Oxford OX1 1ND ("**County Council**")
- (3) **BDW TRADING LIMITED** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1 UF ("**Owner**")

## INTRODUCTION

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Obligation Land is situated.
- (B) The County Council is the county planning authority for the purposes of the Act for the area in which the Obligation Land is situated and has powers and duties in respect of education, highways, transport and the regulation of traffic.
- (C) The Owner is the freehold owner of the Obligation Land, being the land registered at HM Land Registry under title number ON353292 free from encumbrances.
- (D) On 14 July 2015 the Promoter submitted the Outline Planning Application.
- (E) On 20 November 2017 the Original Owners and the Promoter completed the Unilateral Undertaking.
- (F) On 20 December 2017 the Outline Planning Permission was granted on appeal.
- (G) On 31 July 2020 the Reserved Matters Approval was granted.
- (H) The Owner has Commenced the development permitted by the First Planning Permission on those areas of the Site that fall out with the Obligation Land. On 27 January 2021 the First Discharge of Planning Obligations Notice and the Fourth Discharge of Planning Obligations Notice were granted.
- (I) On 11 May 2021 the Second Discharge of Planning Obligations Notice was granted.
- (J) On 13 May 2021 the Fifth Discharge of Planning Obligations Notice was granted.

- (K) On 14 October 2021 the Third Discharge of Planning Obligations Notice was granted.
- (L) The Owner has applied for permission to replan the western part of the residential development permitted under the Reserved Matters Approval for the delivery of 107 dwellings;
- (M) The Application has been submitted by the Owner to the District Council and the District Council has resolved to grant planning permission for the Development subject to the prior completion of this Deed which is necessary to mitigate the impact of the Development and make it acceptable in planning terms.
- (N) 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 Second 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 full planning permission submitted to the District Council for the Development and allocated planning application reference 21/03639/F;
<b>“Bedroom”</b>	means any room in a Dwelling designed and intended to be used as sleeping accommodation whether or not it is

## Expression

## Meaning

intended to be used for other purposes as well and **"Bedrooms"** shall be construed accordingly and

- 1 Bed Dwelling means a Dwelling with 1 Bedroom
- 2 Bed Dwelling means a Dwelling with 2 Bedrooms
- 3 Bed Dwelling means a Dwelling with 3 Bedrooms
- 4 Bed Dwelling means a Dwelling with 4 or more Bedrooms;

## **"Commencement of the Development"**

occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development (whether or not such operation is a lawful commencement 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;

and **"Commence"** **"Commenced"** and **"Commencing"** or any other derivation of this term shall be construed accordingly;

<b>Expression</b>	<b>Meaning</b>
<b>"Construction"</b>	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;
<b>"Development"</b>	the development of the Obligation Land with 107 Dwellings in accordance with the Second Planning Permission or as may be permitted by any Qualifying Permission;
<b>"Due Date"</b>	subject to compliance with the provisions of clause 12 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 is the date hereof;
<b>"Dwelling"</b>	<p>a building (including a house flat or maisonette) Constructed or proposed to be Constructed on the Obligation Land as part of the Development or part of such building designed for residential Occupation by a single household pursuant to the Second Planning Permission or any Qualifying Permission and</p> <ul style="list-style-type: none"> <li>• <b>"Affordable Housing Dwellings"</b> are those Dwellings provided and whose occupancy and ownership is restricted as set out in Schedule 2;</li> <li>• <b>"Market Dwellings"</b> are those Dwellings that are not Affordable Housing Dwellings;</li> </ul>
<b>"Financial Contributions"</b>	means, the Burial Contribution, the Bus Service Contribution, the Community Facilities – Build Contribution, the Off-site Sports Facilities Contribution, the On-site Sports Facilities Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Secondary Land

<b>Expression</b>	<b>Meaning</b>
	Contribution, the Special Educational Needs Contribution, the Refuse and Recycling Bins Contribution, the Strategic Transport Contribution, and the Special Education Contribution being financial contributions payable to the District Council and the County Council in accordance with the provisions in the Third and Fourth Schedules to this Deed
<b>"Fifth Discharge of Planning Obligations Notice"</b>	the decision granted pursuant to planning application reference 20/03273/OBL which confirmed that the planning obligations contained in clause 1.1.5 of and paragraph 5.1 (affordable housing scheme) of Schedule 2 to the Unilateral Undertaking had been discharged;
<b>"First Discharge of Planning Obligations Notice"</b>	the decision granted pursuant to planning application reference 20/00812/OBL which confirmed that the planning obligations contained in paragraph 3.8 (open space play area and bridleway obligations) of Schedule 2 to the Unilateral Undertaking had been discharged;
<b>"First Planning Permission"</b>	means together the Outline Planning Permission and the Reserved Matters Approval;
<b>"Fourth Discharge of Planning Obligations Notice"</b>	the decision granted pursuant to planning application reference 20/00815/OBL which confirmed that the planning obligations contained in paragraph 3.33 (on-site outdoor sports facilities) of Schedule 2 to the Unilateral Undertaking had been discharged;
<b>"Interest"</b>	interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time calculated daily and compounded annually in arrears;
<b>"NPPF"</b>	the National Planning Policy Framework (as amended from time to time) or any Planning Policy Statement, Guidance



Expression	Meaning
	Notes or Circulars which may amend, supplement or supersede it;
“Obligation Land”	the land against which the obligations contained in this Deed may be enforced as described in Part A of the First Schedule and as shown for illustrative purposes only edged red on Plan 1;
“Occupation”	occupation for the purposes permitted by the Second 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;
“Original Owners”	(1) the Reverend Stephen Fletcher, Valerie Scarff, Robert Ernest Cooke, Sebastian Peissell, Sidella Anne Neal, Robert Timothy John Woodall, Margaret Clinkard, Susan Elizabeth Jelfs and Edward Thomas Frost, Graham Stephens and Patricia Ann Leeman all care of Charlotte Holmes, Fletchers, High Street, Adderbury, Banbury OX17 3LS and care of Freeths LLP, 5000 John Smith Drive, Oxford Business Park South, Oxford OX4 2BH being the trustees of the Adderbury Feoffee Charity (charity registration number 200902); and (2) the Oxford Diocesan Board of Finance, a charity registered with charity registration number 247954 whose registered office is at Church House, Oxford Langford Locks, Kidlington, Oxford, OX5 1GF;
“Outline Planning Application”	the application for outline planning permission for up to 280 dwellings (including 30% affordable housing), introduction of structural planting and landscaping, formal and informal public open space and play areas, surface water flood

Expression	Meaning
	mitigation and attenuation, new priority junction arrangements to White Post Road, creation of section of spine road to link Bloxham Road with White Post Road as well as creation of 34 space car park and other associated ancillary works (with all matters reserved except for access) on the Site submitted by the Promoter under planning application reference 15/01326/OUT;
<b>"Outline Planning Permission"</b>	the outline planning permission granted on 20 December 2017 pursuant to the Outline Planning Application on appeal for non-determination under appeal reference APP/C3105/W/17/3172731;
<b>"Plan 1"</b>	the plan attached to this Deed at Annex I to the <b>First Schedule</b> ;
<b>"Planning Application"</b>	the planning application submitted to the District Council and allocated planning application reference 21/03639/F for the replan of the western part of the residential development permitted under the Reserved Matters Approval for the delivery of 107 dwellings;
<b>"Promoter"</b>	Gladman Developments Limited, a company registered in England and Wales with company registration number 36341567 whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton, CW12 1LB;
<b>"Qualifying Application"</b>	any application(s) for full planning permission for the Development or any part of the Development or any Section 73 Permission or any application made pursuant to sections 73 and/or 96A of the Act to vary or amend the Second Planning Permission or any Qualifying Permission;

<b>Expression</b>	<b>Meaning</b>
<b>“Qualifying Permission”</b>	any planning permission or approval granted pursuant to a Qualifying Application;
<b>“Reserved Matters Application”</b>	the planning application submitted to the District Council and allocated planning application reference 19/00895/REM for approval of reserved matters to the Outline Planning Permission in respect of layout, scale, appearance and landscaping for the residential development of up to 280 dwellings and 34 space car park;
<b>“Reserved Matters Approval”</b>	the approval granted pursuant to the Reserved Matters Application;
<b>“Second Discharge of Planning Obligations Notice”</b>	the decision granted pursuant to planning application reference 20/00811/OBL which confirmed that the planning obligations contained in paragraph 3.1 (car parking obligation) of Schedule 2 to the Unilateral Undertaking had been discharged;
<b>“Second Planning Permission”</b>	means the planning permission granted pursuant to the Planning Application;
<b>“Section 73 Permission”</b>	means a planning permission which may be granted by way of approval of an application under Section 73 of the 1990 Act permitting the Development subject to conditions which differ from the conditions of the Second Planning Permission;
<b>“Site”</b>	the land against which the obligations contained in the Unilateral Undertaking may be enforced as described in Part B of the First Schedule and as shown for illustrative purposes only edged blue on Plan 1
<b>“Third Discharge of Planning Obligations Notice”</b>	the decision granted pursuant to planning application reference 20/00813/OBL which confirmed that the planning obligations contained in paragraph 3.7 (open space play area

Expression	Meaning
	and bridleway obligations) of Schedule 2 to the Unilateral Undertaking had been discharged;
<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>“Unilateral Undertaking”</b>	the unilateral undertaking granted pursuant to (inter alia) section 106 of the Act on 20 November 2017 by the Original Owners with the consent of the Promoter in favour of the District Council and the County Council;
<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 The covenants, restrictions and requirements set out herein are enforceable by the District Council and the County Council against the Owner and against any person deriving title from the Owner .
- 3.4 Nothing in this Deed restricts or is intended to restrict the proper exercise of any statutory power, function or discretion in relation to the Obligation Land at any time by the District Council or the County Council.

#### **4. CONDITIONALITY**

- 4.1 Save as set out below this Deed is conditional upon:
- 4.1.1 the grant of the Second Planning Permission; and
  - 4.1.2 the Commencement of the Development save for paragraphs 2.3 and 2.4 of the Fourth Schedule which will come into effect on the grant of the Second Planning Permission .
- 4.2 The provisions of Clauses 1, 2, 3, 8.1.1, 8.1.3, 12, 17, 18 (legal costs, monitoring and administering, notifications, jurisdiction and delivery) shall come into effect immediately upon completion of this Deed.
- 4.3 For the avoidance of doubt, the obligations contained in this Deed shall not be triggered by development carried out on the Obligation Land in accordance with the First Planning Permission. However, if the Development is Constructed in accordance with the Second Planning Permission or any Qualifying Permission then the Owner shall be liable to perform both: -
- 4.3.1 the Owner's covenants under this Deed; and
  - 4.3.2 the Owner's covenants under the Unilateral Undertaking.

#### **5. THE COVENANTS BY OWNER**

- 5.1 The Owner covenants with both the District Council and the County Council as set out herein and covenants with:
- 5.1.1 the District Council as set out in the Second Schedule and the Third Schedule; and
  - 5.1.2 the County Council as set out in the Fourth Schedule.

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

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

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

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

**8. MISCELLANEOUS**

8.1 The Owner shall pay or secure the payment:

8.1.1 to the District Council on the execution and completion of this Deed of the reasonable legal costs of the District Council incurred in the negotiation of the Deed and the preparation and execution of this Deed;

8.1.2 to the County Council on the execution and completion of this Deed of the reasonable legal costs of the County Council incurred in the negotiation of the Deed and the preparation and execution of this Deed;

8.1.3 on completion of this Deed

(a) to the County Council the sum of **£4,600** (Four Thousand Six Hundred pounds)

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

8.2 The Owner shall reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council.

8.3 Without prejudice to the District Council's or the County Council's statutory rights of entry the Owner shall comply with any reasonable and proper requests of the District Council or County Council to have access to any part of the Obligation Land (other than completed Dwellings) upon giving the Owner reasonable notice for the purpose of monitoring compliance with the obligations contained herein.

- 8.4 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.5 This Deed shall be registrable as a local land charge by the District Council.
- 8.6 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 unless there is an express provision to the contrary and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:
- 8.6.1 the District Council by the Assistant Director: Planning and Development;  
and
- 8.6.2 the County Council by the Director for Environment and Place.
- 8.7 Following the District Council and the County Council being notified in writing and the District Council and the County Council being satisfied of the performance and satisfaction of all the obligations contained in this Deed (as confirmed in writing) 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 Second Planning Permission and every Qualifying 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. 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 Obligation Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.10 Except for any provision hereof that restricts or prevents any Dwelling being occupied or prevents a number of Dwellings being occupied until another provision hereof is complied with this Deed shall not be enforceable:

8.10.1 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; or

8.10.2 any statutory undertaker whose interest in the Obligation Land derives from having equipment necessary to carry out their undertaking on the Obligation Land or on adjoining land; or

8.11 Any obligation for the payment of money attaches to each and every part of the Obligation Land subject to the provisions of clauses 8.9 and 8.10

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

8.13 If the District Council consents pursuant to a Qualifying Application to any variation or release of any condition contained in the Second Planning Permission (or a previous Qualifying Permission) or if any such condition is varied or released following an appeal under section 78 of the Act the covenants and provisions of this Deed shall be deemed to bind the Qualifying Permission and to apply in equal terms to that Qualifying Permission save that where a different section 106 obligation is agreed by the District Council and/or the County Council as being binding on any Qualifying Permission this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

**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**

The Owner agrees with the District Council and separately with the County Council to give each written notice of any change in the ownership of any of its interests in the Obligation Land 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 Obligation Land 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 Obligation Land for servicing or utility requirements or to a statutory body or service supply company for the purpose of carrying out their undertaking.

**12. NOTIFICATIONS**

The Owner agrees with the District Council and the County Council:

12.1 to notify the District Council and the County Council in writing no later than 5 Working Days prior to the anticipated date of each of the following:

12.1.1 Commencement of the Development;

12.1.2 first Occupation of the Development;

12.1.3 Occupation of 50% (fifty per cent) of the Market Dwellings;

12.1.4 Occupation of 70% (seventy per cent) of the Dwellings; and

12.1.5 Occupation of 75% (seventy-five per cent) of the Market Dwellings.

and not to Commence Occupy or cause or permit Commencement or Occupation until the appropriate notice has been given and five Working Days have elapsed since it was served;

12.2 to notify the District Council and the County Council in writing of the actual date of each such event referred to in clause 12.1 above no later than 10 Working Days after the event occurs;

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

15.1 The Owner hereby agrees that any payment of Financial Contributions due to the District Council shall be subject to indexation so that such sums or values shall be increased by the percentage change in the BCIS All-in Tender Price Index from time to time in force from the date of this Deed until the date of payment to the District Council, unless express provision is made elsewhere in this Deed.

15.2 The Owner hereby agrees that any payment of Financial Contributions due to the County Council shall be subject to indexation as set out in the Fourth Schedule

#### **16. NOTICES**

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

16.2 Any notice or notification to be given to the County Council under this Deed shall be sent to the Director of Environment and Place, Oxfordshire County Council, County Hall, New Road, Oxford, OX1 1ND (quoting reference 21/03639/F) or to such other person at such other address as the County Council shall direct from time to time.

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

16.4 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:

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

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

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

16.5 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.

16.6 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.

16.7 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 first class post, pre-paid or recorded delivery.

## **17. GOVERNING LAW AND 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.

## **18. 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.

## 19. DISPUTE RESOLUTION

- 19.1 In the event of any dispute or difference arising between any of the District Council and/or the Owner and/or the Purchaser to this Agreement in respect of any matter contained in this Agreement which cannot be resolved by prior agreement between the parties such dispute or difference shall be referred to an independent and suitable person (the "**Expert**") holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 19.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 19.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 19.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.
- 19.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his

appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 (ten) Working Days.

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

## **FIRST SCHEDULE**

### **PART A**

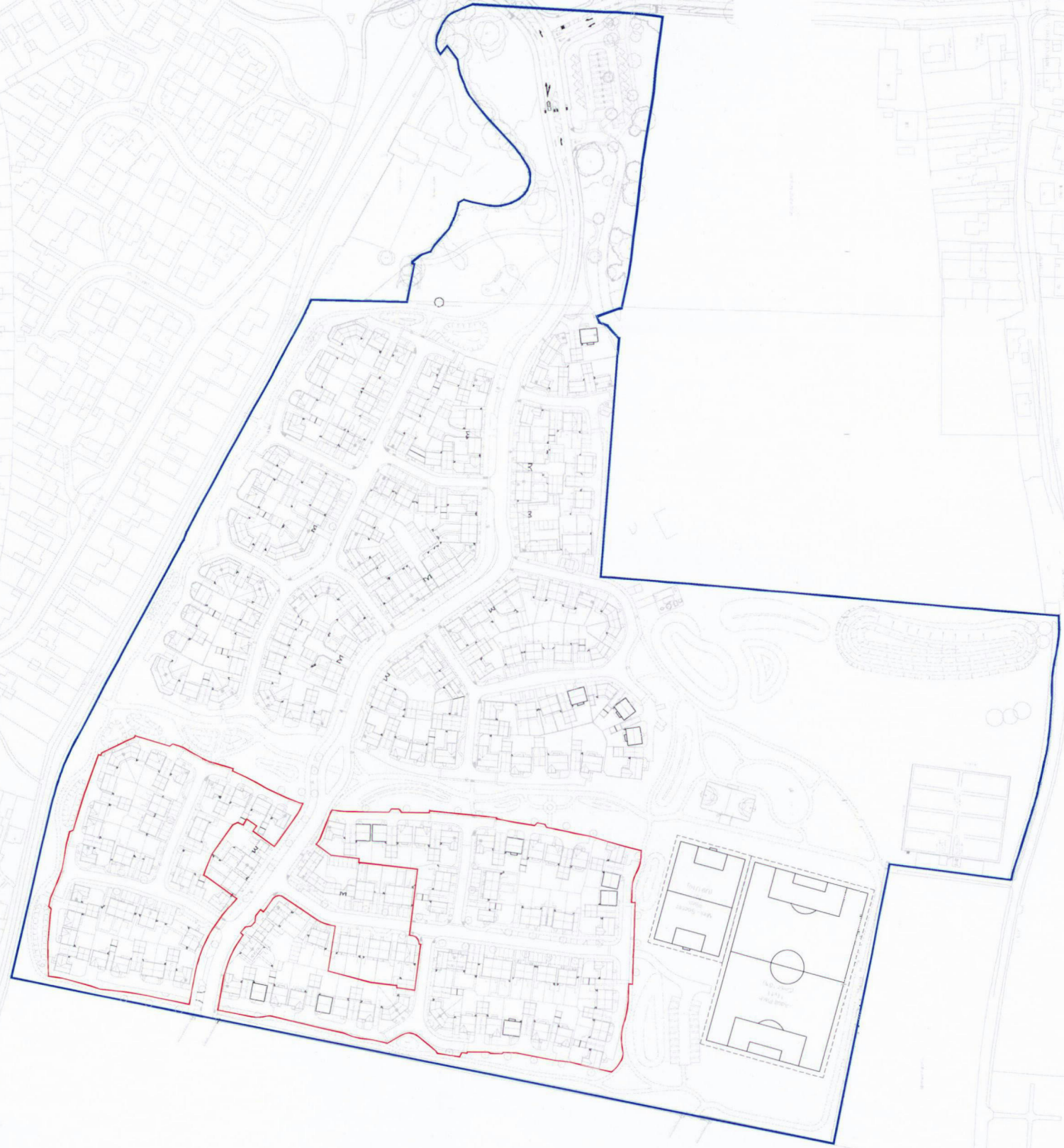
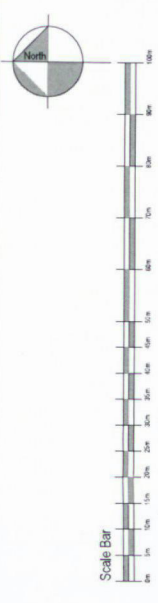
#### **DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE OBLIGATION LAND**

1. The Os Parcels 6741 and 5426 West Cricket Field North Wykham Lane Bodicote shown edged red on Plan 1.
2. The Owner is the freehold owner of the Obligation Land, being the land registered at HM Land Registry under title number ON353292.



**ANNEX I**

**PLAN 1**



REV	DESCRIPTION	DATE	DRAWN	CHECKED
1	ISSUED FOR TENDERS	10/01/2023	DG	
2	REVISED TO REFLECT LATEST INFORMATION	15/01/2023	DG	
3	REVISED TO REFLECT LATEST INFORMATION	22/02/23	DG	

**DAVID WILSON HOMES**  
WHERE QUALITY LIVES

Project:  
**The Pavilions**  
White Post Road  
Bodicote

Drawing Title:  
**PLAN 1**

Scale:  
1:1000 @ A0

Date:  
22.02.23

Drawn By:  
DG

Drawing Ref

**7942-UU-1**

Revision

\*

**SECOND SCHEDULE**

**AFFORDABLE HOUSING**

**COVENANTS WITH THE DISTRICT COUNCIL - AFFORDABLE HOUSING**

**1. DEFINITIONS**

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 given the meaning allocated to it in the main body of this Deed):

<b>Expression</b>	<b>Meaning</b>
<b>Affordable Housing Dwellings</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 definition in Annex 2 of the NPPF;
<b>Affordable Housing Scheme</b>	a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which demonstrates that no less than 7 Dwellings shall be provided as Affordable Housing and sets out details of the numbers, locations and external appearance of the Affordable Housing Dwellings including the timing of Construction of the Affordable Housing Dwellings and shall include details of which of the Affordable Housing

Dwellings are M4(2) and/or M4(3) compliant;

**Affordable Housing Site**

that part or parts of the Obligation Land or any building or any buildings on the Obligation Land upon or within which there will be or have been provided Affordable Housing Dwellings together with the Infrastructure serving that part of the Obligation Land;

**Affordable Housing Standards**

the design criteria with which the Affordable Housing shall comply, namely:

- in relation to the Affordable Rented Housing or Social Rented Housing only, 50% to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings;
- shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Dwellings; and
- shall be constructed to the Nationally Described Space Standard as set out in the Department for Communities and Local Government's technical housing standards for 1-bedroom 2-person Dwellings, 2-bedroom 4-person Dwellings, 3-bedroom 5-person Dwellings and 4-bedroom 7-person dwellings;

**Affordable Housing Tenure Mix**

the mix of tenure and dwelling types of the Affordable Housing Dwellings at least 70% (seventy per cent) of which shall be provided as Affordable Rented Housing or Social Rented Housing and the remainder (if any) shall be Intermediate Housing or such alternative mix of tenure as at any time may be approved in writing by the District Council;

**Affordable Rent**

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;

**Affordable Rented Housing**

rented housing provided by Registered Providers to Qualifying Persons which is not subject to the national rent regime but shall be offered for rent in line with the Regulator of Social Housing's Rent Standard and Guidance for Affordable Rent and in accordance with the District Council's tenancy strategy and at an Affordable Rent;

**Allocations Scheme**

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



## Chargee

any mortgagee or chargee of the Registered Provider (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "**Receiver**"));

## Infrastructure

in relation to the Affordable Housing Site:

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

and the following services:

- a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider;
- a water supply connection from the mains (size and termination position to be agreed with the Registered Provider);
- an electricity supply (size and termination position to be agreed with the Registered Provider);
- a gas supply (size and termination position to be agreed with the Registered Provider) (should it be required for the Affordable Housing Dwellings);
- a telephone spur (terminating in a junction box at a location agreed with the Registered Provider);
- if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a spur to the Affordable Housing Site (final locations to be agreed with the Registered Provider);

PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable

Housing Site nor to any Affordable Housing Dwellings;

**Local Connection**

as defined in the Allocations Scheme or agreed in the Nominations Agreement;

**Long Leasehold**

means a lease of at least 125 years;

**Mortgage Land**

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

**Nationally Described Standards**

**Space** means the standards setting out the minimum gross internal floor space requirement of the Affordable Housing units at a defined level of occupancy;

**Nominations Agreement**

an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Housing Dwellings on the Obligation Land and which shall guide in conjunction with the Allocations Scheme those Qualifying Persons eligible to be nominated to the Affordable Housing Dwellings;

**Qualifying Persons**

those persons who:

1. in respect of potential occupiers of the Affordable Rented Housing or Social Rented Housing are;



- a. assessed by the District Council as in need of Affordable Housing under its current Allocations Scheme (as amended from time to time); and
  - b. (subject to paragraphs 4.2) have a Local Connection; and
  - c. have been nominated to the Affordable Rented Housing or Social Rented Housing by the District Council in accordance with the Allocations Scheme and/or the Nominations Agreement; and
2. in respect of potential occupiers of the Shared Ownership Housing:
- a. those persons who have been assessed by the relevant Registered Provider using the national eligibility criteria and any additional criteria the Registered Provider considers necessary to assess an applicant's ability to purchase the dwelling; and
  - b. (subject to paragraphs 4.2) have a Local Connection

SAVE always that if at any time the Owner proposes to provide more Shared Ownership Housing Units than are required by this Schedule and those Shared Ownership Housing Units are to be wholly or partly funded by a grant provided by Homes

England (or any successor body) and that a requirement for a Qualifying Purchaser to have a Local Connection would be contrary to the terms of (or preclude) such grant funding then paragraph (b) shall not apply;

**Registered Provider**

a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment as registered with the Regulator or any body who may lawfully provide or fund affordable housing from time to time) as shall first be approved in writing by the District Council;

**Shared Ownership Housing**

ownership under the terms of a lease which accords with the Regulator's shared ownership model lease by which a lessee may acquire an initial share or shares of between 10% - 75% of the equity in an Affordable Housing Dwelling from the housing provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity and where the lessee has the option to increase their percentage of ownership through Staircasing, and "**Shared Ownership Dwelling**" shall be construed accordingly;

**Social Rented Housing**

rented housing owned and managed by Registered Providers for which guideline target rents are determined though a

national rent regime as described in Annex 2 of the NPPF;

### **Staircasing**

the exercise by the owner-occupier of a unit of Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the interest in the Shared Ownership Dwelling after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and 'Staircases' or any other derivative thereof shall be construed accordingly;

### **the Regulator**

the Regulator of Social Housing constituted pursuant to the Housing and Regeneration Act 2008 (as amended) and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing.

## **2.**

### **AFFORDABLE HOUSING COVENANTS**

The Owner covenants with the District Council that they:

- 2.1 will submit a detailed scheme for the provision, proposed location and Construction programme of the Affordable Housing Dwellings, including details of the proposed Affordable Housing Tenure Mix, Affordable Housing Standards and Nationally Described Space Standards (or equivalent successor standards from time to time) to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme;

- 2.2 will not Commence or cause or permit the Commencement of the Development until the Affordable Housing Scheme has been approved in writing by the District Council;
- 2.3 will not Occupy or cause or permit the Occupation of more than fifty per cent (50%) of the Market Dwellings until:
- 2.3.1 each area comprising the Affordable Housing Site has been offered to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or Long Leasehold title free from incumbrances and with vacant possession on completion and capable of being fully serviced and properly connected to the public highway; and
- 2.3.2 there has been provided to the District Council's reasonable satisfaction the Infrastructure to serve each parcel of the Affordable Housing Site and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);
- 2.4 will not cause or permit more than seventy five per cent (75%) of the Market Dwellings to be Occupied unless and until the Owner has constructed all of the Affordable Housing Dwellings and made the same ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing Site has been offered to and transferred to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or Long Leasehold title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway;
- 2.5 save as provided by paragraph 3 of this Second Schedule 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 save as provided by paragraph 3 of this Second Schedule 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

save as provided by paragraph 3 of this Second Schedule will provide the Affordable Housing Dwellings in accordance with the Affordable Housing Scheme or such other mix as may be agreed in writing between the Owner and the District Council.

### **3. MORTGAGEE EXEMPTION**

- 3.1 The provisions of this Schedule will not be binding on a Chargee or a bona fide purchaser for value from a Chargee exercising its power of sale or the successors in title of such purchaser or persons deriving title therefrom provided the Chargee:

3.1.1 shall first give written notice to the Council of its intention to dispose of the Mortgage Land (which in this context includes any part thereof);

3.1.2 shall have used reasonable endeavours over a period of three months from the date of the written notice referred to in paragraph 3.1.1 above to complete a disposal of the Mortgage Land to another Registered Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and;

3.1.3 If such disposal has not completed within the three month period subject to compliance with the provisions of paragraph 3.1 the

Chargee shall be able to sell the Mortgage Land free from the restrictions in this Schedule with the effect that they shall cease to bind any person obtaining title to the Mortgage Land and shall determine absolutely.

#### **4. ALLOCATION**

Subject to paragraph 3 above the Owner covenants not to allocate or cause or permit to be allocated any of the Affordable Housing Dwellings other than as follows:

- 4.1 Subject to sub-paragraphs 4.3.1 and 4.3.1 below the Affordable Rented Housing or Social Rented Housing shall only be allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme or in accordance with the terms of the Nominations Agreement;
- 4.2 Subject to sub-paragraph 4.3.1 and 4.3.2 below the Shared Ownership Housing shall be marketed through the Registered Provider's website or other marketing media used by the Registered Provider and only those who are deemed Qualifying Person and who will Occupy the Shared Ownership Housing as their sole and main residence shall be considered for Shared Ownership Housing;
- 4.3 On any Affordable Housing Dwelling becoming available for occupation if:
  - 4.3.1 within three weeks of any Affordable Rented Housing or Social Rented Housing; or eight weeks of any Shared Ownership Housing becoming available any such vacancy arising cannot be filled by a Qualifying Person then a person who has a Local Connection to any neighbouring parishes of Sibford, Wigginton, and Milcombe may be permitted to Occupy that Affordable Housing Dwelling; or
  - 4.3.2 If any such vacancy arising cannot be filled by a person meeting the criterion in 4.3.1 above after five weeks in the case of Affordable Rented Housing or Social Rented Housing; or twelve weeks in the case of any Shared Ownership Housing becoming available then a person who has a Local Connection (as defined in the Nominations Agreement) to the administrative

area of the District Council may be permitted to Occupy that Affordable Housing Dwelling; or

4.3.3 As may be agreed in writing between the Owner and the District Council (acting reasonably and without delay).

## **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 Subject to paragraph 3 above, 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 that are in force (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**

### **OWNER'S COVENANTS TO THE DISTRICT COUNCIL**

#### **1. DEFINITIONS**

- 1.1 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):

**“Additional Dwellings”** means the twenty three additional Dwellings that will be Constructed on the Obligation Land (being the difference between the 107 Dwellings permitted under the Second Planning Permission or any Qualifying Permission and the 84 Dwellings permitted under the First Permission)

**“Burial Ground Contribution”** means the sum of £184.97 (one hundred and eighty four pounds and ninety seven pence) being a contribution towards the provision of burial ground to serve the Additional Dwellings

**“Community Facilities Build Contribution”** means the contribution of £2,879.51 (two thousand, eight hundred and seventy nine pounds and fifty one pence) to be paid towards building of additional community facilities to serve the Additional Dwellings

**“Monitoring Fee Contribution”** means the contribution of £1,000.00 (one thousand pounds) to be paid towards the District Council's costs of monitoring compliance with this Deed

**“Off-site Sports Facilities Contribution”** means the contribution of £ 11,073.00 (eleven thousand and seventy three pence) to be paid towards provision and/or improvement of off-site sports facilities to serve the Additional Dwellings

**“On-site Sports Facilities”** the existing facility to be provided on site under the Unilateral Undertaking comprising an adult football pitch, junior football pitch and a small sports pavilion/changing room



**“On-site Sports  
Facilities  
Contribution”**

means the contribution of £15,349.97 (fifteen thousand three hundred and forty-nine pounds and ninety-seven pence) to be paid for additional maintenance of the existing facility to be provided on site under the Unilateral Undertaking payable to the District Council on the transfer of the On-Site Outdoor Sports Facilities to the District Council

**“Refuse and Recycling  
Bins Contribution”**

means the contribution of £106.00 (one hundred and six pounds) per dwelling to be paid towards provision of refuse and recycling bins to serve the Additional Dwellings

## **2. THE CONTRIBUTIONS**

The owner covenants with the District Council as follows:

2.1 To pay the Burial Contribution to the District Council prior to Commencement of the Development.

2.2 Not to Commence or cause or permit Commencement of the Development until the Burial Contribution has been paid.

2.3 To pay the Community Facilities Build Contribution to the District Council prior to Commencement of the Development.

2.4 Not to Commence or cause or permit Commencement of the Development until the Community Facilities Build Contribution has been paid.

2.5 To pay the Off-site Sports Facilities Contribution to the District Council prior to Commencement of the Development.

2.6 Not to Commence or cause or permit Commencement of the Development until the Off-site Sports Facilities Contribution has been paid.

2.7 In the event that the On-Site Outdoor Sports Facilities are transferred to the District Council to pay the On-site Sports Facilities Contribution to the District Council prior to Commencement of the Development.

2.8 In the event that the On-Site Outdoor Sports Facilities are transferred to the District Council not to Commence or cause or permit Commencement of the Development until the On-site Sports Facilities Contribution has been paid.

2.9 To pay the Refuse and Recycling Bins Contribution to the District Council prior to Commencement of the Development.

2.10 Not to Commence or cause or permit Commencement of the Development until the Refuse and Recycling Bins Contribution has been paid.

#### **FOURTH SCHEDULE**

#### **CONTRIBUTIONS PAYABLE TO THE COUNTY COUNCIL**

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

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

Expression	Meaning
<b>“Additional Dwellings”</b>	means the twenty three additional Dwellings that will be Constructed on the Obligation Land (being the difference between the 107 Dwellings permitted under the Second Planning Permission or any Qualifying Permission and the 84 Dwellings permitted under the First Permission)
<b>“Bus Service Contribution”</b>	Means the contribution of £23,000.00 (twenty three thousand pounds) Index Linked to be paid toward provision and/or improvement of bus services between Banbury and the Site
<b>“Index Linked”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>• in relation to the Bus Service Contribution adjusted according to any increase occurring between October 2014 and the date when the relevant payment is made in the All Items Retail Price Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics</li> <li>• in relation to the Primary Education Contribution, Secondary Education Contribution and Special Educational Needs Contribution adjusted according to any increase occurring between the fourth quarter of 2014 and the quarter period in which the relevant payment is paid (by reference to the index value for that quarter) in the Extension of PUBSEC Tender Price Index of Public Sector Building Non Housing within the BCIS Public Sector Price and Cost Indices and made available through the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors</li> </ul>

**Expression**

**Meaning**

- in relation to the Secondary Land Contribution adjusted according to any increase occurring between November 2016 and the date when the relevant payment is made in the All Items Retail Price Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics
- in relation to the Strategic Transport Contribution adjusted according to any increase occurring between July 2011 and the date when the relevant payment is made 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:-

Index 1	Labour & Supervision	25%
Index 2	Plant & Road Vehicles	25%
Index 3	Aggregates	30%
Index 9	Coated Macadam & Bitumous Products	20%

or if at any time or for any reason it becomes impracticable to use such Index such alternative Index as may be agreed between the Owners and the Council

**“Primary Education Contribution”**

means the sum of £82,874 (eighty two thousand, eight hundred and seventy four pounds) Index Linked to be paid towards provision and/or improvement of primary education facilities to serve the Site

**“Secondary Education Contribution”**

means the sum of £38,220 (thirty eight thousand, two hundred and twenty pounds) Index Linked to be paid

<b>Expression</b>	<b>Meaning</b>
	towards provision and/or improvement of secondary education facilities to serve the Site
<b>Secondary Land Contribution</b>	means the sum of £9,853 (nine thousand, five hundred and fifty three pounds) Index Linked towards the costs to the County Council of the purchase of land for the provision of secondary education facilities to serve the Site
<b>“Special Educational Needs Contribution”</b>	means the sum of £2,378 (two thousand, three hundred and seventy eight pounds) Index Linked to be paid towards provision and/or improvement of special education facilities to serve the Site
<b>“Strategic Transport Contribution”</b>	means the sum of £14,458 (fourteen thousand, four hundred and fifty eight pounds) Index Linked to be paid towards provision and/or improvement of transport infrastructure at the A4260 Upper Windsor Street/A4260 Cherwell Street/Swan Close Road junction to serve the Site

## 2. COVENANTS

The Owner covenants with the County Council as follows:

2.1 To pay to the County Council prior to the first Occupation of any Dwelling the following contributions:

2.1.1 the Bus Service Contribution,

2.1.2 the Primary Education Contribution,

2.1.3 the Secondary Education Contribution,

2.1.4 the Special Educational Needs Contribution, and

2.1.5 the Strategic Transport Contribution

2.2 Not to first Occupy or cause or permit the first Occupation of any Dwelling until the following contributions have been paid to the County Council:

2.2.1 the Bus Service Contribution,

2.2.2 the Primary Education Contribution,

2.2.3 the Secondary Education Contribution,

2.2.4 the Special Educational Needs Contribution, and

2.2.5 the Strategic Transport Contribution.

2.3 To pay the Secondary School Land Contribution to the County Council prior to the Commencement of the Development.

2.4 Not to Commence or cause or permit the Commencement of the Development until the Secondary School Land Contribution has been paid to the County Council.

2.5 The Owner covenants with the County Council not to cause or permit the construction of more than 14 x 2 Bed Dwellings, 43 x 3 Bed Dwellings and 50 x 4 Bed Dwellings on the Site further to the Second Planning Permission (unless otherwise agreed in writing by the Council).

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

**1. REPAYMENT OF FINANCIAL 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 of this Deed 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 Financial Contribution or part of a Financial 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**

2.1 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.



**SIXTH SCHEDULE**  
**COUNTY COUNCIL'S COVERNANTS WITH THE OWNER**

**1. APPLICATION OF MONIES RECEIVED**

- 1.1 The County Council shall not apply any of the Financial Contributions referred to in the Fourth Schedule to this Deed for any purpose other than that set out in the definition of each Financial Contribution therein in such form and at such time as the County Council shall in its discretion decide.

**2. REPAYMENT OF CONTRIBUTIONS**

- 2.1 Following written request from the person who made the relevant contribution the County Council will repay to the person the balance (if any) of such Financial Contributions 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 ten years from the date of receipt by the County Council of the last instalment of any such Financial Contribution or if later 10 years from expiration of the due date for payment of such Financial Contribution.
- 2.2 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 by the Owner to the County Council under this Deed upon receiving a written request from the Owner such request not being made more than once in any year.
- 2.3 Any Financial Contribution or part of a Financial Contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date.

EXECUTION

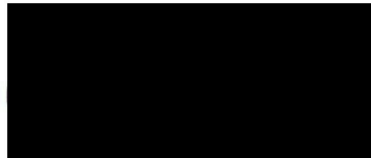
THE COMMON SEAL of  
CHERWELL DISTRICT COUNCIL  
was affixed in the presence of:-



Authorised Signatory



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

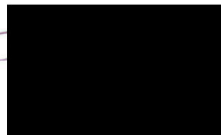


Authorised Signatory



EXECUTED as a DEED by BDW  
TRADING LIMITED acting by one  
director in the presence of:

Director:



PAUL SMITH

Witness:



CHETAN SOLANKI