

Dated 21st December

2023

CHERWELL DISTRICT COUNCIL

-and-

OXFORDSHIRE COUNTY COUNCIL

-and-

**THE PRESIDENT, FELLOWS AND SCHOLARS OF THE COLLEGE
OF THE HOLY AND UNDIVIDED TRINITY IN THE UNIVERSITY
OF OXFORD OF THE FOUNDATION OF SIR THOMAS POPE,
KNIGHT, DECEASED**

-and-

BLOOR HOMES LIMITED

PLANNING OBLIGATION BY DEED OF AGREEMENT

under Section 106 of the Town and Country Planning Act 1990

(as amended) and Section 111 of the Local Government Act 1972

and Section 1 of the Localism Act 2011 relating to

Land South of Banbury Rise, Bretch Hill, Banbury, Oxfordshire

Head of Law & Governance
Cherwell District Council
Bodicote House, Bodicote
Banbury, Oxfordshire
OX15 4AA

DATE

21st December

2023

PARTIES

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, White Post Road, Bodicote, Banbury, Oxfordshire OX15 4AA ("the District Council")
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall, New Road, Oxford OX1 1ND ("the County Council")
- (3) **THE PRESIDENT, FELLOWS AND SCHOLARS OF THE COLLEGE OF THE HOLY AND UNDIVIDED TRINITY IN THE UNIVERSITY OF OXFORD OF THE FOUNDATION OF SIR THOMAS POPE, KNIGHT, DECEASED** of Trinity College, Broad Street, Oxford, Oxfordshire, OX1 3BH ("the Owner")
- (4) **BLOOR HOMES LIMITED** (company number 02162561) whose registered office is at Ashby Road, Measham, Swadlincote, Derbyshire, DE12 7JP ("the Developer")

INTRODUCTION

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The County Council is the county planning authority for the area in which the Site is situated and has sundry powers and duties in respect of education, waste disposal and in respect of highways transport and the regulation of traffic.
3. The Owner is the freehold owner of the Site as described in the First Schedule subject to an option 3 August 2021 in favour of the Developer
4. The Developer submitted the Application to the District Council and the District Council resolved on 9 February 2023 to grant the Planning Permission subject among other things to the completion of this Deed which is necessary to mitigate the impact of the Development and make it acceptable in planning terms.
5. The parties have agreed to enter into this Deed with the intention that the obligations contained herein will mitigate the impact of the Development.

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 outline planning permission submitted to the District Council for the Development and validated on 14 July 2022 under reference number 22/02101/OUT;
"Development"	the Development of the Site with up to 250 dwellings (with up to 30% affordable housing), public open space, landscaping and associated

supporting infrastructure. Means of vehicular access to be determined via Edinburgh Way, with additional pedestrian and cycle connections via Dover Avenue and Balmoral Avenue. Emergency access provision via Balmoral Avenue;

"Dwelling"

a building (including a house flat or maisonette) constructed or proposed to be constructed pursuant to the Planning Permission on the Site or part of such building designed for residential occupation by a single household and including Affordable Housing (as defined in the Second Schedule);

"Implementation"

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, ecological work 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"
"Occupied"**

and occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Phase"

a phase of the Development as shown on the phasing plan approved pursuant to the Planning Permission;

"Plan"

the plan attached to this Deed showing the Site;

"Planning Permission"

the outline planning permission the subject of the Application to be granted by the District Council subject to conditions as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the 1990 Act;

"Reserved Matters"

Details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval;

"the Site"

Land adjoining Withycombe Farmhouse, Stratford Road, A422 Drayton, Oxfordshire against which this Deed may be enforced as shown (for identification purposes only) edged red on the Plan and as set out in the First Schedule.

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 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 all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as planning authorities against the Owner and the Developer and their successors in title.

4 CONDITIONALITY

This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 Implementation,

save for the provisions of Clauses 9.1, 12.1.1, 15 and 16 (legal costs, change of ownership, jurisdiction and delivery) which shall come into effect immediately upon completion of this Deed unless otherwise stated in this Deed.

5 OWNER'S AND DEVELOPER'S COVENANTS

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

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

6 DEVELOPER'S ACKNOWLEDGEMENT

6.1 The Developer acknowledges and declares that this deed has been entered into by the Owner with its consent that the Site will be bound by the planning obligations set out in this Deed

7 DISTRICT COUNCIL'S COVENANTS

7.1 The District Council covenants with the Owner and the Developer as set out in the Fourth Schedule (and as otherwise provided for in this Deed).

8 COUNTY COUNCIL'S COVENANTS

8.1 The County Council covenants with the Owner and the Developer as set out in the Fifth Schedule.

9 MISCELLANEOUS

9.1 The Developer:

9.1.1 will on completion of this Deed pay to the District Council and the County Council their respective reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;

9.1.2 will on completion of this Deed pay to the County Council the sum of £16,721 towards the cost of monitoring and administration of this Deed;

9.1.3 will on completion of this Deed pay to the District Council the sum of £3,000 (Three Thousand Pounds) towards the cost of monitoring and administration of this Deed; and

9.1.4 will reimburse the District Council in respect of its reasonable legal costs where land is transferred to the District Council pursuant to this Deed and

9.2 The Owner will 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;.

- 9.3 No provisions of this Deed shall be enforceable under the Contracts (Rights 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).
- 9.4 This Deed shall be registrable as a local land charge by the District Council.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 If the Planning Permission is
- 9.9.1 quashed by any Court or Tribunal of competent jurisdiction as a result of any legal proceedings (and refused upon re-determination); or
- 9.9.2 revoked pursuant to Section 97 of the Act; or
- 9.9.3 expires prior to being implemented (within the meaning of section 56 of the Act)
- then this Deed shall cease to have effect and no party shall be under any further duty to comply with it.
- 9.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED ALWAYS THAT obligations to pay contributions and other monetary obligations shall bind each and every part of the Site.
- 9.11 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission (or their mortgagee or any receiver appointed by such mortgagee) nor against those deriving title from them PROVIDED ALWAYS THAT this clause shall not apply to Affordable Housing Dwellings to the extent it relates to the covenant contained in Part 3(b) of the Third Schedule only and PROVIDED FURTHER THAT this clause shall not apply to any restrictions on Occupation which shall be enforceable against such persons.
- 9.12 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.
- 9.13 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 granted (whether or not on appeal) after the date of this Deed.

9.14 If the District Council agrees pursuant to an application under section 73 of the Act to any variation or release of any condition contained in the Planning 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 varied permission and to apply in equal terms to the new planning permission save where the District Council or the County Council in their consideration of such an application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

9.15 Any dispute between the District Council and the Owners and/or the Developers arising out of the provisions of this Deed (other than a dispute or difference concerning the meaning or construction of the Deed) may, on the written notice of either party to the dispute to the other, be referred to an independent expert for determination in accordance with sub-clauses ~~8.15(a)-(f)~~ 9.15.1 - 9.15.6

9.15.1 the expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Deed;

9.15.2 the expert shall be appointed jointly by the parties and, in the absence of such agreement within one (1) month of service of the notice pursuant to sub-clause 9.15.1 ~~8.15(a)~~, be appointed by the President for the time being of the Royal Institution of Chartered Surveyors within one (1) month of an application being made by one of the parties;

9.15.3 the expert shall invite written representations from each of the parties and shall make his final determination within one (1) month of his appointment PROVIDED THAT if the expert fails to do so either party to the dispute may apply to the President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in which case the same procedure shall be repeated;

9.15.4 the findings of the expert shall be final and binding on the parties except in the case of manifest, material error;

9.15.5 the expert shall act as an expert and not as an arbitrator;

9.15.6 the costs of the dispute shall be payable by the parties in such proportion as may be determined by the expert and failing such determination to be borne in equal shares by the parties;

9.15.7 nothing in sub-clauses ~~8.15(a)-(f)~~ 9.15.1 - 9.15.6 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

10 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 from acting upon any subsequent breach or default.

11 NO FETTER

Nothing in this Deed shall prejudice or affect the rights powers discretion duties and obligations of the District Council or the County Council under all statutes by-laws

statutory instruments orders and regulations in the exercise of their respective functions in any capacity.

12 CHANGE OF OWNERSHIP

12.1 The Owner or Developer agrees with the District Council and the County Council:

12.1.1 to give the District Council and the County Council written notice as soon as reasonably practicable (and in any event within 14 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 full name and registered office if a company or usual address if not together with the area of the Site purchased by reference to a plan PROVIDED THAT this clause shall not extend to the disposal of an individual Dwelling;

12.1.2 to notify the District Council and (separately) the County Council in writing of the intended date of Implementation of the Planning Permission fourteen days before that date;

12.1.3 to notify the District Council and the County Council in writing within fourteen days of the occurrence of each of the following events and to specify in the notification the date on which it occurred:

12.1.3.1 Implementation of the Planning Permission;

12.1.3.2 the date of first Occupation of the first Dwelling;

12.1.3.3 the date of first Occupation (if different from 12.1.3.2 above)

12.1.3.4 the date of the 50th Occupation

12.1.3.5 the date of the 75th Occupation

12.1.3.6 the date of the 100th Occupation

12.1.3.7 the date of the 200th Occupation

12.1.3.8 the date of the Occupation of 75% of the Dwellings

12.1.3.9 the date of the Occupation of 30% of the Market Dwellings

12.1.3.10 the date of the Occupation of 85% of the Market Dwellings

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

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

15 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.

16 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 this Deed on the day and year first before written.

FIRST SCHEDULE

THE SITE

Land on the south side of Stratford Road, Drayton, Banbury, Oxfordshire shown edged red on the Plan registered under title number ON350042.

SECOND SCHEDULE

OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

Part 1 – Financial Contributions

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 remainder of this Deed):

"Community Development Fund Contribution" the sum of £45 (Forty Five Pounds) per Dwelling Index Linked towards community development work, including initiatives to support groups for residents of the Development.

"Community Development Worker Contribution" the sum of £16,938.68 (Sixteen Thousand Nine Hundred and Thirty Eight Pounds and Sixty Eight Pence) Index Linked towards employment of a community development worker to work to integrate residents of the Development into the community and wider area.

"Community Hall Facilities Calculation" a sum calculated by multiplying A x B x C where:

A = the number of Dwellings x 2.49 (2.49 being the average occupancy per Dwelling)

B = 0.185 (on the basis that 0.185m² of community space is required per occupier); and

C = £2.482

"Community Hall Facilities Contribution" the sum calculated in accordance with the Community Hall Facilities Calculation Index Linked for improvements of community facilities at The Hill Sports and Community Facility, Dover Avenue, Banbury.

"District Contributions" the Community Development Fund Contribution; the Community Development Worker Contribution; the Community Hall Facilities Contribution; the Landscape Monitoring Contribution; the Indoor Sports Contribution; the Outdoor Sports Contribution; the Public Art Contribution; and the Thames Valley Police Contribution.

"Index Linked" adjusted according to the fluctuations between the date of this Deed and the quarter period in which payment is due to the District Council in the BCIS All in One Tender Price Index published by the Royal Institution of Chartered Surveyors or any successor organisation

"Indoor Sports Calculation" a sum calculated by multiplying A x B where:

A = the number of Dwellings x 2.49 (2.49 being the average occupancy per Dwelling)

B = £335.32

"Indoor Sports Contribution"		the sum calculated in accordance with the Indoor Sports Calculation Index Linked as a contribution towards Banbury Indoor Tennis Centre and/or other indoor sports provisions in Banbury.
"Landscape Contribution"	Monitoring	the sum of £15,000.00 (Fifteen Thousand Pounds) Index Linked to be used towards twice yearly monitoring of the Open Space for 15 years following the Completion Certificate.
"Outdoor Sports Contribution"		the sum of £2,017.03 (Two Thousand and Seventeen Pounds and Three Pence) per Dwelling Index Linked as a contribution towards the enhancement of sports facilities at the North Oxfordshire Academy Community Use site.
"Public Art Contribution"		the sum of Two Hundred and Twenty Four Pounds (£224) per Dwelling Index Linked which shall be towards the provision of public art in the vicinity of the Site.
"Thames Valley Police"		Thames Valley Police of Oxford Road, Kidlington, Oxfordshire OX5 2NX or any successor organisation
"Thames Valley Contribution"	Police	<p>the sum which is the combined aggregate of:</p> <ul style="list-style-type: none"> • £2,393.92 (Two Thousand Three Hundred and Ninety Three Pounds and Ninety Two Pence) towards staff set up (calculated on the basis of providing 0.72 additional officers at a cost of £2,906 per officer; and 0.2 other additional staff at a cost of £1,508 per additional staff member); and • £25.70 (Twenty Five Pounds and Seventy Pence) per Dwelling towards the purchase of police vehicles; and • £3,060 (Three Thousand and Sixty Pounds) towards mobile IT capacity (calculated on the basis of providing additional IT capacity for 0.72 additional uniformed officer); and • £5,550 (Five Thousand Five Hundred and Fifty Pounds) towards the provision of ANPR in the area. • £27,053.28 (Twenty Seven Thousand and Fifty Three Pounds and Twenty Eight Pence) towards additional floorspace for police premises (calculated on the basis of providing 0.92 additional staff and each new staff member being provided with 16.88sqm of additional floorspace at a cost of £1800 per sqm). <p>Index Linked to be paid to the District Council and which will be passed on to Thames Valley Police</p>

The Owner covenants with the District Council:

- 1 that they shall implement any Open Space and reach Final Completion prior to paying the Landscape Monitoring Contribution to the District Council
- 2 that they will prior to the Occupation of any Dwellings upon the Development pay to the District Council: .
 - 2.1 20% of the Community Hall Facilities Contribution;
 - 2.2 25% of the Indoor Sports Contribution;
 - 2.3 25% of the Outdoor Sports Contribution; and
 - 2.4 50% of the Public Art Contribution.
- 3 That they will not Occupy any Dwellings unless and until the payments referred to in paragraph 2.1 – 2.4 of this Schedule have been paid.
- 4 that they will prior to Occupation of the 50th Dwelling in the Development pay to the District Council:
 - 4.1 the Community Development Fund Contribution;
 - 4.2 the Community Development Worker Contribution; and
 - 4.3 the Thames Valley Police Contribution.
- 5 That they will not Occupy more than 50 Dwellings unless and until the payments referred to in paragraphs 4.1 – 4.3 of this Schedule have been paid.
- 6 that they will prior to Occupation of the 100th Dwelling in the Development pay:..
 - 6.1 the remaining 80% of the Community Hall Facilities Contribution;
 - 6.2 a further 25% of the Indoor Sports Contribution;
 - 6.3 a further 25% of the Outdoor Sports Contribution; and
 - 6.4 the remaining 50% of the Public Art Contribution.
- 7 That they will not Occupy more than 100 Dwellings unless and until the payments referred to in paragraphs 6.1 – 6.4 of this Schedule have been paid.
- 8 that they will prior to the Occupation of 200th Dwelling in the Development pay to the District Council:
 - 8.1 the remaining 50% of the Indoor Sports Contribution; and
 - 8.2 the remaining 50% of the Outdoor Sports Contribution.
- 9 That they will not Occupy more than 200 Dwellings unless and until the payments referred to in paragraphs 8.1 and 1.2 of this Schedule have been paid.

Part 2 – LAP/LEAP Combined, NEAP & Open Space

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 remainder of this Deed):

"Commuted Sum"	means the total commuted sum payable for the management and maintenance of the relevant Open Space Element which shall be calculated pursuant to the Commuted Sum Formula
"Commuted Sum Formula"	Means the sum calculated as follows: the LAP/LEAP Combined Commuted Sum PLUS the LAP/LEAP Combined Signage Sum PLUS the Open Space Commuted Sum PLUS the Hedgerows Commuted Sum PLUS the Mature Trees Commuted Sum PLUS the SUDS Commuted Sum PLUS the New Orchard Commuted Sum
"Defects Notice"	means a notice or notices served by the District Council which states the relevant Open Space Element has not been provided in accordance with the requirements of this Deed to the District Council's reasonable satisfaction and which sets out the details of the work required to reach the standards required by this Deed
"Estates Management Company"	a company which shall carry out the long term management and maintenance of the Open Space which is to be managed by it in accordance with the provisions of this Deed and whose objectives shall include (but not be limited to): <ul style="list-style-type: none">• setting the level of charges for funding the running of the body and collecting such charges;• ensuring that the level of any charges levied against the Affordable Housing Dwellings shall not materially affect the ability of these dwellings to remain as Affordable Housing;

	<ul style="list-style-type: none"> managing and maintaining the Open Space; parkland tree planting in accordance with the Management Scheme
"Estate Service Charge Deed"	a deed substantially in the form as set out at Appendix 2 of this Deed
"Final Completion Certificate"	a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space, the LAP/LEAP Combined, and provision of the SUDS in accordance with the relevant scheme or specification approved pursuant to this deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction
"Hedgerow"	means any hedgerow whether existing or to be planted as identified in any Open Space Scheme and "Hedgerows" shall be construed accordingly
"Hedgerow Commuted Sum"	means the sum to be calculated in accordance with the formula $1m \times £26.60 \times \text{Index}$ to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the Hedgerows
"LAP LEAP Combined"	means a facility that provides on the Site a combined LAP and LEAP with an equipped activity zone of at least 500 square metres set within a non-equipped landscaped area of at least 3500 square metres designed to provide a safe area for alternative play for children aged 2 to 8 years. The size of the landscaped area (incorporating the equipped activity zone) will be informed by the development context (acknowledging activity zone buffer requirements) and local design guidance. A minimum of 3 items of play equipment is required for the LAP element and 5 items of play equipment for the LEAP element (in combination with multi-play structures). The equipped activity zone within the landscaped area should be located a minimum of 10 metres from the nearest Dwelling boundary and a minimum of 20 metres from the nearest habitable room façade. The landscaped area around the equipped activity zone could be used to incorporate this buffer.
"LAP/LEAP Combined Commuted Sum"	means the sum to be calculated in accordance with the formula $£179,549.95 \times \text{Index}$ in respect of each LAP/LEAP Combined to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of each LAP/LEAP Combined proposed in any Open Space Scheme
"LAP/LEAP Combined Signage Sum"	means the sum of £1,500 (One Thousand Five Hundred Pounds) Index Linked for the play area signage supply and installation of two signs required within the Combined LAP/LEAP in accordance with the Open Space Scheme
"LEMP"	a landscape and ecology management plan scheme as approved by the District Council at Reserved Matters stage, being a written scheme for the detailed ongoing management and maintenance of the Open Space and SUDS (including but not limited to play area inspections, cleansing and maintenance of hard surfaces and balancing ponds or any other aspects of the SUDS within the Open Space) which shall detail the frequency and standard of the maintenance of the facilities that are the

	subject of the scheme together with measures to replace any equipment or infrastructure that becomes damaged or planting that may die or become diseased following implementation of the scheme and which may be varied from time to time with the written agreement of the District Council
"Maintenance Period"	a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate or such longer period as the District Council may determine if it is not satisfied that any defects identified in the Open Space (or the relevant element of the Open Space) have been rectified or if the Open Space (or the relevant Open Space Element) has not been maintained during that period
"Management Scheme"	<p>a scheme that addresses the following:</p> <ul style="list-style-type: none"> • details of the proposed Estates Management Company; • proposed banking arrangements for the Estates Management Company; • details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of the Open Space against those risks that are reasonable to insure against in the circumstances then prevailing; • direct management and maintenance by the Estates Management Company of the Open Space in perpetuity in a safe and attractive environment; • setting the level of the Service Charge for funding the running of the Estates Management Company and collecting such charges from residents of the Development; • ensuring that the level of any charges levied against any Affordable Housing Dwellings shall not materially affect the ability of these Dwellings to remain as Affordable Housing; • ensuring accountability to residents of the Development • providing funding to the Estates Management Company to cover maintenance costs in perpetuity and providing capital funding for replacement items/unforeseen costs; • details of a mechanism together with suitable documentation to enable the transfer of ownership and responsibility for management and maintenance of the Open Space that are in the ownership of the Estates Management Company to the District Council or its nominee on terms to be agreed (including how and when such transfer and step-in mechanism shall be triggered (which is likely to be by written petition of at least 66% of households occupying the Development); details of settlement of outstanding management costs prior to transfer; and liability for legal costs / expenses associated with the transfer)
"Mature Trees"	means those mature trees identified as such in any Open Space Scheme

"Mature Trees Commuted Sum"	means the sum to be calculated in accordance with the formula $\text{£}280.04 \times \text{Index}$ per Mature Tree to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the Mature Trees
"New Orchard"	means the new orchard to be provided within the Development as identified in any Open Space Scheme and as required by the relevant condition imposed on the Planning Permission
"New Orchard Commuted Sum"	means the sum to be calculated in accordance with the formula $\text{m}^2 \times \text{£}35.02 \times \text{Index}$ to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the New Orchard
"Open Space"	all of the areas of public open space to be provided on the Development for recreation and amenity space and which is to be retained and maintained as open space in accordance with the provisions of this Deed and the Open Space Scheme
"Open Space Commuted Sum"	means the sum to be calculated in accordance with the formula $\text{m}^2 \times \text{£}12.65 \times \text{Index}$ to be paid by the Owner to the District Council and applied by the District Council towards the future management and maintenance of the Informal Open Space
"Open Space Elements"	<p>means the areas of Open Space within the Site to be provided by the Owner and which are to be retained and maintained as Open Space to serve the Development, the location and details of which are to be approved as part of the Reserved Matters and which may include:</p> <ul style="list-style-type: none"> • the LAP/LEAP Combined • the Open Space • the Hedgerows • the Mature Trees • the SUDS • the New Orchard
"Open Space Scheme"	<p>a scheme (including a phasing programme) for the provision, laying out, landscaping and (where necessary) equipping of the Open Space Elements which shall include:</p> <ul style="list-style-type: none"> (a) the broad location of each Open Space Element; (b) a timetable for carrying out the works to deliver each Open Space Element; (c) provisions to ensure (where reasonably necessary) each publicly accessible Open Space Element is accessible to wheelchair users; <p>as may be amended from time to time in accordance with this Deed</p>

"Practical Completion Certificate"	a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the Planning Permission and the relevant scheme or specification approved pursuant to this Deed
"RoSPA Inspection Report"	A report prepared by an inspector accredited and certified by Register of Play Inspectors International (RPiI) as a play area inspector that certifies that the LAP/LEAP Combined is fit for purpose in accordance with the appropriate standards set by the Royal Society for the Prevention of Accidents
"Service Charge"	the charge set by the Estates Management Company as a relevant proportion of the costs of managing and maintaining the Open Space transferred to it payable by Occupiers of each Dwelling and which charge may vary depending on the size of each Dwelling
"SUDS"	means any attenuation basins, or similar features, to be provided to form the sustainable urban drainage system for the Development as detailed in the SUDS Scheme and to be provided on the Development as determined by Qualifying Permissions
"SUDS Commuted Sum"	the sum to be calculated in accordance with the formula $m^2 \times £66.05 \times$ Index towards the future management and maintenance of the attenuation ponds comprised in the SUDS Scheme
"Transfer"	<p>to transfer the freehold of the Open Space from the Owner to the Estates Management Company or the District Council (or such other person or body as the District Council may direct) the terms of which shall:</p> <ul style="list-style-type: none"> (a) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency; (b) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is retained by the Owner; (c) include any reasonable reservation of rights of access and services over the Open Space (excluding the Combined LAP/LEAP) for the benefit of any other part of the Site for the purpose of managing maintaining replacing renewing cleaning and repairing services including but not limited to as applicable sustainable urban drainage measures, water, gas, sewerage, drainage or electricity; (d) include for the benefit of the Open Space the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the area being transferred over any adjoining land for its intended purpose as set out in this Schedule; (e) be a transfer of the entire freehold interest of the Open Space or relevant Open Space Element with full title guarantee and vacant possession on completion; (f) be free from any pre-emption or option agreement and free from any mortgage charge or lien or other encumbrance which restricts the use of the land for its intended purpose other than

	those which exist at the date of this deed and/or are agreed in the Transfer;
(g)	may contain a restrictive covenant that the land transferred shall not be used for any purpose other than for a publicly accessible games recreation relaxation and play area and publicly accessible free at the point of use recreational facilities; and
(h)	confirm that the Owner shall no longer be entitled to elect by written notice to require the District Council to acquire the Open Space and/or SUDS (or any part thereof).

- 1 The Owner covenants with the District Council (and, in respect of paragraph 1.8 only, the District Council covenants with the Owner and Developer) that they:

LAP/LEAP Combined

- 1.1 will provide the LAP/LEAP Combined as part of the Development in accordance with the Open Space Scheme and prior to the Occupation of 75% of the Dwellings;
- 1.2 will not at any time following the delivery of the LAP/LEAP Combined use the LAP/LEAP Combined or cause or permit the LEAP/LEAP Combined to be used for any purpose other than as a children's play area;
- 1.3 will not use the land on which the LAP/LEAP Combined is comprised for the laying of services unless they have prior approval of the District Council or the services are permitted by a condition of the Planning Permission;
- 1.4 will provide to the District Council for the LAP/LEAP Combined prior to the inspection required in paragraph 1.7 of this Part Two of Schedule Two, a RoSPA post installation report and Risk Assessment for the LAP/LEAP Combined which RoSPA report and Risk Assessment must be satisfactory to the District Council (acting reasonably) and thereafter will provide a satisfactory RoSPA report in respect of the LAP/LEAP Combined annually until the date of transfer of the LAP/LEAP Combined

OPEN SPACE

- 1.5 will not Implement the Development until there has been submitted in writing to and agreed with the District Council an Open Space Scheme;
- 1.6 shall carry out the Development in accordance with the Open Space Scheme (subject to any amendments as may be agreed between the Owner and/or Developer and the District Council (acting reasonably)) including:
 - 1.6.1 equipping, laying out and / or seeding the Open Space and the Open Space Elements in accordance with the Open Space Scheme; and
 - 1.6.2 the timetable set out in the Open Space Scheme.

PRACTICAL COMPLETION CERTIFICATE

- 1.7 will on completion of each Open Space Element invite the District Council in writing to inspect the relevant Open Space Element with a view to issuing a Practical Completion Certificate in respect of each Open Space Element;

- 1.8 the District Council shall inspect the relevant Open Space Element within 14 days of receipt of the invitation in paragraph 1.7 above and shall within 14 days of such inspection either:
- 1.8.1 issue a Practical Completion Certificate; or
 - 1.8.2 issue a Defects Notice which states the Open Space Element has not been provided to the District Council's reasonable satisfaction and set out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done;
 - 1.8.3 if the Owner receives a Defects Notice in respect of any Open Space Element, they shall use reasonable endeavours to complete the works within the timescale specified in the notice and then invite the District Council to re-inspect that Open Space Element;
 - 1.8.4 the procedure set out above shall be repeated in respect of each and every Open Space Element until such time as the District Council either:
 - 1.8.4.1 issues a Practical Completion Certificate; or
 - 1.8.4.2 fails to inspect the relevant Open Space Element within 14 days of receipt of the invitation in paragraph 1.8 above in which case a Completion Certificate shall be deemed to have been issued 14 days after receipt of the relevant invitation; or
 - 1.8.4.3 fails to serve within 14 days of their inspection a Defects Notice in which case a Completion Certificate shall be deemed to have been issued 14 days following the relevant inspection.
- 1.9 will not unless otherwise agreed by the District Council cause or permit all of the Dwellings to be Occupied in a Phase until a Practical Completion Certificate has been issued (or is deemed to have been issued) in respect of each Open Space Element in that Phase.

MAINTENANCE AND ACCESS

- 2 Prior to Commencement of Development, the Owner (at its absolute discretion) will inform the District Council in writing whether:
- 2.1 The Open Space and the Open Space Elements are to be transferred to Estates Management Company, in which case paragraph 3 of this Schedule will apply and FOR THE AVOIDANCE OF DOUBT paragraph 4 of this Schedule shall have no application whatsoever; or
 - 2.2 The Open Space and the Open Space Elements are to be transferred to the District Council, in which case paragraph 4 of this Schedule will apply and FOR THE AVOIDANCE OF DOUBT paragraph 3 of this Schedule shall no application whatsoever.

OPEN SPACE TO BE MANAGED BY THE ESTATES MANAGEMENT COMPANY

- 3 In the event that the Owner informs the District Council that the Open Space and Open Space Elements are to be managed by the Estates Management Company, then the Owner covenants that it:
- 3.1 shall continue to maintain each Open Space Element in accordance with the Open Space Scheme (and, for the avoidance of doubt, upon the transfer of each Open Space Element to the Estates Management Company, the Estates Management Company will

become responsible for such maintenance as successor-in-title and the Owner of the remainder of the Site will be released from liability).

- 3.2 will provide an unrestricted right of access for the general public to each Open Space Element at all times following the issue of a Practical Completion Certificate for the relevant Open Space Element;
- 3.3 will (at all times prior to the issuing or deemed issue of any Practical Completion Certificate in respect of all Open Space Elements) upon reasonable notice permit the District Council's officers servants and agents to enter onto any necessary part of the Site and will afford them access to do so for the purpose of inspecting the laying out of the Open Space Elements;
- 3.4 will allow the District Council on reasonable written notice but no less than one (1) Working Day's written notice to enter the Site with workmen and contractors to remedy any default in compliance with the requirements of this schedule and in the event that such work is carried out by the District Council, the costs of such works shall be recoverable from the Owner PROVIDED THAT the District Council shall not be entitled to take action under this paragraph nor recover reimbursement unless the District Council before taking action to enforce any of the terms of this Schedule shall have given the Owner a reasonable time period to remedy the breach and shall afford the Owner a reasonable opportunity to remedy the breach in accordance with the steps and time period in the written notice.
- 3.5 will prior to Implementation of any Phase which includes any Open Space Element(s) submit for approval to the District Council the Management Scheme and LEMP and the Owner and the Developer will not cause or permit a Phase of the Development that contains Open Space Elements to be Implemented until the District Council has approved the Management Scheme and LEMP in respect of that Phase PROVIDED THAT if the District Council does not respond within 28 days of receipt of the Management Scheme and LEMP then approval of the scheme will be deemed to be given.
- 3.6 shall not dispose of an interest in any Dwelling without putting in the plot documentation for each of the Dwellings a covenant whereby each of the residents of each Dwelling (and their successors in title) shall be liable to make payment to the Estates Management Company (or, in the event that the Open Space is transferred to another entity, that other entity) of the Service Charge which shall be collected, ring-fenced and used towards the management and / or maintenance of the Open Space.
- 3.7 shall not dispose of any interest in any Dwelling without ensuring that each purchaser of a Dwelling subject to the Service Charge enters into the Estates Service Charge Deed.
- 3.8 will Transfer each Open Space Element to the Estates Management Company.
- 3.9 In the event that:
 - 3.9.1 The Estates Management Company fails to maintain any part of aspect of the Open Space in accordance with the approved Management Scheme; or
 - 3.9.2 The Estates Management Company:
 - 3.9.2.1 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

- 3.9.2.2 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of it with one or more other companies or its solvent reconstruction;
- 3.9.2.3 is wound up or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Estates Management Company (other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction);
- 3.9.2.4 has an administrator appointed or an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given;
- 3.9.2.5 has an administrative receiver appointed or the holder of a qualifying floating charge over the assets of it has become entitled to appoint an administrative receiver;
- 3.9.2.6 a receiver is appointed over all or any of its assets or a person becomes entitled to appoint a receiver over all or any of those assets;
- 3.9.2.7 has a creditor or encumbrancer of it attach or take possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against the whole or any of its assets, and such attachment or process is not discharged within ten (10) Working Days; or
- 3.9.2.8 suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (whether or not that business involves maintaining the Open Space)

then the District Council may take one the actions set out in paragraph 3.9.

3.10 In the event that paragraph 3.8 applies, then the District Council may:

- 3.10.1 enter on to the relevant Open Space Element together with relevant personnel and equipment to ensure the performance of the obligations contained in these covenants and/or carry out those works it considers necessary to maintain or make good any defect or damage or reinstate the relevant Open Space Element and the District Council shall be entitled to full reimbursement by the owner of the relevant Open Space Element in respect of all costs and expenses incurred in performing the said obligations.
 - 3.10.2 Require the owner of the relevant Open Space Element(s) at that time to
 - 3.10.2.1 Transfer all its interest in the relevant Open Space Elements to the District Council or its nominee together with all responsibilities for management and maintenance of the same; or
 - 3.10.2.2 Transfer the responsibility for management and maintenance of the Open Space to the District Council or its nominee;
- AND (in the case that either 3.9.2.1 or 3.9.2.2 applies) the Owner will pay any accrued Service Charges to the District Council or its nominee and assign its right to collect and receive payments of the Service Charge.

OPEN SPACE TO BE MANAGED BY THE DISTRICT COUNCIL

- 4 In the event that the Owner informs the District Council that the Open Space and Open Space Elements are to be transferred to and managed by the District Council, then the Owner covenants that:
 - 4.1 It will continue to manage and maintain the Open Space and each Open Space Element during the Maintenance Period;
 - 4.2 At the expiry of the Maintenance Period in respect of each Open Space Element, the Owner will invite the District Council in writing to inspect the relevant Open Space Element with a view to issuing a Final Completion Certificate;
 - 4.3 the District Council shall inspect the relevant Open Space Element within 14 days of receipt of the invitation in paragraph 4.2 above and shall within 14 days of such inspection either:
 - 4.3.1 issue a Final Completion Certificate; or
 - 4.3.2 issue a notice ('Defects Notice') which states the Open Space Element has not been managed and maintained during the Maintenance Period to the District Council's reasonable satisfaction and set out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done;
 - 4.3.3 if the Owner receives a Defects Notice in respect of any Open Space Element, they shall use reasonable endeavours to complete the works within the timescale specified in the notice and then invite the District Council to re-inspect that Open Space Element;
 - 4.3.4 the procedure set out above shall be repeated in respect of each and every Open Space Element until such time as the District Council either:
 - 4.3.4.1 issues a Final Completion Certificate; or
 - 4.3.4.2 fails to inspect the relevant Open Space Element within 14 days of receipt of the invitation in paragraph 4.2 above in which case a Final Completion Certificate shall be deemed to have been issued 14 days after receipt of the relevant invitation; or
 - 4.3.4.3 fails to serve within 14 days of their inspection a Defects Notice in which case a Final Completion Certificate shall be deemed to have been issued 14 days following the relevant inspection.
- 4.4 Upon completion of the Maintenance Period and following the issue of the Final Completion Certificate in respect of each Open Space Element the Owner shall Transfer the freehold interest in the relevant Open Space Element to the District Council or such other body as the District Council may direct on the following terms (other than to the extent that such terms are inconsistent with the Transfer):
 - 4.4.1 shall be on the Law Society's Standard Conditions of Sale applicable at the time of the issue of the Final Completion Certificate;
 - 4.4.2 consideration therefor shall be no more than one pound (£1);
 - 4.4.3 shall be with:
 - 4.4.3.1 full title guarantee; and

4.4.3.2 vacant possession on completion

- 4.4.4 shall include such rights as may be necessary for the District Council to access the Open Space and / or any Open Space Element for the purposes of maintenance, repair, improvement and replacement of the Open Space or any Open Space Element;
- 4.4.5 The Transfer may contain a covenant not to use or permit the relevant Open Space Element to be used for anything other than the purposes that they were provided for and not to use them for any income generating use without the consent of the transferor (such consent not to be unreasonably withheld or delayed); and
- 4.4.6 Upon the Transfer of each Open Space Element, the Owner shall pay to the District Council the relevant Commuted Sum payable in respect of that Open Space Element;
- 4.5 A draft transfer shall be prepared by the Owner and sent to the District Council for approval or amendment within twenty (20) Working Days of the issue of the last Final Completion Certificate and once approved an executed transfer shall be delivered to the District Council for execution by the District Council within ten (10) Working Days.

Part 3 – First Homes & Affordable Housing

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):

"Additional Contribution"	First Homes	in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 3.7, 3.8 or 5 of part 3(a) of this Schedule, the lower of the following two amounts:
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- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

"Affordable Housing"

means housing as defined in Annex 2 of the National Planning Policy Framework dated 20 July 2021 and any successor policy thereto issued by government and which will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Affordable Housing Dwellings"

Affordable Housing units in the Development that shall (inclusive of First Homes) comprise not less than 30% (thirty per cent) of the total number of Dwellings in accordance with Affordable Housing Dwelling and Tenure Mix PROVIDED THAT any reference to Affordable Housing Dwellings in Part 3(b) of the Second Schedule shall, save for paragraph 1, exclude First Homes

"Affordable Housing Dwelling and Tenure Mix"

means the mix of tenures and dwelling types of the Affordable Housing Dwellings as set out in Appendix 1 of this Deed or such other tenure and dwelling mix as may be agreed between the Owner and/or Developer and the District Council from time to time (including pursuant to paragraph 1.5 of this Part);

"Affordable Housing Scheme"

means a scheme submitted to the District Council pursuant to paragraph 1.1 of this Part of this Schedule or an alternative scheme pursuant to paragraph 1.5;

"Affordable Housing Site "

that part or parts of the Site or any building or any buildings on the Site upon or within which there will be provided Affordable Housing Dwellings together with full rights of access to each Affordable Housing Site from the Site and the provision of all necessary Infrastructure and connections thereto and the necessary installations thereof for the dwellings to be constructed on the Affordable Housing Site;

"Affordable Housing Standards"

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

- 50% of the Affordable Rented Housing and Social Rented Housing are to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings;
- shall be located in clusters of no more than 20 Affordable Housing Dwellings
- shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Housing; and
- shall be constructed to the nationally described space standard as set out in the

"Affordable Rented Housing"

rented housing as defined in Annex 2 to the National Planning Policy Framework (20 July 2021) and any successor policy thereto issued by government provided by the Registered Provider to households who are Qualifying Persons and in respect of which the rents will be no more than 80% of local market rent including service charge or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting, each individual unit identified pursuant to

the Affordable Housing Dwelling and Tenure Mix and the Affordable Housing Scheme being an "Affordable Rented Unit"

"Allocate"

means 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) whereby there are conferred or transferred rights of residential occupation in respect of an Affordable Housing Dwelling which could for the avoidance of doubt include the first occasion on which an Affordable Housing Dwelling is occupied and any subsequent changes in the occupier and 'allocating' 'allocated' and 'allocations' should be construed accordingly

"Armed Services Member"

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

"Chargee"

mortgagee or chargee (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

"Compliance Certificate"

means the certificate issued by the District Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National)

"Discount Market Price"

means a sum which is the Market Value discounted by at least 30%

"Disposal"

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (i) a letting or sub-letting in accordance with paragraph 4 of Part 3(a) of this Third Schedule
- (j) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- (k) an Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly

"Eligibility Criteria (National)"

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

"Exempt Disposal"

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 5 of Part 3(a) of this Second Schedule shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5 of Part 3(a) of this Second Schedule

“First Home”

means a Dwelling which may be Disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap

“First Homes Mortgagee”

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home

“First Homes Owner”

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Developer; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 5 of Part 3(a) to this Second Schedule

“First Time Buyer”

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

“Help to Buy Agent”

that organisation which is appointed by the Regulator to assess eligibility for and market low cost home ownership products

“Income Cap (National)”

means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

“Infrastructure”

means 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 from the Owner's foul and surface water drain run serving the Development up to the boundaries of the Affordable Housing Site;
- a standard fire hydrant supply and fire hydrants in the public highway;
- a water supply connection from the mains (size and termination);
- an electricity supply;
- a gas supply (should it be required for the Affordable Housing Dwellings);
- a telephone spur (terminating in a junction box);
- if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a connection to the Affordable Housing Site;

"Local Connection"

a person has a Local Connection if such person has a local connection (as defined in the District Council's Allocation Scheme or agreed in the Nominations Agreement) to the administrative area of the District Council

"Market Dwelling"

means any Dwelling which is not a First Home or Affordable Housing Dwelling

"Market Value"

means the open market value as assessed by a Valuer of Dwellings as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

"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 and which shall guide who are eligible to be nominated to the Affordable Housing Dwellings

"Practical Completion"

means the stage reached when the construction of a First Home is sufficiently complete that, where

	necessary, a certificate of practical completion can be issued and it can be Occupied
"Price Cap"	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
"Qualifying Persons"	those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to an Affordable Housing Dwelling in accordance with the Allocations Scheme and the Nominations Agreement
"Registered Provider"	a private provider of affordable housing which is designated in the register maintained by the Regulator or any similar future authority carrying on substantially the same regulatory or supervisory functions
"Regulator"	means the body as known as the Regulator of Social Housing, or any successor organisation or body which regulates Registered Providers
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Shared Equity Dwellings"	A unit to be sold at 75% of Open Market Value on terms to be agreed in writing with the District Council with the balance of 25% being secured by means of a legal charge in favour of the District Council or the District Council's nominee;
"Shared Ownership Housing"	housing offered via the Registered Provider under the terms of a lease which accords with the Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 25% - 75% of the equity in an Affordable Housing Dwelling from the Registered Provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity each individual unit identified pursuant to the Affordable Housing Dwelling and Tenure Mix and the Affordable Housing Scheme being a "Shared Ownership Unit"
"Social Rented Housing"	rented housing owned and managed by Registered Provider for which guideline target rents are determined through a national rent regime as described in Annex 2 of the NPPF.
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer

appointed by the First Homes Owner and acting in an independent capacity.

Part 3(a) – First Homes

1 Obligations

- 1.1 Unless otherwise agreed in writing by the District Council, the Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the District Council as below save that:

1.1.1 paragraph 2 shall not apply to a First Homes Owner;

1.1.2 paragraphs 3 and 4 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.1.3 paragraph 5 applies as set out therein.

2 Quantum

- 2.1 Unless otherwise agreed with the District Council, nineteen (19) of the Dwellings as identified as First Homes in the Affordable Housing Dwelling and Tenure Mix shall be reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of Part 3(a) of this Second Schedule.

3 Delivery Mechanism

- 3.1 All First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting the Eligibility Criteria (National).

- 3.2 Subject to paragraph 3.5 to 3.9 and / or paragraph 5, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee

- 3.3 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

3.3.1 The District Council has been provided with evidence that:

3.3.1.1 the intended purchaser meets the Eligibility Criteria (National)

3.3.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

3.3.1.3 the transfer of the First Home includes:

(a) a definition of the "Council" which shall be Cherwell District Council;

(b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Part 3(a) of the Second Schedule to the S106 Agreement a copy of which is attached hereto."

- (c) a definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council (2) Oxfordshire County Council (3) The President, Fellows and Scholars of the College of the Holy and Undivided Trinity in the University of Oxford of the Foundation of Sire Thomas Pope, Knight, Deceased and (4) Bloor Homes Limited
- (d) a provision that the Dwelling is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the Dwelling or any part of it other than in accordance with the First Homes Provisions
- (e) a copy of this Deed

3.3.2 The District Council has issued the Compliance Certificate and the District Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.2 and 3.3.1.1 have been met

3.4 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Cherwell District Council of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

3.5 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the District Council to Dispose of it other than as a First Home on the grounds that either:

3.5.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraph 3.1 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 3.2 and 3.3.1; or

3.5.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 3.5.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

3.6 Upon receipt of an application served in accordance with paragraph 3.5 the District Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

- 3.7 If the District Council is satisfied that either of the grounds in paragraph 3.5 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.5 that the relevant Dwelling may be Disposed of:

3.7.1 to the District Council at the Discount Market Price; or

3.7.2 (if the District Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.9 which shall cease to apply on receipt of payment by the District Council where the relevant Dwelling is disposed of other than as a First Home.

- 3.8 If the District Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.5 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.5 serve notice on the owner of the First Home setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner of the First Home has been unable to Dispose of the Dwelling as a First Home he may serve notice on the District Council in accordance with paragraph 3.5 following which the District Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

- 3.9 Where a Dwelling is Disposed of other than as a First Home or to the District Council at the Discount Market Price in accordance with paragraphs 3.7 or 3.8 above the owner of the First Home shall pay to the District Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

- 3.10 Upon receipt of the Additional First Homes Contribution the District Council shall:

3.10.1 within twenty (20) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.4 where such restriction has previously been registered against the relevant title

3.10.2 apply all monies received towards the provision of Affordable Housing in Cherwell

- 3.11 Any person who purchases a First Home free of the restrictions in part 3(a) of the Second Schedule to this Deed pursuant to the provisions in paragraphs 3.8 and 3.9 shall not be liable to pay the Additional First Homes Contribution to the District Council.

4 USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 4.1 – 4.4 below.

- 4.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

- 4.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the District Council and the District Council consents in writing to the proposed letting or sub-letting. The District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- 4.2.1 the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - 4.2.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - 4.2.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - 4.2.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 4.2.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 4.2.6 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 4.3 A letting or sub-letting permitted pursuant to paragraphs 4.1 or 4.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 4.4 Nothing in this paragraph 4 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

5 MORTGAGEE EXCLUSION

The obligations in paragraphs 1-4 of part 3(a) of the Second Schedule to this Deed in relation to First Homes shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a First Homes Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or First Homes Receiver PROVIDED THAT:

- 5.1 such First Homes Mortgagee or First Homes Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and
- 5.2 once notice of intention to Dispose of the relevant First Home has been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 5.3
- 5.3 following the Disposal of the relevant First Home the First Homes Mortgagee or First Homes Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the District Council the Additional First Homes Contribution.

- 5.4 following receipt of notification of the Disposal of the relevant First Home the District Council shall:

5.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.4; and

5.4.2 apply all such monies received towards the provision of Affordable Housing in Cherwell

Part 3(b) – Affordable Housing

- 1 The Owner and the Developer covenant with the District Council that they:

- 1.1 will not Implement or cause or permit the Implementation of any Phase of the Development until there has been submitted to and approved by the District Council in writing the Affordable Housing Scheme for that Phase which scheme shall include:

1.1.1 plans and details identifying the location and position of the Affordable Housing Dwellings; and

1.1.2 details of the precise mix of tenure and house types and sizes of the Affordable Housing Dwellings in that Phase; and

1.1.3 details of which of the Affordable Housing Dwellings will meet Building Regulations Standard Part M4 (Cat 2) and Part M4 (Cat 3) respectively; and

1.1.4 a phasing plan demonstrating how and when the Affordable Housing within a Phase will be delivered

PROVIDED THAT if the District Council do not indicate whether they accept or reject the Affordable Housing Scheme within 21 days of receipt then approval of the Affordable Housing Scheme shall be deemed to be given AND FURTHER PROVIDED THAT there shall be no requirement to submit an Affordable Housing Scheme if the matters set out in this paragraph 1.1 have already been determined by Reserved Matters;

- 1.2 prior to the commencement of construction of the Affordable Housing Dwellings on that Phase the Owner or the Developer can submit to the District Council for approval a revised scheme for the provision of the Affordable Housing Dwellings (if changes are required to the scheme approved under the paragraph above) which shall include a revised mix of affordable housing tenures, types, products or schemes (including new tenures that may be introduced by government and which qualifies as Affordable Housing) and if the District Council do not indicate whether they accept or reject the revised scheme within 21 days of receipt then approval of the revised scheme shall be deemed to be given;

- 1.3 will not Occupy or cause or permit the Occupation of more than thirty percent (30%) of the Market Dwellings in a Phase until:

1.3.1 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

- 1.3.2 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);
- 1.1 unless otherwise agreed in writing by the District Council, to use reasonable endeavours to enter into a binding contract with a Registered Provider within six months of the Commencement of a Phase for the construction and / or transfer of the Affordable Housing Dwellings within that Phase.
- 1.4 In the event that the Owner has not entered into a binding contract with a Registered Provider within six months of Commencement of a Phase, then the Owner may:
 - 1.4.1 provide the District Council with an alternative Affordable Housing Scheme and Affordable Housing Dwelling and Tenure Mix;
 - 1.4.2 if the District Council approves the Affordable Housing Scheme and Affordable Housing Dwelling and Tenure Mix (such approval not to be unreasonably withheld or delayed), the Owner shall further use its reasonable endeavours to enter into a contract with a Registered Provider;
 - 1.4.3 if the District Council does not respond to the Affordable Housing Scheme and Affordable Housing Dwelling and Tenure Mix within 15 Working Days of submission of those documents pursuant to paragraph 1.5.1 above, then those documents shall be deemed to be approved.
- 1.5 If, despite the use of reasonable endeavours by the Owner to enter into such a contract, within three months of Owner receiving written or deemed approval of the alternative Affordable Housing Scheme and Affordable Housing Dwelling and Tenure Mix for a Phase a legally binding contract has not been entered into by the Owner with a Registered Provider, then the Owner shall be released from the requirement to comply with the provisions of this Agreement in relation to the Provision of Affordable Housing for that Phase and the remaining Shared Ownership Units in that Phase shall be sold as Shared Equity Dwellings and the remaining Affordable Rented Dwellings and Social Rented Dwellings shall be sold on the open market and the Affordable Housing Contribution shall be paid to the District Council within five working days of legal completion of each Dwelling as an Open Market Dwelling;
- 1.6 will construct and provide the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme and the Affordable Housing Standards and the Affordable Housing Dwelling and Tenure Mix (or such other mix as may be agreed in writing between the Owner and the District Council);
- 1.7 will construct all of the Affordable Housing Dwellings in a Phase and make the same ready for Occupation prior to the use or Occupation of 85% of the Market Dwellings in that Phase (unless otherwise agreed in the Affordable Housing Scheme);
- 1.8 will not cause or permit more than 85% of the Market Dwellings in a Phase to be used or Occupied until all of the Affordable Housing Dwellings in that Phase have been constructed and made the same ready for Occupation (unless otherwise agreed in the Affordable Housing Scheme).
- 2 The Owner and the Developer covenant with the District Council that they:
 - 2.1 (subject to the provisions of this part 3(b)) will not use or cause or permit the use of any Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected

thereon for any purpose other than for the provision of Affordable Housing in accordance with this Deed; and

- 2.2 (subject to paragraph 1.6) will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected thereon except to:

2.2.1 the Developer;

2.2.2 the District Council; or

2.2.3 a Registered Provider;

2.2.4 individual owner occupiers of the individual Affordable Housing Dwellings.

- 3 The provisions in this Deed shall not be binding on any Chargee of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such Chargee PROVIDED THAT:

- 3.1 Such Chargee shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Dwellings and shall have used reasonable endeavours over a period of three months from the date of written notice to complete a disposal of the Affordable Housing Dwellings 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

- 3.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the provisions in this Deed which shall determine absolutely.

- 3.3 The provisions of this Deed will not be binding on:

- 3.4 Any owner (including their successors, assignees and chargees and any other party that derives title from them) of a unit which is sold as an Open Market Dwelling pursuant to paragraph 1.6;

- 3.5 any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire (or their mortgagee); or

- 3.6 any owner of Shared Ownership Housing who has staircased up to 100% of the equity in a Shared Ownership Unit (or their mortgagee).

- 3.7 in each case, the successors in title, assigns and those deriving title through or under any person specified in paragraphs 4.1, 4.2 and / or 4.3

- 4 The Owner will not Allocate or cause or permit to be Allocated any of the Affordable Housing Dwellings other than as follows:

- 4.1 the Affordable Rented Units shall only be Allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement; or

- 4.2 the Shared Ownership Housing shall be marketed through the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the relevant criteria shall be considered for the Shared Ownership Housing; or

- 4.3 other criteria or marketing strategy as agreed by the District Council.

- 5 For the avoidance of doubt, if the Affordable Housing Dwellings are vested or transferred to another Registered Provider then the provisions of this Agreement shall continue in respect of such other Registered Provider.

THIRD SCHEDULE

COVENANTS WITH THE COUNTY COUNCIL

Definitions

- 1 In 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):-

Bedroom means a room in a Dwelling designed as a bedroom or study/bedroom 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

"County Council Index Linked" means

- in relation to the Highway Works Contribution adjusted according to any increase occurring between the July 2023 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:

Index 1 Labour & Supervision 25%

Index 2 Plant & Road Vehicles 25%

Index 3 Aggregates 30%

Index 9 Coated Macadam & Bituminous Products 20%

- in relation to the Public Rights of Way Contribution adjusted according to any increase occurring between July 2022 and the date when the relevant payment is made to the County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:

Index 1 Labour & Supervision 25%

Index 2 Plant & Road Vehicles 25%

Index 3 Aggregates

30%

Index 9 Coated Macadam & Bituminous Products 20%

- the Travel Plan Monitoring Contribution adjusted according to any increase occurring between the December 2021 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics.; and
- the Secondary Land Contribution and any Supplemental Payments adjusted according to any increase occurring between November 2020 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics.; and
- the Public Transport Services Contribution adjusted according to any increase occurring between the October 2020 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics.; and
- in relation to the Secondary Education Contribution, the Special Education Contribution and the Waste and Recycling Contribution and any Supplemental Payments made under paragraphs 3.1 adjusted according to any increase occurring between index value 327 and the index value for the quarter period in which the contribution is paid in the BCIS All in-Tender Price Index published by the Royal Institution of Chartered Surveyors

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

"Highway Works Contribution"

the sum of £224,358.97 (Two Hundred and Twenty Four Thousand, Three Hundred and Fifty Eight Pounds and Ninety Seven Pence) County Council Index Linked to be used towards upgrades to the local pedestrian and cycleways serving the Site including segregated cycle routes wherever possible, traffic-free routes, speed reductions to 20mph, protected space for cycling, additional road crossings, and reviewed and improved junctions

Matrix (Education)

Sum

means the sum calculated in accordance with the following formula:

$$£(A \times W) + (B \times X) + (C \times Y) + (D \times Z)$$

When

A means the number of 1 Bed Dwellings

B means the number of 2 Bed Dwellings

C means the number of 3 Bed Dwellings

D means the number of 4 Bed Dwellings

W, X, Y and Z are as set out in the table in Annex 1 to this Schedule

Matrix Sum
(Secondary Land) means the sum calculated in accordance with the following formula:

$$£(A \times P) + (B \times Q) + (C \times R) + (D \times S)$$

When

A means the number of 1 Bed Dwellings

B means the number of 2 Bed Dwellings

C means the number of 3 Bed Dwellings

D means the number of 4 Bed Dwellings

P, Q, R and S are as set out in the table in Annex 2 to this Schedule

"Phase" a phase of the Development identified in the phasing plan approved by the District Council pursuant to the conditions subject to which the Planning Permission is granted or part of such a phase where a Qualifying Application (or as applicable a full planning application) is submitted for such a part of a phase

"Public Rights of Way Contribution" the sum of £60,000 (Sixty Thousand Pounds) County Council Index Linked to be used towards access mitigation measures in the proximity of the Site including surface improvement, signing and furniture along the routes

"Public Transport Services Contribution" the sum of £262,750 (Two Hundred and Sixty Two Thousand Seven Hundred and Fifty Pounds) County Council Index Linked for the provision of bus services serving the Site and extending the service to employment areas in the east of Banbury;

Return means a written return made by the Owner to the Council specifying

1. The total number 1 Bed Dwellings, 2 Bed Dwellings, 3 Bed Dwellings and 4+ Bed Dwellings newly Occupied during the Return Period;
2. The aggregate number of 1 Bed Dwellings, 2 Bed Dwellings, 3 Bed Dwellings and 4+ Bed Dwellings which have been Occupied as part of the Development at the end of the Return Period

Return Dates means the quarter days being the first day of January, first day of April, first day of July and first day of October in each year occurring after the Occupation of the first Dwelling until Returns have been made pursuant to paragraph 4 reporting the

Occupation of all the Dwellings comprised in the Development

Return Period

means the period of 3 months ending on the day before a Return Date but so that the first Return Period will be the period commencing on the Occupation of the first Dwelling and ending on the day before the following Return Day and the final Return Period will be the Return Period ending on the day before the Return Day next following the Occupation of the final Dwelling comprised in the Development

"Secondary Education Contribution"

the sum of £1,994,220 (One Million, Nine Hundred and Ninety Four Thousand, Two Hundred and Twenty Pounds) County Council Index Linked to be used towards secondary school capacity serving the Site payable in two instalments as follows:

- Secondary Education Instalment 1 being 50% of the Secondary Education Contribution;
- Secondary Education Instalment 2 being 50% of the Secondary Education Contribution;

"Secondary Land Contribution"

the sum of £184,560 (One Hundred and Eighty Four Thousand, Five Hundred and Sixty Pounds) County Council Index Linked to be used towards the costs of purchase for land required for secondary education purposes;

"Supplemental Payments (Education)"

means the sum calculated as follows:-

$\text{£}(\text{Me} - \text{P})$ Index Linked

Where Me is the Matrix Sum (Education) applying the total number and type of Dwellings occupied at the relevant Return Date

P is the aggregate of the Secondary Education Contribution and the Special Education Contribution (disregarding adjustments for index linking) made further to clause 2 which have been paid to the County Council at the relevant Return Date

"Supplemental Payments (Secondary Land)"

means the sum calculated as follows:-

$\text{£}(\text{Ms} - \text{P})$ Index Linked

Where Ms is the Matrix Sum (Secondary Land) applying the total number and type of Dwellings occupied at the relevant Return Date

P is the aggregate of the payments made towards the Secondary Land Contribution (disregarding adjustments for index linking)

Supplemental Payment Return Date

means a Return Date where, by applying the information comprised in the Return for the Return Period ending on the day before the Return Date:

- the Matrix Sum (Education) exceeds £2,128,831 and/or
- the Matrix Sum (Secondary Land) exceeds £184,560 (One

Hundred and Eighty Four Thousand, Five Hundred and Sixty Pounds)

"Special Education Contribution"	the sum of £134,611 (One Hundred and Thirty Four Thousand, Six Hundred and Eleven Pounds) County Council Index Linked to be used towards SEND school capacity serving the Site;
"Travel Plan Monitoring Contribution"	the sum of £1,558 (One Thousand, Five Hundred and Fifty Eight Pounds) County Council Index Linked to be used towards monitoring compliance with the Travel Plan;
"Waste Recycling Contribution"	the sum of £23,490 (Twenty Three Thousand Four Hundred and Ninety Pounds) County Council Index Linked to be used towards the expansion and efficiency of household waste recycling centres.

Covenants (Payment)

- 2 The Owner and the Developer covenant with the County Council:
 - 2.1 not to Occupy any Dwellings or cause or permit any Dwellings to be Occupied until:
 - 2.1.1 the Highway Works Contribution;
 - 2.1.2 the Public Transport Services Contribution;
 - 2.1.3 the Public Rights of Way Contribution;
 - 2.1.4 Secondary Education Instalment 1;
 - 2.1.5 the Secondary Land Contribution; and
 - 2.1.6 the Travel Plan Monitoring Contribution;have been paid to the County Council.
 - 2.2 to pay:
 - 2.2.1 the Highway Works Contribution
 - 2.2.2 the Public Transport Services Contribution
 - 2.2.3 the Public Rights of Way Contribution
 - 2.2.4 Secondary Education Instalment 1;
 - 2.2.5 the Secondary Land Contribution; and
 - 2.2.6 the Travel Plan Monitoring Contribution;to the County Council before the first Occupation of any Dwelling.
 - 2.3 not to Occupy or cause or permit to be Occupied more than 75 Dwellings until the Special Education Contribution has been paid to the County Council.
 - 2.4 to pay the Special Education Contribution to the County Council prior to the Occupation of the 75th Dwelling:

2.5 not to Occupy, or cause or permit to be Occupied, more than 100 Dwellings until:

2.5.1 Secondary Education Instalment 2; and

2.5.2 the Waste Recycling Contribution

have been paid to the County Council.

2.6 to pay:

2.6.1 Secondary Education Instalment 2; and

2.6.2 the Waste Recycling Contribution;

to the County Council prior to the Occupation of the 100th Dwelling

3 PAYMENTS COVENANTS

3.1 The Owner covenants to pay to the County Council within 28 days of each Supplemental Payment Return Date a Supplemental Payment calculated by applying the information comprised in the Return for the Return Period ending on the day before that Return Date

4 COVENANTS (NOTIFICATION AND PROVISION OF INFORMATION)

4.1 The Owner covenants with the County Council that within 21 days of each Return Date it will make a Return to the Council

4.2 In the event that the County Council considers that the Owner may have failed to give notification of an event taking place in accordance with clause 12.1.3 or if the Owner fails to make a Return within 21 days of any Return Date or makes a Return which is incomplete:-

4.2.1 The County Council may investigate whether the number and type/size of Dwellings Occupied for the purpose of ascertaining whether or not any of the obligations or restrictions in this Deed have become operative and the owner will pay to the Council the sum of £450 in respect of the costs of each such investigation; and

4.2.2 The due date for any payment due at or before a relevant event specified in clause 12.1.3 takes place will be such date as the Council reasonably selects; and

4.2.3 If the Council reasonably considers that a Return Date is a Supplemental Payment Return Date the relevant Supplemental Payment shall be such sum as the Council reasonably determines and the due date for payment of the relevant Supplemental Payment shall be the Supplemental Payment Return Date and

4.2.4 The provisions of this paragraph 4.2 shall be without prejudice to any other right or remedy of the Council

ANNEX 1

	<u>1 Bed</u>	<u>2 Bed</u>	<u>3 Bed</u>	<u>4 + Bed</u>
Secondary	£0.00	£7,040.79	£9,723.00	£10,728.82
Special Education	£0.00	£487.50	£656.64	£706.38
TOTALS	W= £0.00	X=£7,528.29	Y=£10,388.64	Z=£11,435.20

ANNEX 2

	<u>1 Bed</u>	<u>2 Bed</u>	<u>3 Bed</u>	<u>4 + Bed</u>
Secondary Land	£0.00	£651.61	£899.84	£992.93
TOTALS	P= £0.00	Q=£651.61	R=£899.84	S=£992.93

FOURTH SCHEDULE

DISTRICT COUNCIL'S COVENANTS

Repayment of Contributions

- 1 Subject to paragraph 4 below the District Council covenants with the Owner and Developer to use all sums received from the Owner or Developer under the terms of the Second 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 / or Developer and the District Council shall agree.
- 2 Subject to paragraph 4 below the District Council covenants with the Owner and Developer that following written request from the person who made the relevant payment it will subject to paragraph 4 below, repay to that person such amount of the relevant payment made to the District Council under the terms of the Second Schedule of this Deed in accordance with the provisions of this Deed which has not been expended at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of ten years of the date of receipt by the District Council of such payment. Any contribution or part of a contribution which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the District Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph.
- 3 Subject to paragraph 4 below the District Council shall provide to the Owner and / or Developer such evidence as the Owner and / or Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Owner and / or Developer under the terms of the Second Schedule of this Deed upon a written request by the Owner or Developer such request not to be made more than once in any year.

Thames Valley Police Contribution

- 1 Paragraphs 1 to 3 above shall not apply to the Thames Valley Police Contribution.
- 2 The District Council covenants with the Owner and Developer that it will pass on within 14 days of receipt any sums received as part of the Thames Valley Police Contribution to Thames Valley Police without deduction.
- 3 The District Council covenants with the Owner and Developer that it will use reasonable endeavours to ensure that Thames Valley Police use all sums received under the terms 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 / or the Developer and the District Council shall agree.
- 4 The District Council shall provide to the Owner and / or the Developer such evidence as the Owner shall reasonably require in order to confirm that the Thames Valley Police Contribution has been passed on to Thames Valley Police such request not to be made more than once in any year.

Discharge of Obligations

- 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.

FIFTH SCHEDULE

COUNTY COUNCIL'S COVENANTS

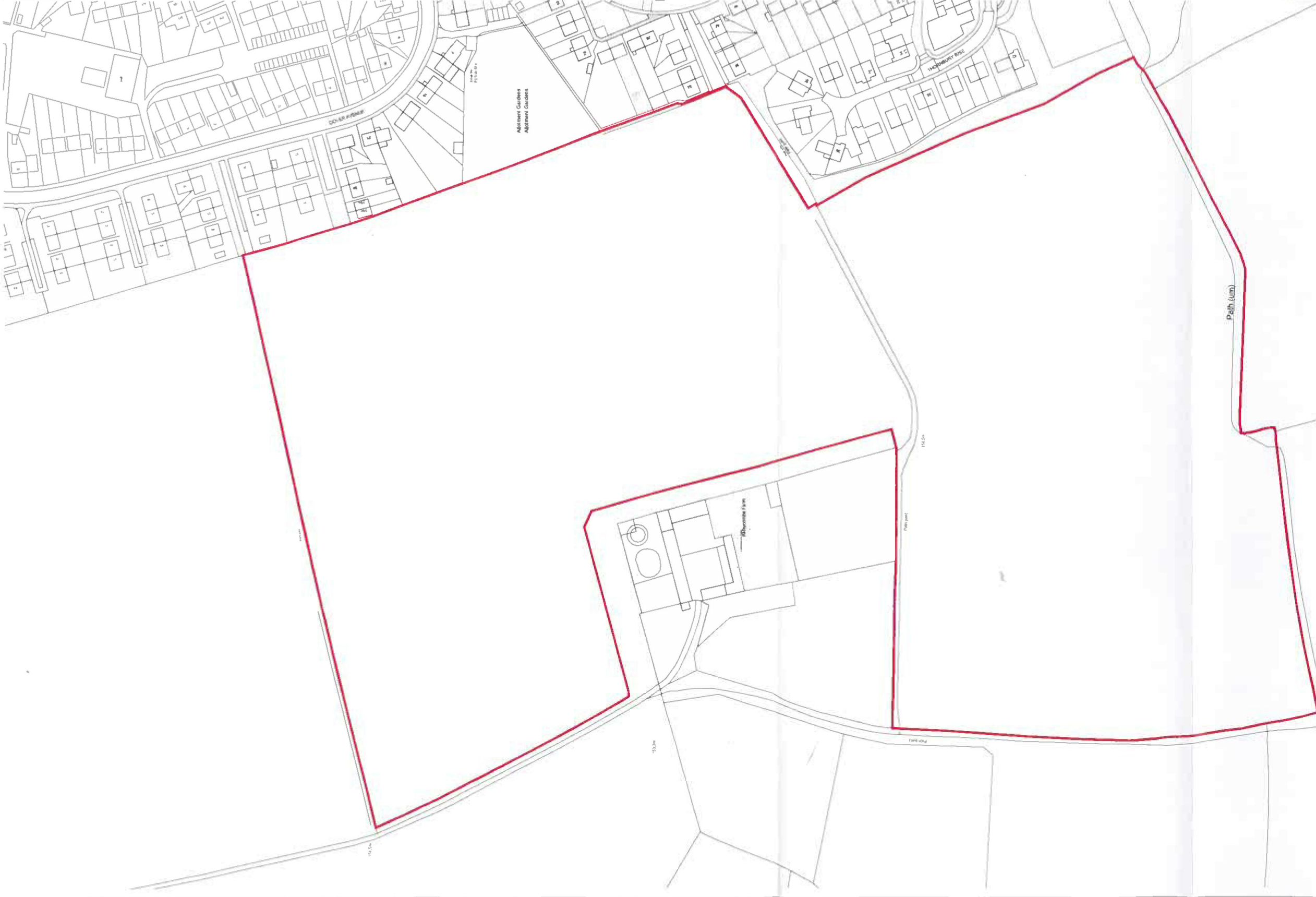
- 1 The County Council covenants with the Owner and the Developer not to use any sums received under the terms of the Third Schedule to this Deed other than for the purposes specified in this Deed for which they are to be paid.
- 2 Following written request from the person who paid it, the County Council will repay to that person the balance (if any) of any contribution which has not been expended 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 from the date of payment of the final instalment of the relevant contribution or if later ten years from expiry of the due date for payment of the final instalment of the relevant 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.
- 3 The County Council shall provide to the Owner and the Developer such evidence as they shall reasonably require in order to confirm the expenditure of any contribution upon receipt of a written request by the Owner or the Developer such request not to be made more than once in any year.

PLAN

ALL DIMENSIONS SHOWN IN METERS
UNLESS OTHERWISE SPECIFIED
DRAWN BY: JCB
DATE: JULY 2023
SCALE: 1:1000 @ A1
DRAWN: FM
CHECKED: JCB

Notes:

KEY
Site Boundary



Withycombe Farm
Banbury
Site Location Plan
DATE: JULY 2023
SCALE: 1:1000 @ A1
DRAWN: FM
CHECKED: JCB



Banbury

BLOOR HOMES
Drawing No. WE102-PD-005

APPENDIX 1

Affordable Housing Dwelling and Tenure Mix

Social Rent (29%)	Unit Type	No.	%	SQM	SQFT
1 bed 2 person Flat (2 Blocks of 6)	Acton	12	55%	50	540
1 bed 2 person Maisonette GF/FF	Symons	8	36%	50/60	540/647
1 bed 2 person Bungalow M4 Cat 3	Tiverton	2	9%	57	613
Total		22	100%		
Affordable Rent (37%)	Unit Type	No.	%	SQM	SQFT
2 bed 4 person House M4 Cat 2	Sansom	14	50%	79	850
3 bed 5 person House M4 Cat 2	Sutherland	11	39%	93	1001
4 bed 6 person House	Scurfield	3	11%	106	1141
Total		28	100%		
Shared Ownership (8%)	Unit Type	No.	%	SQM	SQFT
3 bed 5 person House	Sorley	6	100%	82	885
Total		6	100%		
First Homes (25%)	Unit Type	No.	%	SQM	SQFT
2 bedroom House	Ellyot	19	100%	632	
Total		19	100%		

APPENDIX 2

Estates Service Charge Deed

Dated

20

[PLOT PURCHASER]

AND

[MANAGER]

AND

BLOOR HOMES LIMITED

ESTATE SERVICE CHARGE DEED

relating to Plot [PLOT NUMBER],
[DEVELOPMENT] to be known as [POSTAL
ADDRESS]

THIS DEED is made on the

of

20

BETWEEN:

- (1) [PLOT PURCHASER] (the "Owner"); and
- (2) [MANAGEMENT COMPANY] (Company Number: []) of [] (the "Manager")
- (3) **BLOOR HOMES LIMITED** a company incorporated and registered in England and Wales under number 02162561 whose registered office is at Ashby Road Measham Swadlincote Derbyshire DE12 7JP (the "Developer")

THIS DEED WITNESSES THAT:

1 DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires, the terms used in this Deed which are defined in this clause shall have the meanings assigned to them by this clause.

Accounting Date 31 January in each year unless the Manager specifies otherwise;

Accounting Period the period from [●] in every year during the continuance of this Agreement to the [●] of the following year or such other annual period as the Developer or the Manager may in their discretion from time to time determine as being that in respect of which the accounts relating to the Managed Areas shall be made up;

[Attenuation Features] the attenuation areas including balancing ponds swales ditches infiltration basins soakaways all associated inlet/outlet structures control devices and inspection chambers and/or other areas equipment or facilities forming the surface water attenuation for the Estate which are intended to be maintained by the Manager [and shown for identification purposes coloured [] on Plan 2];

[Authorised Vehicle] a private motor vehicle or motor cycle or light commercial van not exceeding 3000 kg gross laden weight such vehicle to be taxed and in a roadworthy condition and must not exceed 2 metres in height where access is required under a building on the Estate]

[Bin Collection Points] the area designated for the purpose of temporary storage of refuse bins and shown for identification purposes coloured [] and marked "BCP" on Plan 2]

Business Day any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in

the United Kingdom.

Deed of Covenant	a deed substantially in the form of the draft set out in Schedule 3;
Estate	the estate known as [INSERT DEVELOPMENT MARKETING NAME] and now or formerly registered at the Land Registry under title number [INSERT DEVELOPMENT TITLE NUMBER(S)] or such reduced or extended area as the Manager or the Developer may from time to time reasonably and properly designate as comprising the Estate;
Estate Regulations	any reasonable rules directions and regulations as may be published from time to time by the Developer (prior to the Handover Date) or the Manager in respect of the management and operation of the Estate and/or the Managed Areas including but not limited to those matters set out in Schedule 4;
Estate Services	the services details of which are set out in Schedule 1;
Handover Date	the date the Manager first commences the management of the Managed Areas (or any part thereof);
Insured Risks	such risks or perils against the occurrence of which the Manager may from time to time consider reasonably necessary or expedient to insure provided that the insurance against such risks may ordinarily be arranged with an insurer of good repute at a rate which the Manager reasonably considers acceptable and (where applicable) such risks as may be necessary from time to time to satisfy the requirements of the UK Finance Lenders Handbook in force from time to time and subject to such excesses limitations and conditions as the insurer may impose and are usual in the UK insurance market;
[Lease	the lease of the Property to the Owner of even date with this Deed;]
Legal Obligation	any obligation imposed by any present or future statute or any statutory instrument, EU directive, code of practice, regulation, order, notice, direction or requirement of any Relevant Authority;
[Maintained Parking Space	the parking space(s) (if any) which form part of the Property shown edged red and tinted blue on [Plan 1][Plan 2] intended to be maintained by the Manager and "Maintained Parking Spaces" shall mean all such spaces
[Managed Accessway	the accessway [at ground floor level only] shown hatched black [and tinted orange] on [Plan 1][Plan 2] intended to be maintained by the Manager]

Managed Areas

all the areas and facilities forming part of the Estate (but not exclusively) which do not form part of a Unit and which are intended to remain in private ownership and not (for the avoidance of doubt) adopted or intended for adoption by any Relevant Authority and which are used in common by the occupants of the Units including (as the case may be) but not limited to:

- (a) [roads footpaths common car parking areas (if any) accessways access areas forming part of the Estate and any roads footpaths car parking accessways and access areas substituted for them;]
- (b) [all hard and soft landscaped areas and garden areas (if any) forming part of the communal areas of the Estate together with (if any) all play equipment seats litter and/or dog waste bins provided from time to time by the Developer and/or the Manager whether under an obligation contained in the S106 Agreement or otherwise;]
- (c) [all lighting systems lighting columns and any installations ancillary to them (if any);]
- (d) [all Estate boundaries of whatsoever nature not forming part of any of the Units (if any);]
- (e) [all Service Installations but excluding any such Service Installations utilised exclusively by individual Units together with all gates and security systems (if any);]
- (f) [all environmental protection devices of whatsoever nature (if any);]
- (g) [any Bin Collection Points;]
- (h) [the Visitor Parking Spaces]
- (i) [the Managed Parking Space]
- (j) [the Maintained Parking Space]
- (k) [the Managed Accessway]
- (l) [the Attenuation Features;] [and]
- (m) all other equipment cabling metres fixtures fittings and accessories ancillary to the above together with such additional facilities as may be determined from time to time by the Developer (prior to the Handover Date) or the Manager (acting reasonably)

and shown for identification purposes only coloured [] on Plan 2;

[Managed Parking Space

the parking space(s) (if any) as shown edged green on [the Plan 1 or such other space(s) as may be nominated by the Developer or the Manager from time to time and "Managed Parking Spaces" shall mean all such spaces]

Management Agreement

an agreement dated [] and made between (1) the Developer and (2) the Manager relating to (inter alia) the

provision of the Estate Services;

Management Fees

the management fees in respect of each Unit specified in Annexure 3 which are subject only to increases from year to year in line with the annual increase (if any) in RPI or to any statutory restrictions imposed on such fees from time to time;

[Management Scheme

the scheme of management to be agreed by the Developer and Relevant Authority for the future management and maintenance of the Managed Areas [pursuant to [] of the S106 Agreement]];

Management Transfer

the transfer of the Managed Areas (or such relevant parts) to the Manager by the Developer;

New Provider

any company or body appointed by the Developer and/or the Unit Holders from time to time to provide the Estate Services in place of the Manager pursuant to clause 9 of this Deed;

Plan 1

the plan of the Property annexed to this Deed at Annexure 1;

Plan 2

the plan of the Estate showing (inter alia) the Managed Areas annexed to this Deed at Annexure 2 and so numbered;

Planning and Other Requirements

the requirements of any requisite planning permissions or other planning obligations (including but not limited to the S106 Agreement [and any connected [approved] Management Scheme]) and conditions and other covenants or obligations relating to the Managed Areas including any landscaping scheme programme and maintenance specification and all relevant British Standards and Codes of Practice from time to time in force;

Practical Completion

the dwelling comprised within the Property is practically completed (being capable of beneficial use and enjoyment and handed over for occupation as a residential unit)

Property

Plot [], [] to be known as [] and shown edged red on Plan 1 and pursuant to the [Transfer][Lease], now in the ownership of the Owner;

Relevant Authority

the local authority/ies highway authority statutory undertakers water and drainage companies gas electricity oil supply and telecommunications companies or bodies and any other relevant authority company or body and "Relevant Authorities" shall have a corresponding meaning;

Reserve Fund

the funds (if any) from time to time established by the Manager (acting reasonably) to meet the cost of any of the

Estate Services which the Manager reasonably anticipates may be required in the future;

RPI	the United Kingdom General Index of Retail Prices (or in the event that such ceases to be published or if the said Index or the basis on which it is calculated or published is altered to a material extent such other equivalent published index of general prices or the value of money as a substituted index and in that case the substituted index so selected shall thereupon be the RPI for the purpose of this Deed;
S106 Agreement	any agreement/s and/or undertaking/s made or given pursuant to (inter alia) Section 106 of the Town and Country Planning Act 1990 relating to the Estate and/or the Managed Areas and any variation of it/them and any further agreement or undertaking supplemental to it/them;
Service Charge	the costs incurred in connection with the provision of the Estate Services details of which are set out in Schedule 2;
Service Charge Start Date	<p>the later of:</p> <p>(a) the Handover Date or</p> <p>(b) Practical Completion of the dwelling comprised within the Property</p>
Service Installations	all drains channels sewers tanks pipes wires cables water courses soakaways gutters filtration and pumping apparatus plant and machinery rainwater pipes spouts and all apparatus and meters for the supply of water electricity gas telephone or television signals (if any) or for the disposal of foul or surface water and all other conducting media excluding any such service media to the extent the same are intended by the Developer to be or have been at any time adopted by the Relevant Authorities
[Transfer	the transfer of the Property to the Owner of even date with this Deed;]
Unit	any unit of accommodation (whether residential commercial or other use) forming part of the Estate (or as appropriate in the area of the Estate in which the Property is situated) that is sold let or otherwise exclusively occupied or designed or intended for letting or exclusive occupation otherwise than in connection with the provision of Estate Services or Utility Services and "Units" has a corresponding meaning;
Unit Holder	an owner from time to time of any Unit and their lawful tenants and occupiers (including for the avoidance of doubt the Owner) but not the tenant or sub-tenant under a shorthold tenancy or the occupier of affordable housing other than on a shared ownership basis and "Unit Holders"

has a corresponding meaning;

Unit Holder's Percentage a fair and reasonable proportion as conclusively determined from time to time in accordance with clause 4.3 by the Manager (acting reasonably);¹

Utility Services gas, oil, water, electricity, soil (including the disposal of foul and surface water), [sprinkler systems,] telecommunications and any other utilities which now, or may at any time, serve the Property or any part of the Estate;

VAT value added tax or other tax of a similar nature; and

[Visitor Parking Spaces the communal parking spaces intended for use by the Unit Holders and other occupiers of and visitors to of any Units and intended to be maintained by the Manager shown for identification purposes only coloured [] and marked "VP on Plan 2 and reference to "Visitor Parking Space" shall mean any such space.]

1.1 In this Deed unless the context otherwise requires:

- (a) any reference to a "party" or the "parties" is a reference to a party or the parties as the case may be to this Deed;
- (b) any reference to a Clause, Paragraph or Schedule is a reference to a clause or paragraph of or schedule to this Deed so numbered;
- (c) any reference to a statute or statutory provision includes any consolidation, re-enactment modification or replacement of the same and any subordinate legislation in force under the same from time to time;
- (d) any reference to the masculine, feminine or neuter gender respectively includes the other genders references to the singular include the plural and vice versa and references to persons include firms, corporations and unincorporated associations and bodies;
- (e) any covenant by the Owner includes an obligation to use all reasonable endeavours to ensure that all persons under the Owner's control observe or perform that covenant;
- (f) an obligation not to do an act or thing includes an obligation not to permit that act or thing to be done;
- (g) the Manager and the Owner include their respective successors in title and their personal representatives (as the case may be);
- (h) the rights reserved to the Manager are to be construed as extending to any mortgagee of the Manager and to all persons authorised by them; and

¹ This will need to be reviewed/amended where you are proposing to include a service charge cap for RP Units

- (i) wherever there is an obligation imposed upon the Owner to make a payment or provide other consideration then there shall be implied an additional obligation to pay any VAT properly due on that payment or consideration.

2 RECITALS

- 2.1 The Owner is by reason of the [Transfer][Lease] the owner of the Property.
- 2.2 The Developer is the owner of the Estate and is carrying out residential development which includes the provision of the Managed Areas and wishes the Manager to provide the Estate Services in relation to the Managed Areas.
- 2.3 It is intended that:
 - (a) the Managed Areas shall be maintained by the Manager and the Manager will provide the Estate Services for the benefit of the Unit Holders from the Handover Date; and
 - (b) the Developer shall transfer the Managed Areas (or such parts as are intended to be so transferred) to the Manager in accordance with the terms of the Management Agreement.

3 PERFORMANCE OF THE ESTATE SERVICES

- 3.1 The Manager covenants with the Owner and the Developer:
 - (a) to provide or procure the provision of the Estate Services for the benefit of the Estate and the Unit Holders from the Handover Date and to do so in such manner as the Manager (acting reasonably) from time to time considers appropriate in an efficient and economic manner and otherwise in accordance in all respects with the principles of good estate management;
 - (b) to hold all sums paid by way of the Reserve Fund in a separate account and any interest on or income derived from the Reserve Fund shall be held by the Manager on trust for the Unit Holders and which will only be applied towards the cost of the Estate Services;
 - (c) to use all reasonable endeavours to recover the contributions towards the cost of providing the Estate Services which may be due from the other Unit Holders;
 - (d) if required by the Owner for the reasonable protection of the Property to enforce or assist the Owner in enforcing the covenants entered into or to be entered into by a transferee or lessee of any one or more of the other Units PROVIDED THAT the Owner shall (if required) indemnify the Manager against all costs and expenses in respect of such enforcement and provide such security for the said costs and expenses as the Manager may reasonably require; and
 - (e) to take into account any reasonable representations made by or on behalf of the Unit Holders in respect of the provision of the Estate Services.
- 3.2 In providing the Estate Services the Manager may employ such agents, contractors or such other persons at such cost as the Manager may from time to time think fit (acting reasonably).

3.3 The Manager shall not be liable to the Owner or the Developer:

- (a) if an Estate Service is interrupted or not provided because of inspection, maintenance, repair or other works or due to damage breakdown inclement weather fuel or water shortage, non-availability of labour or materials or some other cause beyond the Manager's reasonable control, during such period only as the Manager is aware of the interruption the interruption is not caused by the negligence of the Manager and the Manager is taking all reasonable steps to restore the Estate Service or provide it in an alternative way as soon as reasonably practicable; or
- (b) if an Estate Service is withdrawn, where the Manager reasonably considers it is no longer appropriate having regard to the reasonable interests and requirements of all of the Unit Holders provided that the Manager shall have notified the Owner in writing prior to such Estate Service being withdrawn; or
- (c) if any sums payable by the Owner under this Deed are due but remain unpaid or the Owner is otherwise in material breach of the covenants on its part contained in this Deed; or
- (d) if the Management Agreement has been terminated by the Developer or the Unit Holders have exercised their right to appoint a New Provider; or
- (e) if for any other reason the Manager ceases to be the party responsible for providing the Estate Services pursuant to this Deed.

3.4 The Manager shall (acting reasonably) have authority from the Handover Date to make and at any time vary such Estate Regulations as it may think fit for the preservation of the Managed Areas or for the general convenience of the Unit Holders.

3.5 The Manager shall at the request of the Developer enter into the Management Transfer upon the terms and conditions set out in the Management Agreement.

3.6 Where the Manager is the owner of the Managed Areas the Manager shall not sell or dispose (here meaning a freehold sale or the grant of a registrable lease) of the whole or any part of the Managed Areas without:

- (a) simultaneously procuring that the transferee or lessee provides a completed deed of covenant in favour of the Owner by which the transferee or lessee covenants to observe the obligations and covenants of the Manager contained in this Deed insofar as they relate to the part disposed of (including this covenant); and
- (b) thereafter delivering such deed of covenant to the Owner.

4 PAYMENT OF THE UNIT HOLDER'S PERCENTAGE

The amount from time to time to be paid by the Owner by way of the Unit Holder's Percentage of the Service Charge shall be assessed and paid according to the following provisions:

4.1 Service Charge on Account

- (a) The Manager will on or before the commencement of each Accounting Period make and notify in writing to the Owner an estimate of the Manager's anticipated expenditure

during that Accounting Period in respect of the Service Charge and the amount and fair and reasonable proportion thereof attributable to the Property.

- (b) The Owner shall pay the Unit Holder's Percentage of the Service Charge so assessed under clause 4.1(a) above on [1 February] in each year (or at such frequency as may be agreed with the Manager pursuant to clause 4.1(c) the first payment whereof shall be made on the Service Charge Start Date in respect of the period from the Service Charge Start Date to the next Accounting Date (including any sums to be collected in respect of the Reserve Fund for the following Accounting Period) and being an apportionment calculated on a daily basis in respect of such period.
- (c) In the event of any unanticipated Service Charge expenditure that cannot prudently be postponed the Manager may levy one or more exceptional additional advance payments on account of the Service Charge which the Owner shall pay within twenty Business Days of demand in writing.
- (d) The Owner may make an application to the Manager to request that the payments to be made by the Owner set out in clause 4.1(b) may be paid by monthly instalments and the Manager shall (acting reasonably) accept such request.

4.2 Balancing Payment

- (a) As soon as reasonably practicable following the end of each Accounting Period the Manager will prepare and deliver to the Owner a statement of the actual Service Charge for that Accounting Period and of the sum determined by the Manager's surveyor to be payable by the Owner as being the proper proportion of the Service Charge attributable to the Property for that Accounting Period (which proportion shall in the absence of special circumstances be the Unit Holder's Percentage).
- (b) The statement to be provided pursuant to clause 4.2(a) shall summarise the Service Charge to which it relates and set out in reasonable detail the relevant heads of expenditure. There is then to be deducted (in each case net of any tax):
 - (i) any income derived or contributions payable by third parties for the provision of an Estate Service the cost of which is included as a Service Cost;
 - (ii) any interest earned on advance payments of Service Charge made by the Owner and similar payments in relation to other Units at the Estate; and
 - (iii) any interest on late advance payments of Service Charge made by the Owner and similar payments of interest in relation to other Units at the Estate,during the Accounting Period.
- (c) If any sum expended or liability incurred during the Accounting Period is omitted from the relevant certificate the Manager is not prevented from including that sum or liability in the certificate for the subsequent (but not any later) Accounting Period.
- (d) If any costs (including without limitation any costs of rectifying damage or vandalism) is omitted from the Service Charge in any Accounting Period the Manager shall be entitled to include it in the Service Charge for the following Accounting Period
- (e) The Owner will within 21 days of receipt of a demand from the Manager pay to the

Manager any balance shown by such statement to be due from the Owner as being in excess of the aggregate amount of the Service Charge paid by the Owner during that Accounting Period and in the event of the aggregate amount so paid by the Owner exceeding the proportion of the Service Charge shown in such statement to be properly attributable to the Property for that Accounting Period the Manager shall credit the amount of the excess by way of set-off against the next instalment payable by the Owner under clause 4.1(b) above.

- (f) The Owner is entitled for a period of four months after the account is submitted to it to raise any reasonable enquiries in relation to the account (with which the Manager shall promptly deal).
- (g) The Parties agree that the Service Charge is deemed to accrue on a day to day basis in order to ascertain the yearly rates for it and for the purpose of apportionment in respect of any periods of other than one year.

4.3 Variations to Service Charge

- (a) The Manager may adjust the Unit Holder's Percentage of the Service Charge payable from time to time to make fair and reasonable allowances for any differences in Estate Services provided to or capable of benefitting particular Units within the Estate.
- (b) If additional Estate Services beyond those listed in Schedule 1 are provided at the request of a particular Unit Holder and such additional Estate Services are agreed with the Manager and those particular Units (or parts of Units) that have requested such Estate Services (acting reasonably) the Manager may exclude from the Service Charge for those Units who do not derive any benefit from such Estate Services the cost of providing the relevant additional Estate Services and charge it directly to the relevant Unit Holders in proportions according to their benefit and use and where such costs are charged to the Owner it must pay the relevant sum (or a fair and reasonable proportion of the sum where such costs are provided to the Owner and other occupier(s) or other Unit(s) of the Estate) to the Manager within fifteen (15) Business Days of demand.
- (c) In the event of the Estate being altered added to extended or redeveloped the Service Charge and the Unit Holder's Percentage payable in respect of the Property may be adjusted in such manner as the Manager's surveyor shall determine to be fair and reasonable.
- (d) The Manager may from time to time operate the Service Charge provisions in this Deed by reference to any separate area or phase of the development of the Estate (rather than by reference to the Estate as a whole) if the Manager or the Developer reasonably considers it desirable so to do having regard to the more efficient and economical management of the Estate.

4.4 Items comprised in Service Charge

- (a) The Manager will use reasonable endeavours to maintain the Service Charge at the lowest figure reasonably practicable and which is consistent with the due performance and observance of its obligations hereunder and resulting from any consultation with residential tenants as required under s.20 of the Landlord and Tenant Act 1985 (as amended) but the Owner shall not be entitled to object to any item comprised therein by reason only that the materials work or service in question might then have been provided or performed at a lower cost (other than to the extent that the Manager is in breach of its express obligations contained in this clause 4).

(b) If the Owner shall at any time object to any item of the Service Charge as being unreasonable then:

- (i) the Owner shall first serve a written notice on the Manager setting out its reasonable objections
- (ii) in the event that the Owner and the Manager are unable to reach agreement within 40 (forty) Business Days of receipt of the notice from the Owner, then the Owner may refer the matter in dispute for determination by the President (or failing him the person delegated to act in his place) for the time being of the Royal Institution of Chartered Surveyors to nominate a person ("the Expert") considered by the appointor in his sole discretion to be suitably qualified and experienced to determine disagreements between the parties as to such matters as usually and properly fall to be determined by a Chartered Surveyor ("the Issues") and the Expert shall act as an expert and not as an arbitrator and whose decision shall be final and binding;
- (iii) the Expert shall give notice in writing of his nomination to both the Owner and the Manager inviting each of them to submit to him within a specified period (which shall not exceed twenty (20) Business Days) a statement of reasons and shall consider any reasons submitted to him within (but not after the expiration of) twenty (20) Business Days but he shall not in any way be limited or fettered by any statement of reasons submitted to him and he shall determine the Issues in accordance with his own judgement and opinion and shall notify his determination to the Owner and the Manager in writing as soon as is practicable after his appointment;

PROVIDED THAT if the Expert shall die or unreasonably delay or become unwilling to act or incapable of acting the President (or failing him the person designated to act in his place) for the time being of the Royal Institution of the Chartered Surveyors shall at the request of either the Owner or the Manager by writing discharge the Expert and nominate another person to act in his place who shall proceed as if there had been no prior nomination; and

- (iv) the fees and expenses of the Expert shall be paid in the proportions or shares determined by the Expert.

PROVIDED THAT any objection by the Owner shall not affect the obligation of the Owner to pay to the Manager the Unit Holder's Percentage in accordance with clause 4.2(d) and after the decision of any person appointed as aforesaid any overpayment by the Owner shall be credited against future payments due from the Owner to the Manager under the terms of clause 4.

4.5 VAT

All payments to be made by the Owner pursuant to this clause 4 are inclusive of VAT (to the extent that the same shall be permissible by law). Any VAT incurred by the Manager in connection with any Service Charge items shall itself form part of such costs.

4.6 Interest

If any sums due to be paid by the Owner under the terms of this Deed or any part of them shall be unpaid within 21 days after becoming payable the Owner shall pay to the Manager interest upon such sum or sums as shall remain unpaid at the rate of two percent (2%) per annum above the base rate (or its equivalent) from time to time of the Bank of England calculated on a

day to day basis from the date of the same becoming due down to the date of payment but without prejudice to the operation of any other right of the Manager in respect of non-payment of such sums.

4.7 Voids

The Developer shall for so long as any part of its Estate comprising Units remain vested in the Developer pay to the Manager from the Handover Date such parts of any costs and expenses incurred by the Manager in providing procuring and performing the Estate Services as if the Developer had entered into a deed in like terms to this deed in respect of the Units remaining vested in the Developer and for the avoidance of doubt the Developer shall be automatically released from its obligations under this clause 4.7 once it has parted with its interest (at arm's length) in the relevant Unit.

4.8 Generally

Subject to the preceding provisions of this clause 4 above in carrying out the Estate Services the Manager will:

- (a) act in good faith;
- (b) act in accordance with the principles of good estate management; and
- (c) do so:
 - (i) to a reasonable standard;
 - (ii) in a reasonably efficient and economic manner; and
 - (iii) so that only items beyond economic repair are renewed or replaced.

4.9 Rent Charge Act 1977 and Section 121 Law of Property Act 1925

The Manager, the Owner and the Developer agree that the Service Charge shall not be treated as a rent charge under the Rent Charge Act 1977 but in the event that a court determines that the Service Charge is deemed a rent charge under the Rent Charge Act 1977, then the following provisions shall apply:

- (a) the Manager and the Developer agree that the right of re-entry under section 121(3) of the Law of Property Act 1925 and the right of a rentcharge lease under section 121(4) of the Law of Property Act 1925 are excluded from the provisions of this Deed; and
- (b) the Manager shall give at least six (6) weeks' notice to any mortgagee of the Property (whose interest has been notified to the Manager in writing) if the Unit Holder's Percentage of the Service Charge is unpaid within three (3) months after the date that the payment has been demanded

5 REGULATIONS

The Owner covenants with the Manager at all times to observe and perform and to procure that those from time to time deriving title under the Owner shall fully observe and perform the Estate Regulations.

6 MANAGER'S RIGHTS OF ENTRY

The Owner hereby grants the Manager in fee simple a right with employees and agents (except in an emergency when no such notice shall be required) at all reasonable times on reasonable notice (of at least 48 hours except in an emergency when no such notice shall be required) to enter upon such unbuilt parts of the Property to the extent necessary to enable the Manager to comply with its covenants and obligations in this Deed.

7 SALES BY THE OWNER

7.1 The Owner covenants with the Manager and the Developer so as to benefit the Managed Areas not to transfer or grant a registrable lease [²save for the grant of a shared ownership lease until such time as the shared ownership tenant staircases to 100% ownership {and acquires the freehold interest in the Property}] of the whole or any part of the Property without:

- (a) simultaneously with such transfer or lease:
 - (i) making payment of any part of the Unit Holder's Percentage of the Service Charge which remains in arrears and any other sums which have fallen due and remain outstanding under this Deed prior to the date of such disposal;
 - (ii) procuring that the transferee or lessee enters into a Deed of Covenant in favour of the Manager and the Developer and (where a New Provider is appointed pursuant to clause 9 of this Deed) the New Provider by which the transferee or lessee covenants to observe the obligations and covenants of the Owner contained in this Deed insofar as they relate to the part disposed of (and such deed shall include an application to enter a restriction on the relevant title of the transferee or lessee in terms similar to the restriction set out in clause 7.2 of this Deed); and
 - (iii) paying the Manager or (where a New Provider is appointed pursuant to clause 9 of this Deed) the New Provider (or the solicitors acting on its behalf) its proper and reasonable legal and administrative fees (which at the date of this Deed are set out in Annexure 3 and subject only to increases from year to year in line with RPI or to any statutory restrictions imposed on such fees from time to time); and
- (b) thereafter delivering such completed Deed of Covenant to the Manager or (where appropriate) the New Provider

7.2 The parties hereby apply to the Chief Land Registrar for the entry of the following restriction upon the proprietorship register of the title number allocated to the Property as follows:

["No transfer or lease of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions

² Shared ownership leases to be carved out until full staircasing has been achieved for Housing Association Plots

of clause 7.1 of the Estate Service Charge Deed dated 20[]
made between (1) [Plot Purchaser] and (2) [] and (3) Bloor Homes Limited have been
complied with or that they do not apply to the disposition.”]

8 TRANSFER OF THE MANAGED AREAS

The Owner acknowledges the right of the Developer following the Handover Date to transfer the Managed Areas to the Manager in whole or in such phases as the Developer and the Manager shall agree from time to time.

9 APPOINTMENT OF A NEW PROVIDER;

9.1 If:

- (a) the Manager goes into liquidation for any reason (whether compulsory or voluntary) or
- (b) the Manager fails in a material way to observe and perform its covenants under this Deed or any management agreement entered into with the Developer; or
- (c) not less than 51% of the Unit Holders vote in favour of appointing a New Provider

then and in any such case the Owner will join with the Unit Holders of the other Units in arranging for the carrying out of the Estate Services subject to the Owner contributing an appropriate part of the expense of so doing in accordance with the provisions of this Deed

9.2 For the avoidance of doubt:

- (a) where a Unit Holder constitutes two or more persons jointly, then only one of the persons whose name appears on the registered title to the Property shall be entitled to exercise a right to vote pursuant to paragraph 9.1(c) above;
- (b) [subject to paragraph (c) below,] where a Unit comprises an affordable housing dwelling then the registered provider of that Unit shall be entitled to exercise a right to vote pursuant to paragraph 9.1(c) above in respect of each Unit it owns
- (c) [where a Unit Holder is a tenant under a shared ownership Unit and that tenant has staircased to 100% ownership then only the shared ownership tenant shall be entitled to exercise a right to vote pursuant to paragraph 9.1(c)]

9.3 If a New Provider is appointed pursuant to clause 9.1 then the Owner will join with the other Unit Holders on the Estate in arranging for the substitution of the Manager by the New Provider including (without limitation) entering into appropriate deeds whereby the New Provider covenants with each Unit Holder to observe and perform the covenants and obligations of the part of the Manager contained in this Deed and the Owner covenants with the New Provider to observe and perform the covenants conditions and obligations on the part of the Owner set out in this Deed in favour of the Manager and if called upon to do so the Owner shall release the Manager from all its obligations under this Deed to the intent that no right of action shall from the date of the appointment of the New Provider subsist as between the Owner and the Manager

9.4 The provisions of clauses 9.1 to 9.3 shall apply mutatis mutandis to appointments of any New Provider during the term of such appointment

10 NOTICE OF DEED

- 10.1 The Owner consents to the noting of this Deed in the charges register of the title of the Property.
- 10.2 The parties hereto hereby jointly apply to the Registrar to make such entries upon the registers of the title to the Property as may be required to give effect to the provisions of this Deed.

11 THIRD PARTIES ACT

Except as permitted prior to the coming into force of the Contracts (Rights of Third Parties) Act 1999 the parties to this Deed do not intend that any of its terms shall be enforceable by any third party PROVIDED THAT any New Provider who may from time to time be appointed in place of the Manager to carry out of the obligations on behalf of the Manager contained in this Deed shall have the benefit of the right to enforce the covenants given by the Owner under this Deed pursuant to that Act.

12 GOVERNING LAW

This Deed shall be governed by and construed in accordance with English law.

SCHEDULE 1

Estate Services³

The Estate Services are all services that the Manager provides or arranges to be provided in the management and maintenance of the Managed Areas including (without limitation):

1 Repairs, maintenance and cleaning

Repairing, resurfacing, cleaning, lighting, landscaping, maintaining, renewing and replacing (where appropriate) the Managed Areas and generally keeping them in a safe neat and tidy condition and (where appropriate) in good repair.

2 Insurance

Insuring the Managed Areas against the Insured Risks (where appropriate).

3 Staff

(a) Providing all staff and other personnel as the Manager shall reasonably consider necessary for the efficient maintenance and management of the Estate and the Managed Areas.

(b) Providing lighting, maintenance and repair of all storage areas provided for the use of any employees or contractors of the Manager or otherwise used in connection with the provision of the Estate Services (if any).

4 Compliance with Legal Obligations

Carrying out any work involved in complying with every notice, regulation or order of any Relevant Authority in relation to the Managed Areas.

5 Management Costs

Administering and managing the Estate and the Managed Areas and employing any solicitor, accountant, surveyor, valuer, agent or architect or other professional or any of them whom the Manager may from time to time reasonably require to be retained in connection with the management or maintenance of the Estate and the Managed Areas including the preparation of statements of costs, charges and expenses and auditing the same (but excluding the costs incurred in the collection of rents and other sums due from the Unit Holders).

6 Pest control

Providing pest control services as the Manager reasonably considers appropriate to the Managed Areas.

³ NB: This assumes each plot is paying the same level of service charge. If the Development has a tiered service charge, you need to consider whether the Schedule needs to be amended so it splits the "Estate Services" from any other tiered services to be provided

7 Litter

Collecting litter at such times and using such staff as the Manager reasonably considers appropriate to the Managed Areas.

8 Compliance with Planning and Other Requirements

Implementing and thereafter maintaining [the Management Scheme] the facilities required to be implemented or provided on the Estate pursuant to the Planning and Other Requirements.

9 Estate Regulations

Preparing and supplying to the Unit Holders copies of any Estate Regulations the Manager makes from time to time.

10 Other services

Providing such services of any kind whatsoever which the Manager may from time to time reasonably and properly consider necessary or expedient for the purpose of maintaining the Estate and the Managed Areas in the interests of the Owner or other Unit Holders.

SCHEDULE 2

(The Service Charge)

- 1 The Service Charge includes all costs reasonably and properly incurred by the Manager in providing the Estate Services including (without limitation):
- (a) all charges for the supply of Utility Services used in providing Estate Services or otherwise consumed in the Estate for the benefit of the Owner or occupiers as a whole;
 - (b) the cost of the supply of any fuel or other power used in providing Estate Services or otherwise consumed in the Estate for the benefit of the Owner or occupiers as a whole;
 - (c) the cost of providing (including by leasing), maintaining and renewing equipment and materials to provide Estate Services;
 - (d) the cost of engaging contractors to perform Estate Services;
 - (e) the costs of health and safety inspections, audits and risks assessments in respect of the Managed Areas;
 - (f) the premiums payable (including any tax payable on the insurance premiums) and all associated costs of effecting and maintaining insurance of the Managed Areas (or such parts of the Managed Areas as the Manager may from time to time reasonably determine it appropriate to insure against the Insured Risks) with insurers of repute for their full reinstatement cost (including the cost of demolition and site clearance, VAT and architects', surveyor's and other professional fees and an appropriate allowance for inflation) and the amount of any excess payable in the event of a claim;
 - (g) the premiums payable (including any tax payable on the insurance premiums) and all associated costs of effecting and maintaining such other insurances as the Manager may from time to time reasonably determine to be appropriate including (without limitation) insurance against property owner's public liability, insurance against employer's liabilities and in each case the amount of any excess payable in the event of a claim;
 - (h) any interest commission banking charges and account operating costs incurred in relation to the provision of Estate Services;
 - (i) commitment fees, interest and any other cost of borrowing money where necessary to finance the provision of Estate Services;
 - (j) the Management Fees;
 - (k) the cost of preparing and certifying the Service Charge accounts;
 - (l) any fees in connection with abating any nuisance and executing such works as may be necessary for complying with any notice served by a local authority in connection with the Managed Areas or any part thereof insofar as the same is not the liability of or attributable to the Unit Holders;

- (m) the fees charges expenses and commissions payable on a full indemnity basis to any professional advisers whom the Manager may from time to time employ (where reasonably and properly required) in connection with the management of the Estate and the provision of the Estate Services;
- (n) the sums to be paid to the Reserve Fund which the Manager (acting reasonably) deems desirable for the future provision of periodically recurring items whether recurring at regular or irregular intervals and the replacement repair or renewal of items the expenditure on which items would fall within the Service Charge;
- (o) all existing and future rates include water rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary parochial local statutory bank or of any other description) including all payments whether direct or indirect towards or in connection with the carrying out of all or any part of the Estate Services;
- (p) VAT (or other tax) where chargeable on any of the Service Charge to the extent that it cannot be recovered by the Manager; and/or
- (q) improvement costs above the costs of normal maintenance, repair or replacement where such improvements have been agreed by at least 51% of the Unit Holders on the Estate unless incurred in order to comply with the requirements of a Relevant Authority or other Legal Obligation for the greater amenity of those using the Estate or for the more efficient management or maintenance of the Estate;
- (r) all other reasonable and proper expenses (if any) incurred by the Manager:
 - (i) in and about the maintenance and proper and convenient management and running of the Managed Areas including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Managed Areas (except in so far as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable for them);
 - (ii) as to any interest paid on any money borrowed by the Manager to defray any expenses incurred by it and specified in this Schedule or otherwise in the operation of any bank or trust fund account in connection with the Managed Areas; and/or
 - (iii) as to any legal or other costs reasonably and properly incurred by the Manager and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any transfer or lease of any of the Units or any claim by or against any Unit Holder agent or visitor or by any third party against the Manager as owner of the Managed Areas.

2 For the avoidance of doubt, Service Charge shall not include:

- (a) any initial costs (including leasing of initial equipment) incurred in relation to the original design and/or construction by the Developer of the Managed Areas (including the costs of remedying any defects in the original construction of the Managed Areas by the Developer which are identified during the defects liability period pursuant to the building contract relating to the initial construction of the Managed Areas) or of repairing any damage to the Managed Areas caused by construction traffic or machinery carrying out works by or on behalf of the Developer on the remainder of the Estate or adjoining land, such costs to be borne by the Developer;

- (b) any setting up costs reasonably considered part of the original development cost of the Managed Areas;
- (c) costs of any future redevelopment of the Estate;
- (d) any costs that are properly considered matters between the Manager and a Unit Holder relating to the cost of enforcing covenants for payment of rent, dealing with rent reviews or consents for assignments, underlettings and alterations;
- (e) costs of any Estate Services provided at the request of a particular Unit Holder excluded from the Service Charge in accordance with the provisions of this Deed;
- (f) any insurance costs that are properly recoverable by the Manager from an individual Unit Holder other than as part of the Service Charge;
- (g) the cost of making good any damage caused to or defect in the construction of the Managed Areas which is recoverable by the Manager under any insurance policy effected by the Manager or recovered by the Manager under the provisions of any building contract (or any other contract) relating to the initial construction of the Managed Areas and the Manager shall use reasonable endeavours to recover under its insurance policy and to enforce its remedies under any such building contract in relation thereto; or
- (h) any costs arising from any act, default, omission or negligence of the Manager or its managing agents.

SCHEDULE 3

Draft Deed of Covenant

THIS DEED of COVENANT is made on

BETWEEN

- (1) [] of [] ("the New Owner")
- (2) [] (Company Number: []) whose registered office is at [] ("the Manager")
- (3) **BLOOR HOMES LIMITED** (Company Number: 02162561) whose registered office is at Ashby Road, Measham, Swadlincote, Derbyshire DE12 7JP ("the Developer")

THIS DEED WITNESSES THAT:

1 DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires, the terms used in this Deed which are defined in this clause shall have the meanings assigned to them by this clause.

Covenantor	[Plot Purchaser]
Estate	the estate known as [] of which the Property forms part
Estate Service Charge Deed	the estate service charge deed dated [] made between (1) the Covenantor and (2) the Manager and (3) Bloor Homes Limited in respect of the Property
Principal [Transfer][Lease]	a [transfer][lease] of the Property made between (1) Bloor Homes Limited and (2) the Covenantor and dated []
Property	Plot [] on the Estate now known as [Postal Address]

2 RECITALS

- 2.1 By the Principal [Transfer][Lease] the Property was transferred to the Covenantor.
- 2.2 Simultaneously with the completion of the Principal [Transfer][Lease] the Covenantor entered into the Estate Service Charge Deed under which the Manager agreed to provide the Estate Services (as so defined in the Estate Service Charge Deed) subject to the Covenantor observing and performing its obligations under the Estate Service Charge Deed.

2.3 The Estate Service Charge Deed included a covenant not to transfer the Covenantor's interest in the Property without first procuring that each new owner of the Property entered into a deed of covenant with the Manager and the Developer to observe and perform the Covenantor's obligations under the Estate Service Charge Deed.

2.4 By a transfer of the Property from [] to the New Owner having the same date as this Deed of Covenant the Property has been transferred to the New Owner.

3 NEW OWNER'S COVENANTS

3.1 The New Owner with effect from the date of this Deed covenants with the Manager and the Developer that the New Owner will observe and perform the covenants on the part of the Covenantor contained in the Estate Service Charge Deed to the same extent as if the New Owner had been the Covenantor;

3.2 The New Owner shall procure that the restriction set out in clause 7.2 of the Estate Service Charge Deed remains registered against the title to the Property.

4 THIRD PARTIES ACT

Except as permitted prior to the coming into force of the Contracts (Rights of Third Parties) Act 1999 the parties to this Deed do not intend that any of its terms shall be enforceable by any third party.

5 GOVERNING LAW

This Deed shall be governed by and construed in accordance with English law.

SIGNED AS A DEED

by the New Owner in the

presence of:

[END OF DEED OF COVENANT]

SCHEDULE 4

Estate Regulations

- 1 Not to damage or remove any trees and/or shrubs or flowers which may be planted on the Managed Areas and which are situated on the boundary of the Property.
- 2 Not to damage or interfere with any statues, ornaments, garden furniture or public works of art situated on the Managed Areas.
- 3 Not to play any games on the Managed Areas which may interfere with or cause any damage, actionable nuisance or annoyance to the owners and occupiers of any other properties on the Estate.
- 4 Not to drive or ride any vehicle upon any part of the Managed Areas which are designated at any time by the Manager as pedestrian areas.
- 5 Not to leave any motor vehicle on any part of the Estate (including the Managed Areas) so as to cause an obstruction or nuisance to any other owner or occupier within the Estate.
- 6 Not to obstruct or permit to be obstructed any of the Managed Areas.
- 7 Not to store any bicycles, push chairs, goods or other chattels on any Managed Areas.
- 8 Not to do or permit to be done any act or thing in or upon the Property or any part of it or any part of the Managed Areas which may render void or voidable any policy of insurance of the Managed Areas or may operate to increase the premium payable in respect of it.
- 9 Not to do or use or suffer to be done upon the Property anything which may be or may become an annoyance nuisance danger damage or disturbance to the Manager or any transferee or lessee of any other part of the Estate or which may give rise to a public or private nuisance
- 10 Not to deposit refuse upon or otherwise exercise any rights which they may have over the Managed Areas in such manner so as to cause any nuisance or prejudice to the Managed Areas or any part of it or to prejudice or adversely affect the efficient and economic carrying out by the Manager of any part of its management operations in respect of it.
- 11 Not to exercise any rights of access over the Managed Areas or any part of it during a period where such rights may be suspended by the Manager at its absolute discretion during the carrying out of any works or maintenance to the Managed Areas
- 12 Not to use the Managed Areas except for the purposes for which they have been or will be laid out or provided but in any event for or as ancillary to reasonable domestic and recreational purposes only
- 13 Not to allow any dogs on the Managed Areas unless they are on a lead and kept under control at all times.
- 14 [Not to park anything on [a Visitor Parking Space][the Maintained Parking Space][[or][the Managed Parking Space] except an Authorised Vehicle].

IN WITNESS of which each party has duly executed this Deed as a deed on the date first above written

SIGNED as a DEED by

[PLOT PURCHASER]

.....

(Owner)

in the presence of:

Signature of witness

Name (in BLOCK CAPITALS)

Address

.....

Occupation.....

SIGNED as a DEED on behalf of

[MANAGER] acting by its attorney

.....

Attorney

in the presence of:

Witness Signature:

.....

Witness Name (in BLOCK CAPITALS):

.....

Witness Address:

.....

.....

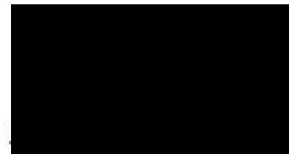
Witness Occupation:

.....

SIGNED as a **DEED** on behalf of

BLOOR HOMES LIMITED acting by its attorneys

AUTHORISED SIGNATORY
RICHARD GADD



Attorney

in the presence of:

Witness Signature:



Witness Name (in BLOCK CAPITALS):

Adam Lowe
Trainee Accounts Assistant
Bloor Homes Limited
Ashby Road
Measham
Swadincote
Derbyshire DE12 7JP

Witness Address:

Witness Occupation:

Michael Nash
Authorised Signatory



Attorney

Witness Signature:



Witness Name (in BLOCK CAPITALS):

Adam Lowe
Trainee Accounts Assistant
Bloor Homes Limited
Ashby Road
Measham
Swadincote
Derbyshire DE12 7JP

Witness Address:

Witness Occupation:

ANNEXURE 1

Plan 1 – The Property

ANNEXURE 2

Plan 2 – Managed Areas

ANNEXURE 3

Manager's Fees⁴

Description	Charge

⁴ To be agreed with the Manager on each site – to include re-sale, consent and notice fees which the Manager intends to charge

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:-)



County Solicitor /Designated Officer



Signed as a deed by
BLOOR HOMES LIMITED
acting by its Attorneys

AUTHORISED SIGNATORY

.....**RICHARD GARDNER**.....
(Print name) (Sign name)

in the presence of:

Name of witness Block capitals:

Address:

Michael Nash
Authorised Signatory

.....
(Print name) (Sign name)

in the presence of:

Name of witness Block capitals:

Address:

.....
.....
.....

.....
(Signature of witness)

..... Adam Lowe
..... Trainee Accounts Assistant
..... Bloor Homes Limited
..... Ashby Road
..... Measham
..... Swadlincote
..... Derbyshire DE12 7JP

.....
.....
.....
(Signature of witness)

..... Adam Lowe
..... Trainee Accounts Assistant
..... Bloor Homes Limited
..... Ashby Road
..... Measham
..... Swadlincote
..... Derbyshire DE12 7JP

THE COMMON SEAL of
PRESIDENT, FELLOWS AND SCHOLARS OF THE
COLLEGE OF THE HOLY AND UNDIVIDED TRINITY
IN THE UNIVERSITY OF OXFORD OF THE FOUNDATION
OF SIR THOMAS POPE, KNIGHT, DECEASED
was affixed in the presence of:

)
)
)
)
)
)
)

President

Estate Bursar

