

Dated 13<sup>th</sup> MARCH 2024

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CHERWELL DISTRICT COUNCIL (1)

AND

OXFORDSHIRE COUNTY COUNCIL (2)

AND

DEBORAH ANN DAVIES (3)

AND

WATES DEVELOPMENTS LIMITED (4)

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**SECTION 106 AGREEMENT**

**Planning Obligation by Deed under Section 106  
of the Town and Country Planning Act 1990 (as  
amended)**

**relating to land south of Green Lane,  
Chesterton**

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THIS DEED is dated

13<sup>th</sup> MARCH

2024

**PARTIES:**

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, 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) **DEBORAH ANN DAVIES** of 20 Rectory Close, Wendlebury, Bicester OX25 2PG (the "Owner");  
and
- (4) **WATES DEVELOPMENTS LIMITED** (Co. Regn. No. 00441484) of Wates House, Station Approach, Leatherhead, Surrey KT22 7SW (the "Developer").

**BACKGROUND:**

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the county planning authority and accordingly a local planning authority for the purposes of the Act for the area in which the Site is situated; the local highway authority and the traffic authority for the purposes of the Highway Act 1980, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004; the education authority and waste management authority and has powers and duties in respect of education, waste disposal, highways, transport and the regulation of traffic.
- (C) The Owner is the freehold owner of the Site registered at the Land Registry under Title Number ON195777 and such title is free from encumbrances save for the registration of the option set out in Recital D below.
- (D) The Developer has entered into an agreement to acquire the Site dated 21 December 2018.
- (E) The Developer submitted the Application for the Development and the District Council refused to grant planning permission for the Application on 14 July 2023.

- (F) The Developer lodged the Appeal with the Planning Inspectorate and the Planning Inspectorate issued a start date for the Appeal of 2 November 2023.
- (G) In the event the Secretary of State grants the Appeal the obligations in this Deed will become binding and will be enforceable by the District Council and/or the County Council.
- (H) The parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the District Council and the County Council against the Owner and the Developer subject to clause 8 and their successors in title.

**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** means the Town and Country Planning Act 1990 (as amended);

**Appeal** means the appeal lodged with the Secretary of State by the Owner against the refusal by the District Council to grant planning permission following the Application and allocated reference number APP/C3105/W/23/3331122;

**Application** means the application for outline planning permission submitted to the District Council for the Development and validated on 25 January 2023 and allocated reference number 23/00173/OUT;

**Commencement of Development** means the carrying out of any material operation (as defined in section 56(4) of the Act) forming part of the Development (whether or not such operation is a lawful commencement of the Development) other than (for the purposes of this Deed and for no other purpose) operations consisting of:

- a) site clearance;
- b) demolition work;
- c) creation of any ecological habitats to translocate species;
- d) archaeological investigations;
- e) investigations for the purpose of assessing ground conditions;
- f) remedial work in respect of any contamination or other adverse ground conditions;
- g) diversion and laying of services;
- h) erection of any temporary means of enclosure including hoardings, fences and site compound;
- i) site cabins and welfare facilities;
- j) noise attenuation works;
- k) the temporary display of site notices or advertisements;
- l) works to existing water courses;
- m) temporary access roads for construction traffic

and "Commence" "Commence Development" and "Commencement" shall be construed accordingly;

**Commutated Sums**

means those commuted sums set out in Schedule 2 and Schedule 3 which provide alternative Option A and Option B figures;

**County Monitoring Fee**

means the sum calculated in accordance with the spreadsheet attached at Appendix 2 where the contribution secured is the

aggregate of the financial contributions payable to the County Council in accordance with Schedule 6 disregarding Index Linking and payments made further to paragraph 4 of Schedule 6;

**Decision Letter**

a letter issued by or on behalf of the Secretary of State determining the Appeal;

**Development**

means the development of the Site for up to 147 homes, public open space, flexible recreational playing field area and sports pitches with associated car parking, alongside landscaping, ecological enhancements, SUDs, green/blue and hard infrastructure, with vehicular and pedestrian/cycle accesses, and all associated works (all matters reserved except for means of access);

**District Council Financial Contributions**

means together the Community Development Fund Contribution, Community Development Worker Contribution, Community Hall Facilities Contribution, Indoor Sport Contribution, Outdoor Sport Contribution and Police Infrastructure Contribution

**District Monitoring Fee**

means the sum of five thousand pounds (£5,000.00) to be applied by the District Council calculated on in accordance with Appendix 6 of the SPD entitled "Fees and Charges" for developments of 10 – 100 dwellings, based upon the number of obligations and triggers (with a minimum charge of £1,000) towards monitoring and reporting upon compliance with the planning obligations as set out in Schedule 1, Schedule 2, Schedule 3, Schedule 4 and Schedule 5;

**Due Date**

is the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs but otherwise is the date hereof;

**Dwelling**

means any dwelling (including a house, flat or bungalow) permitted to be constructed pursuant to the Planning

Permission and "Dwellings" shall be construed accordingly;

**Expert**

means an independent person of at least 10 years standing (or such other period of qualification as may be agreed between the parties in writing) in the area of expertise relevant to a Relevant Dispute to be agreed between the relevant Parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may comprise the Relevant Dispute

**Index Linked**

means in relation to contributions payable to the District Council:

- (a) increased according to the fluctuations between the date of this Deed and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in one Tender Index; or
- (b) as where otherwise specified in Schedule 3 of this Deed where payments are increased according to the fluctuations between the Q2 BCIS 2023 and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the

Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in one Tender Index;

and "Index Linking" shall be construed accordingly;

<b>Interest</b>	means interest at the rate of 4% above the base lending rate of Lloyds Bank Plc from time to time;
<b>Market Dwelling</b>	means each and every Dwelling which is not an Affordable Housing Dwelling (as defined in Schedule 1 to this Deed) to be constructed pursuant to the Planning Permission;
<b>NPPF</b>	means the National Planning Policy Framework (as amended from time to time) or any planning policy statement, guidance notes or circulars which may amend, supplement or supersede it;
<b>Occupation</b>	means occupation for the purposes permitted by the Planning Permission or any Qualifying Permission but not including occupation by persons engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" "Occupy" and "Occupier" shall be construed accordingly;
<b>Option A</b>	means the commuted sum figures in Schedule 2 and Schedule 3 provided by the District Council;
<b>Option B</b>	means the commuted sum figures in Schedule 2 and Schedule 3 provided by the Developer;
<b>Parish Council</b>	means the Chesterton Parish Council or such other parish council as may be agreed in writing by the District Council;
<b>Plan</b>	means the plan entitled Site Location Plan reference 353-ACG-XX-OO-DR-A-1000 Rev. P3 attached to this Deed as Appendix 1;



**Planning Permission**

means any planning permission subject to conditions to be granted further to the Appeal pursuant to the Application which where the context admits shall include each and every Qualifying Permission and includes any Reserved Matters Approval;

**Planning Inspector**

the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal;

**Qualifying Application**

means any separate application(s) for planning permission for the Development or any part of the Development or any application for Reserved Matters approval or any application under sections 73, 73A or 96A of the Act relating to the Planning Permission or any permission granted pursuant to section 73 of the Act;

**Qualifying Permission**

means any approval of planning permission (including under section 73 or s 73A of the Act) or approval to a non-material change pursuant to section 96A of the Act or any reserved matters approval as the case may be issued pursuant to a Qualifying Application;

*\* (and for the avoidance of doubt any subsequent planning permission under s73 or s73A which varies a s73 or s73A planning permission)*

**Relevant Dispute**

Means any dispute or difference between the District Council and the Owner where the Owner requires or seeks the approval or consent of the District Council PROVIDED ALWAYS that this provision shall not be construed as prohibiting the Owner from otherwise applying to a court in accordance with clause 18 (jurisdiction) to resolve any dispute

**Reserved Matters**

means details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission or as applicable Qualifying Permission for subsequent approval;

**Reserved Matters Area**

means the area or areas which comprise the Development which shall be determined by a Qualifying Permission or Qualifying Permissions and approved by the District Council;

<b>Secretary of State</b>	means the Secretary of State for Levelling Up, Housing and Communities from time-to-time and which term shall include any inspector appointed on their behalf to determine the Appeal;
<b>Site</b>	means the means the land known as Green Lane, Chesterton against which this Deed may be enforced as shown for identification purposes only edged red on the Plan;
<b>Statutory Undertaker</b>	means any gas transporter water or sewerage undertaker electricity supplier or telecommunications operator providing utility services to the Site
<b>Trigger Event</b>	any event that when it occurs requires any party to this Deed to pay any sum or carry out any works or take (or desist from taking) any other action including service of any notice;
<b>Working Days</b>	means Mondays to Fridays (excluding bank and other public holidays and any day which is on or between 27 and 31 December in any calendar year).

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable 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 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.
- 2.7 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions.
- 2.8 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
- 2.9 The headings and contents list are for reference only and shall not affect construction.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and any covenants, restrictions and requirements imposed pursuant to clause 8 upon the Developer under this Deed create planning obligations pursuant to Section 106 of the Act.
- 3.3 The covenants, restrictions and requirements set out generally herein are enforceable by the District Council and the County Council but:
- (a) those set out in Schedule 1, Schedule 2, Schedule 3, Schedule 4 and Schedule 5 are only enforceable by the District Council as local planning authority; and
  - (b) those set out in Schedule 6 and Schedule 7 are only enforceable by the County Council as local County planning authority;

against the Owner and the Developer (subject to clause 8) and in accordance with Section 106(3)(b) of the Act against any person deriving title from the Owner or the Developer.

#### **4 CONDITIONALITY**

4.1 Other than the provisions set out at clause 4.2 which shall have immediate effect and the provisions set out at clause 4.3 which shall take effect on the grant of the Planning Permission, this Deed is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development.

4.2 The provisions referred to in clause 4.1 which shall come into effect immediately upon completion of this Deed are clauses 1, 2, 3, 4, 5.1, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20 and 21 and paragraphs 1, 3 and 5 of Schedule 6.

4.3 The provisions referred to in clause 4.1 which shall come into effect upon the grant of Planning Permission are clause 14, 15 and paragraph 2 of Schedule 6 and Schedule 7

#### **5 COVENANTS BY THE OWNER AND THE DEVELOPER**

5.1 The Owner and the Developer covenant with both the District Council and the County Council as set out in the body of this Deed; and

5.2 The Owner covenants with:

- (a) The District Council as set out in Schedule 1, Schedule 2, Schedule 3, Schedule 4 and Schedule 5; and
- (b) The County Council as set out in Schedule 6 and Schedule 7.

#### **6 COVENANTS BY THE DISTRICT COUNCIL**

The District Council covenants with the Owner as set out in Schedule 8 to this Deed.

#### **7 COVENANTS BY THE COUNTY COUNCIL**

The County Council covenants with the Owner as set out in Schedule 9 to this Deed.

## **8 COVENANTS BY THE DEVELOPER**

The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that its option over the Site shall take effect subject to this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed unless it (i) takes possession of the Site or any part of it or (ii) undertakes any part of the Development of the Site or (iii) becomes a successor in title to the Owner in which case if (i) and/or (ii) and/or (iii) apply it too will be bound by the obligations as if it were a person deriving title from the Owner.

## **9 BLUE PENCIL TEST**

9.1 In the event that in determining the Appeal the Secretary of State or his appointed Inspector expressly states in his Decision Letter:

- (a) that any of the covenants or planning obligations contained in this Deed (or any part of the said planning obligations) do not meet the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 and accordingly attaches no weight to that obligation in determining the Appeal; and/or
- (b) that a condition shall be imposed upon the Planning Permission instead of one or more of the planning obligations in this Deed,

then such covenant(s) or planning obligation(s) or part of such covenant(s) or planning obligation(s) as so identified by the Secretary of State or his appointed Inspector (whichever may be the case) shall from the date of the Decision Letter be deemed to be of no effect notwithstanding the remaining provisions of this Deed which for the avoidance of doubt shall remain in effect and fully enforceable.

9.2 The Secretary of State or his appointed Inspector (whichever may be the case) is requested to determine at Schedule 2 and Schedule 3 whether Option A or Option B should be applied for the Commuted Sums. Should the Secretary of State or his appointed Inspector state in his Decision Letter that the Option A should be applied then Option B shall from the date of the Decision Letter be deemed to be of no effect and should the Secretary of State or his appointed Inspector state in his Decision Letter that the Option B should be applied then Option A shall from the date of the Decision Letter be deemed to be of no effect.

**10 MISCELLANEOUS**

10.1 The Owner shall pay:

- (a) to the District Council on the execution and completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation, preparation and execution of this Deed;
- (b) to the County Council on the execution and completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed;
- (c) on or prior to completion of this Deed to the District Council the District Monitoring Fee as a contribution towards the cost to the District Council of monitoring and administering compliance with the obligations in this Deed; and
- (d) to the County Council within 14 days of the grant of the Planning Permission the County Monitoring Fee as a contribution towards the cost to the County Council of monitoring and administering compliance with the obligations in this Deed.

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

10.3 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).

10.4 This Deed shall be registrable as a local land charge by the District Council and registered on the planning register.

10.5 Where the approval, consent or expression of satisfaction is required by the Owner from the District Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent, approval or expression of satisfaction shall be given on behalf of:

- (a) the District Council by the Assistant Director: Planning and Development; and

(b) the County Council by the Director for Environment and Place.

10.6 Following the District Council and the County Council being notified in writing and the District Council and the County Council being satisfied of the performance and satisfaction of all the obligations contained in this Deed (as confirmed in writing) the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

10.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable, then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.

10.8 This Deed shall cease to have effect (insofar only as it has not already been complied with or should have been complied with) if the Planning Permission and every Qualifying Permission has been quashed (and refused upon redetermination), revoked or otherwise withdrawn (without the consent of the Owner or Developer) or has expired prior to being implemented (within the meaning of section 56 of the Act);

10.9 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 in relation to any planning obligations with the District Council the part(s) of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

10.10 Except for:

(a) any provision in Schedule 6 or Schedule 7 that restricts or prevents any Dwelling being Occupied or prevents a number of Dwellings being Occupied until an obligation in Schedule 6 or Schedule 7 is complied with or prevents Commencement of Development until an obligation in Schedule 6 or Schedule 7 is complied with; or

(b) any District Council provision which secures the payment of the District Council Financial Contributions and restricts or prevents any Dwelling being Occupied or prevents a number of Dwellings being Occupied until the District Council Financial Contributions are complied with or prevents Commencement of Development until the District Council Financial Contributions are complied with

the provisions of this Deed shall not be enforceable against:

- i. any Statutory Undertaker or public utility company who acquires or owns an interest in the Site for the sole purposes of undertaking their statutory functions or the supply of electricity gas water telecommunications highways or other utility services to the Site;
  - ii. the individual owners lessees or occupiers of any Market Dwelling or any mortgagee or chargee of any Market Dwelling or any purchasers therefrom or any successors in title;
  - iii. the individual owners lessees or occupiers of any Affordable Housing Dwellings or First Home or any mortgagee or chargee of any Affordable Housing Dwellings or First Home or any purchasers therefrom or any successors in title save that the Affordable Housing and First Home obligations in Schedule 1 shall remain binding unless and until they cease to have effect pursuant to the relevant the Affordable Housing or First Home provisions;
  - iv. the owners or occupiers including the Approved Body (after the Transfer as defined in Schedule 6) of the Sports Facilities and/or Open Green Space including any successors in title save that the obligations in of Schedule 3 shall remain binding;
  - v. a Registered Provider save that the Registered Provider will remain bound in relation to Schedule 6 and Schedule 7 and save that the Affordable Housing obligations in clause 4 of Schedule 1 shall remain binding against that Registered Provider and PROVIDED ALWAYS THAT where a Registered Provider is providing more than 35% (thirty five percent) of Dwellings available for Affordable Housing and First Homes this release of liability shall only apply to the 35% (thirty five percent) requirement for Affordable Housing and First Homes as set out in this Deed;
- 10.11 Nothing contained or implied 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 and/or a Qualifying Permission granted (whether or not on appeal) after the date of this Deed.
- 10.12 If the District Council consents pursuant to a Qualifying Application to any variation or release of any condition contained in the Planning Permission (or a previous Qualifying Permission) or if any such condition is varied or released following an appeal under section 78 of the Act the covenants and provisions of this Deed shall be deemed to bind the Qualifying Permission and



to apply in equal terms to that Qualifying Permission save that where a different section 106 obligation is agreed by the District Council and <sup>v3 RNC</sup> ~~or~~ the County Council as being binding on any Qualifying Permission this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

**11 WAIVER**

No waiver (whether expressed or implied) by the District Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**12 NO FETTER**

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

**13 CHANGE OF OWNERSHIP ETC.**

13.1 The Owner and Developer agree with the District Council and separately with the County Council to give each written notice of any change in the ownership of any of their interests in the Site within ten Working Days and in any event before the next Trigger Event that arises following such change in ownership if sooner occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan provided that this clause shall not apply to:

- (a) the sale of individual Dwellings on the Development; or
- (b) any disposal of any part or parts of the Site for servicing or utility requirements or to a statutory body or service supply company for the purpose of carrying out their undertaking in or on the Site.

**14 NOTIFICATIONS**

14.1 The Owner covenants with the District Council and the County Council:

14.1.1 to notify the District Council and the County Council in writing:

- (a) no later than 5 Working Days prior to Commencement of Development of the anticipated date of Commencement of Development and not to Commence until 5 Working Days have passed since service thereof; and
- (b) within 10 Working Days of the date of the Commencement of Development the date on which such Commencement of Development occurred; and
- (c) not to Commence the Development or cause or permit Commencement until the appropriate notice has been given and the time therein has expired

14.1.2 to notify the District Council and the County Council in writing no later than within 10 Working Days prior to the anticipated date of the following events and after each event to specify in a further notification the date on which it occurred:

- (a) first Occupation of any Dwelling on the Development;
- (b) first Occupation of the 74<sup>th</sup> Dwelling on the Site;
- (c) first Occupation of the 50<sup>th</sup> Dwelling on the Site;
- (d) first Occupation of the 110<sup>th</sup> Dwelling on the Site;
- (e) first Occupation of the 140<sup>th</sup> Dwelling on the Site;

and not to Occupy or cause or permit Occupation until the appropriate notice has been given and the time therein has expired.

## **15 INTEREST**

15.1 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.

15.2 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.

## **16 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the Owner shall pay to the District Council and separately to the County Council any value added tax properly payable on any sums paid to the District

Council and/or the County Council or works undertaken under this Deed upon presentation of any appropriate value added tax invoice addressed to the Owner.

## 17 NOTICES

- 17.1 Any notice or notification to be given to the District Council under this Deed shall be sent to the District Council attention of the Assistant Director Planning and Development at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA (quoting reference 23/00173/OUT) or to such other person at such other address as the District Council shall direct from time to time.
- 17.2 Any notice or notification to be given to the County Council under this Deed shall be sent to the Director of Environment and Place, Oxfordshire County Council, County Hall, New Road, Oxford, OX1 1ND (quoting reference 23/00173/OUT) or to such other person at such other address as the County Council shall direct from time to time.
- 17.3 Any notice to be given to the Owner shall be sent to the Owner at the Owner's address at the head of this Deed or to such other person at such address as the Owner shall notify to the District Council and separately to the County Council from time to time.
- 17.4 Any notice to be given to the Developer shall be sent to the registered office and addressed to the Planning Director of the Developer or to such other person at such address as the Owner shall notify to the District Council and separately to the County Council from time to time.
- 17.5 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- (a) if delivered by hand, at the time of delivery;
  - (b) if sent by post, on the second Working Day after posting; or
  - (c) if sent by recorded delivery, at the time delivery was signed for.
- 17.6 If a notice, demand or any other communication is served after 16:00 on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

17.7 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

17.8 Any notice or notification to be given pursuant to this Deed shall be in writing and shall, unless otherwise agreed, be delivered by hand or sent by post.

## 18 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.

## 19 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.

## 20 DATA PROTECTION

20.1 The parties to this Deed acknowledge and agree that information as to compliance with obligations pursuant to this Deed (including as to whether or not contributions have been paid) may be passed to:

(a) persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further; and

(b) any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

## 21 DISPUTES

21.1 A Relevant Dispute between the District Council and the Owner that persists beyond 25 Working Days or such other duration as may be agreed between the Owner and the District Council in writing and then in each instance the Relevant Dispute may be referred to the Expert by either the District Council or the Owner. The Expert shall act as an expert and not as an arbitrator. His decision shall be final and binding on the parties to the Relevant Dispute.

- 21.2 Each party shall bear its own costs and the Expert's costs shall be paid as determined by him.
- 21.3 The Expert shall be appointed subject to an express requirement that he must reach his decision and communicate it to the parties within the minimum practical timescale allowing for the nature and complexity of the dispute, and in any event not more than twenty (20) Working Days from the date of his appointment to act. His decision shall be given in writing with reasons and in the absence of manifest error shall be binding on the parties.
- 21.4 The Expert shall be required to give notice to each of the parties, inviting each of them to submit to him within (ten) 10 Working Days written submissions and supporting material and shall afford to the parties an opportunity to make counter submissions within a further five (5) Working Days in respect of any such submission and material.
- 21.5 Nothing in this Deed shall be taken to fetter the parties to this Deed's ability to seek legal redress in the courts (or otherwise) for any breach of the obligations in this Deed.

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

## SCHEDULE 1

### AFFORDABLE HOUSING AND FIRST HOMES

#### 1 DEFINITIONS

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

**Additional First Homes Contribution** means in circumstances where a sale of a First Home Dwelling other than as a First Home Dwelling has taken place in accordance with paragraphs 3.8, 3.9 or 3.15 of this Schedule, the lower of the following two amounts:

- a) 30% of the proceeds of sale; and
- b) the proceeds of sale less the amount due and outstanding to any Chargee of the relevant First Home Dwelling 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 Home Owner to the Chargee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Home Owner in connection with the sale of the First Home Dwelling;

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

**Affordable Housing** means housing for sale or rent that will be available for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is

for essential local workers) and which meets the definition in Annex 2 of the NPPF;

**Affordable Housing Dwellings** means those Dwellings to be provided as Affordable Housing and First Home Dwellings;

**Affordable Housing Scheme** means a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which demonstrates that no less than 35% of the Dwellings (rounded up or down to the nearest whole number) shall be provided as Affordable Housing and First Homes and sets out details of the numbers locations and external appearance of the Affordable Housing Dwellings including the timing of construction of the Affordable Housing Dwellings it being agreed that the number of Affordable Housing Dwellings within a Reserved Matters Area will comprise thirty five percent (35%) of the Dwellings within that Reserved Matters Area;

**Affordable Housing Site** means that part or parts of the Site or any building or any buildings on the Site upon or within which there will be or have been provided Affordable Housing Dwellings together with the Infrastructure serving that part of the Site and includes any part of the Affordable Housing Site;

**Affordable Housing Standards** means the design criteria with which the Affordable Housing Dwellings shall comply, namely:

- all Affordable Housing Dwellings to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings; and
- at least 1 (one) of the Affordable Housing Dwellings to comply with the Building Regulations Requirement M4(3) Category 3: Wheelchair User Dwellings; and

- the Affordable Housing Dwellings shall be located in clusters of no more than 15 (fifteen) Affordable Housing Dwellings in any 1 (one) cluster then location of which for the whole Site are to be agreed in writing by the District Council prior to the first Reserved Matters Area submission; and
- shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Dwellings; and
- shall be constructed to the nationally described space standard as set out in the Department for Levelling Up, Housing and Communities' technical housing standards current at the time of the relevant Qualifying Permission;

**Affordable Housing Tenure Mix**

means the mix of tenure and dwelling types of the Affordable Housing Dwellings of which:

1. 70% (seventy per cent) shall be provided as Affordable Rented Housing;
2. 25% (twenty five per cent) shall be provided as First Home Dwellings; and
3. 5% (five percent) shall be Shared Ownership Housing;

Or such alternative mix of tenure as at any time may be approved by the District Council in writing PROVIDED ALWAYS that the above mix shall be proportionality rounded up or down as required to ensure no less than 35% of the Dwellings on the Development are provided as Affordable Housing and First Homes;

**Affordable Rented Housing**

means rented housing provided by Registered Providers to Qualifying Persons which is not subject to the national rent regime but shall be in line with Homes England's Rent



Standard Guidance for Affordable Rent and in accordance with the District Council's tenancy strategy, the rents shall be no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting, whichever is the lower;

**Allocations Scheme**

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);

**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 Dwelling, 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**

means any mortgagee or chargee of the Registered Provider of the Affordable Housing Site and/or the Affordable Housing Dwellings (or any one or more of them) 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 Dwelling to a purchaser meeting the Eligibility Criteria (National) and Eligibility Criteria (Local);

**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 Dwelling other than:

- a) a letting or sub-letting in accordance with paragraph 3.13;
- b) a transfer of the freehold interest in a First Home Dwelling or land on which a First Home Dwelling is to be provided before that First Home Dwelling is made available for occupation except where the transfer is to a First Home Owner; or
- c) 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 Dwelling 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);

**Eligibility Criteria (Local)** means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) 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 (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
  - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
  - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
  - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.

**Exempt Disposal**

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

- a) a Disposal to a spouse or civil partner upon the death of the First Home 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 Home Owner;
- c) Disposal to a former spouse or former civil partner of a First Home 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 First Home Dwelling (and for the avoidance of doubt paragraph 3.15 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 3.13;

**First Home Dwelling(s)**

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 Home Owner**

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

- a) the Owner; or
- b) another person persons or body or other entity to which the freehold interest or leasehold interest in a First Home Dwelling or in the land on which a First Home Dwelling is to be provided has been transferred before that First Home Dwelling is made available and is disposed of for occupation as a First Home Dwelling; or
- c) the freehold or tenant or sub-tenant of a permitted letting under paragraph 3.13;

**First Homes Provisions**

means the provisions to be included in any Disposal by transfer or assignment of a First Home Dwelling which are in a form approved by the District Council that repeats or incorporates the provisions set out in paragraph 3 of Schedule 1 hereto and confirms that the Property 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 Property or any part of it other than in accordance with the First Homes Provisions;

**First Time Buyer**

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

**Homes England**

means the Homes and Communities Agency trading as Homes England as established under the Housing and Regeneration Act 2008;

**Income Cap (National)**

means a combined household income of £80,000 (eighty thousand pounds) 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 Dwelling;

**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; and
- spur connections to agreed inverts (to be available at a time or times to be agreed with the Registered Provider) from the Owner's foul and surface water drain run serving the Development up to the boundaries of the Affordable

Housing Site such spur connections to be to a specification agreed with the Registered Provider;

and the following services:

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

PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable Housing Site nor to any Affordable Housing Dwellings;

**Intermediate Housing**

means Affordable Housing at prices and rents above those for Social Rented Housing but below their value as Market Dwellings which meet the criteria set out in the NPPF and for the avoidance of doubt the expression 'Intermediate Housing' includes Shared Ownership Housing, shared equity and low cost homes for sale but does not include Affordable Rented Housing unless otherwise approved by the District Council;

<b>Local Connection</b>	means a 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;
<b>Market Dwelling</b>	means each and every Dwelling (other than an Affordable Housing Dwelling) to be constructed in accordance with the Planning Permission and any Qualifying Permissions
<b>Market Value</b>	means the open market value as assessed by a Valuer of a Dwelling as confirmed to the District Council by the relevant First Home 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;
<b>Mortgage Land</b>	means the Affordable Housing Site or any part of it which is or may be mortgaged or charged to the Chargee by a Registered Provider;
<b>Mortgagee</b>	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 Dwelling including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home Dwelling;
<b>Nominations Agreement</b>	means an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Rented Dwellings on the Site and which shall guide in conjunction with the Allocations Scheme those persons eligible to be nominated to the Affordable Housing Dwellings;
<b>Practical Completion</b>	as used in paragraph 3 of this Schedule only means the stage reached when the construction of a First Home Dwelling 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 Dwelling is sold after the application of the Discount Market Price which on its first Disposal shall not exceed £250,000 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State;

**Qualifying Persons**

means those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to Affordable Rented Housing in accordance with this Allocations Scheme and the Nominations Agreement;

**Registered Provider**

means a private provider of social 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 pursuant to section 111 of the Housing and Regeneration Act 2008 as a non-profit organisation under subsections 115(1)(a) or 278(2) of the Housing and Regeneration Act 2008 or which is designated in that register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008 which is on the District Council's list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and been approved in writing by the District Council;

**Regulator**

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



<b>SDLT</b>	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
<b>Secretary of State</b>	in this Schedule means the Secretary of State that has responsibility for the matters herein;
<b>Shared Ownership Housing</b>	means ownership under the terms of a lease which accords with the Regulator's Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 10% and 75% of the equity in an Affordable Housing Dwelling from the housing provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity and where the lessee has the option to increase their percentage of ownership through a process of Staircasing;
<b>Social Rented Housing</b>	means rented housing owned and managed by Registered Providers for which guideline target rents are determined through a national rent regime as described in Annex 2 of the NPPF;
<b>Staircasing</b>	means the exercise by the owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the interest in the Shared Ownership Dwelling after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and 'Staircases' or any other derivative thereof shall be construed accordingly.
<b>Valuer</b>	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by a First Home Owner and acting in an independent capacity;

## **2 PRE COMMENCEMENT COVENANTS**

The Owner covenants with the District Council that they:

- 2.1 will submit a detailed scheme for the provision, proposed location and construction programme of the Affordable Housing Dwellings (including the First Home Dwellings) in a Reserved Matters Area, including details of the proposed Affordable Housing Tenure Mix to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme; and
- 2.2 will not Commence or cause or permit the Commencement of Development of a Reserved Matters Area until the Affordable Housing Scheme has been approved in writing by the District Council.

## **3 FIRST HOME DWELLINGS**

The Owner covenants with the District Council as follows

- 3.1 To construct the First Home Dwellings in accordance with the Affordable Housing Scheme unless otherwise permitted by the District Council in writing save that:
  - 3.1.1 paragraphs 3.1 and 4 shall not apply to a First Home Owner;
  - 3.1.2 paragraphs 3.4 – 3.4.1 apply as set out therein but and for the avoidance of doubt where a First Home Dwelling is owned by a First Home Owner they shall apply to that First Home Owner only in respect of the First Home Dwelling owned by that First Home Owner; and
  - 3.1.3 paragraph 5 applies as set out therein.
- 3.2 The First Home Dwellings shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Home Dwellings to persons who meet the Eligibility Criteria (National) and Eligibility Criterial (Local).
- 3.3 Subject to paragraphs 3.6 to 3.10, that no First Home Dwelling 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 chargee.

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

3.4.1 the District Council has been provided with evidence that:

- (a) the intended purchaser meets the Eligibility Criteria (National) and Eligibility Criteria (Local);
- (b) the Dwelling is being Disposed of as a First Home Dwelling at the Discount Market Price; and
- (c) the transfer of the First Home Dwelling includes:
  - (i) a definition of the "Council" which shall be Cherwell Council; and
  - (ii) the First Homes Provisions; and

3.4.2 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 3.3 and 3.4.1 above have been met.

3.5 On the first Disposal of each and every First Home Dwelling 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 the solicitor to Cherwell District Council of Bodicote House Bodicote Banbury OX15 4AA 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"*

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

3.6.1 the Dwelling has been actively marketed as a First Home Dwelling for six (6) months in accordance with paragraph 3.2 above (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 Dwelling but it has not been possible to Dispose of that Dwelling as a First Home Dwelling in accordance with paragraphs 3.3 and 3.4.1 above; or

3.6.2 requiring the First Home Owner to undertake active marketing for the period specified in paragraph 3.6.1 before being able to Dispose of the Dwelling other than as a First Home Dwelling would be likely to cause the First Home Owner undue hardship.

3.7 Upon receipt of an application served in accordance with paragraph 3.6 above 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.

3.8 If the District Council is satisfied that either of the grounds in paragraph 3.6 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 3.6 above that the relevant Dwelling may be Disposed of:

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

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

and on the issue of that written confirmation the obligations in this Deed which apply to First Home Dwellings shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.10 below 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 Dwelling.

3.9 If the District Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with that paragraph serve notice on the owner of the First Home Dwelling setting out the further steps it requires that owner to take to secure the Disposal of a Dwelling as a First Home Dwelling and the timescale (which

shall be no longer than six (6) months) and if at the end of that period that owner has been unable to Dispose of the Dwelling as a First Home Dwelling they may serve notice on the District Council in accordance with paragraph 3.6 above following which the District Council must within 28 (twenty eight) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home Dwelling.

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

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

3.11.1 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 3.5 above where such restriction has previously been registered against the relevant title; and

3.11.2 apply all monies received towards the provision of Affordable Housing.

3.12 Any person who purchases a First Home Dwelling free of the First Home Provisions pursuant to the provisions in paragraphs 3.9 and 3.10 above shall not be liable to pay the Additional First Homes Contribution to the District Council.

3.13 Each First Home Dwelling shall be used only as the main residence of the First Home 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:

3.13.1 for a fixed term of no more than two (2) years, provided that the First Home Owner notifies the District Council in writing before the First Home Dwelling is Occupied by the prospective tenant or sub-tenant and PROVIDED THAT such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed two (2) years in total;

3.13.2 for any period and the District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent where:

(a) the First Home 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;

- (b) the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- (c) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- (d) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- (e) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; or
- (f) the First Home 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;

3.13.3 only by way of a written lease or sub-lease (as the case may be) of the whole of the First Home Dwelling on terms which expressly prohibit any further sub-letting.

3.14 Nothing in paragraph 3.13 above prevents a First Home Owner from renting a room within their First Home Dwelling or from renting their First Home Dwelling as temporary sleeping accommodation provided that the First Home Dwelling remains at all times the First Home Owner's main residence.

3.15 The obligations in paragraphs 3.1-3.14 of this Schedule in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a First Homes Receiver)) of any individual First Home Dwelling or any persons or bodies deriving title through such Mortgagee or First Homes Receiver PROVIDED THAT:

3.15.1 such Mortgagee or First Homes Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home Dwelling; and

3.15.2 once notice of intention to Dispose of the relevant First Home Dwelling has been given by the Mortgagee or First Homes Receiver to the District Council the Mortgagee or First Homes Receiver shall be free to sell that First Home Dwelling at its full Market Value subject only to paragraph 3.15.3; and

3.15.3 following the Disposal of the relevant First Home Dwelling the 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.

3.16 Following receipt of notification of the Disposal of the relevant First Home Dwelling the District Council shall:

3.16.1 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 3.5; and

3.16.2 apply all such monies received towards the provision of Affordable Housing.

#### **4 AFFORDABLE HOUSING OTHER THAN FIRST HOME DWELLINGS**

The Owner covenants with the District Council as follows:

4.1 Not to Occupy or cause or permit the Occupation of more than thirty per cent (30%) of the Market Dwellings in a Reserved Matters Area until the Affordable Housing (excluding any Intermediate Housing whose tenure involves homes for sale without the involvement of a Registered Provider and First Home Dwellings) has been offered to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the relevant 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 a Registered Provider has exchanged a binding contract for the purchase of the Affordable Housing

4.2 To construct the Affordable Housing Dwellings (excluding First Home Dwellings) and make the same ready for Occupation in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme to the reasonable satisfaction of the District Council as part of the Development upon the Site prior to use or Occupation of more than sixty per cent (60%) of the Market Dwellings in a Reserved Matters Area.

4.3 Not to cause or permit more than sixty five per cent (60%) of the Market Dwellings in a Reserved Matters Area to be used or Occupied unless and until the Owner has constructed all of the Affordable Housing Dwellings (excluding First Home Dwellings) in a Reserved Matters Area and

made the same ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing in that in a Reserved Matters Area have been offered to and transferred to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the relevant Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway.

- 4.4 Not to cause or permit more than sixty per cent (60%) of the Market Dwellings in a Reserved Matters Area to be used or Occupied unless and until 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 (excluding First Home Dwellings) in a Reserved Matters Area;
- 4.5 Not to use or cause or permit the use of the Affordable Housing Site for any other purpose than for the provision of Affordable Housing and First Homes in accordance with this Deed unless otherwise specified in this Deed.
- 4.6 Not to 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 (excluding First Home Dwellings) erected thereon except to a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings.
- 4.7 To provide the Affordable Housing Dwellings in line with the Affordable Housing Tenure Mix or such other mix as may be agreed in writing between the Owner and the District Council.

## 5 CHARGE EXEMPTION

- 5.1 The obligations in paragraph 4 of this Schedule in relation to the Affordable Housing Dwellings (excluding First Home Dwellings) will not be binding on a Chargee or a bona fide purchaser for value from a Chargee or the successors in title of such purchaser if the Chargee:

- 5.1.1 have first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, its mortgage, charge or other security; and



5.1.2 have used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 5.1.1 above to complete a disposal of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed to a Registered Provider or the District Council **PROVIDED ALWAYS** that nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained within this Schedule) or all sums due and outstanding under the terms of the Chargee's mortgage or charge or security documentation including all accrued principal monies interest, costs and expenses; and

5.1.3 if upon the expiry of three months from the date of receipt by the District Council of the notice in paragraph 5.1.1 above and provided the steps in this paragraph have been completed and no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed within the said period of three months then upon expiry of the said three months the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraph 4 of this Schedule with the effect that they shall cease to bind the Mortgage Land.

## 6 ALLOCATION

6.1 The Owner covenants not to allocate or cause or permit to be allocated any of the Affordable Housing Dwellings other than as follows:

6.1.1 the Affordable Rented Housing 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;

6.1.2 the Shared Ownership Housing shall be marketed through the Registered Provider's website or other marketing media used by the Registered Provider and only those deemed eligible under the Registered Provider's criteria shall be considered for the Shared Ownership Housing; or

6.1.3 as agreed by the District Council.

## 7 MISCELLANEOUS

7.1 It is agreed that:

- 7.1.1 the provisions of this Schedule will not be binding on any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any owner of Shared Ownership Housing who has Staircased up to 100% or any Mortgagee, Chargee or successor in title thereto.
  
- 7.1.2 if the Affordable Housing Dwellings are vested or transferred to another Registered Provider pursuant to a proposal made Homes England pursuant to Sections 143A-169 of the Housing and Regeneration Act 2008 (or any statutory provision amending or replacing the same) then the provisions of this Agreement shall continue in respect of such other Registered Provider.

## SCHEDULE 2

### INCIDENTAL OPEN SPACE INCLUDING LAP/LEAP AND SUDS

#### 1 DEFINITIONS

1.1 In this Schedule and the following additional definitions shall apply (and 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):

**Approved Body** means the Parish Council or otherwise a company, charitable trust, parish council or other body experienced in the management and maintenance of facilities such as the Open Space and SUDS to be approved in writing by the District Council (such approval not to be unreasonably withheld or delayed);

**BS5837** means the British Standard for Trees in Relation to Design, Demolition and Construction – Recommendations, the latest version being published in 2012 and applies to all trees and Hedgerows that could be affected during the carrying out of the Development;

**Final Completion Certificate** means a certificate issued by the District Council confirming final completion of the landscaping of the Incidental Open Space and the laying out and equipping of any LAP or LEAP and New Woodland 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 identified in the Open Space Scheme;

**Hedgerows Commuted Sum** means the Index Linked sum being either:

Option A

thirty-three pounds and eighty-three pence( £33.83) per linear metre of Hedgerow (to be assessed), or

Option B

nineteen pounds and fifty nine pence (£19.59) per linear metre of Hedgerow (to be assessed),

towards the future management and maintenance of the Hedgerows by the District Council or Approved Body;

**Incidental Open Space**

means areas of incidental open space to be provided on the Development as identified within the Planning Permission or by any Qualifying Permission and/or the Open Space Scheme but excluding any area accommodating a LAP or LEAP;

**Incidental Open Space  
Commutated Sum**

means the Index Linked sum being either:

Option A

sixteen pounds and nine pence (£16.09) per square metre of Incidental Open Space as shown in the Open Space Scheme, or

Option B

fourteen pounds and thirty seven pence (£14.37) as shown in the Open Space Scheme

towards the future management and maintenance of the Incidental Open Space by the District Council or Approved Body;

**LAP**

means an equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 6 with a minimum of 3 (three) items of play equipment of a minimum area of 100m<sup>2</sup> and located a minimum of 5m from the nearest Dwelling boundary, 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 and the landscaped area around the equipped activity zone could be used to incorporate this buffer and is to be provided by the Owner as part of the Development the location of which is to be determined by a Qualifying Permission and the Open Space Scheme;

**LAP Commuted Sum**

means the Index Linked sum being either:

Option A

fifty thousand two hundred and seventy-nine pounds and seventy-six pence (£50,279.76), or

Option B

thirty five thousand nine hundred and twenty two pounds and ninety pence (£35,922.90)

towards the future management and maintenance of the LAP by the District Council or Approved Body;

**LEAP**

means a local equipped areas of play for children under eight (8) years of age with up to of 5 pieces of equipment and has a minimum 500 sq. m equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 8. 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 and has the equipped activity zone within the landscaped area should be located a minimum of 10 metres from the nearest Dwelling boundary AND 20 metres from the nearest habitable room façade. The landscaped area around the equipped activity zone could be used to incorporate this buffer, to be provided by the Owner as part of the Development with the number and location to be determined by a Qualifying Permission and the Open Space Scheme;

**LEAP Commuted Sum**

means the Index Linked sum being either:

Option A

two hundred and two thousand and nine hundred and eighty nine pounds and ninety five pence (£202,989.56), or

Option B

one hundred and forty two thousand and sixty four pounds and ten pence (£142,064.10)

towards the future management and maintenance of the LEAP by the District Council or Approved Body;

**LEMP**

means once approved by the District Council the landscape and ecology management plan submitted to the District Council pursuant to paragraph 2.1.6 being a written scheme for the detailed ongoing management and maintenance of the Incidental Open Space, any LAP, LEAP and Hedgerows including the maintenance of any swales, balancing ponds or other aspects of the SUDS which shall detail the frequency and standard of 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;

**LEMP Monitoring Sum**

means the total sum of £19,080.00 (nineteen thousand and eighty pounds) Index Linked towards the District Council's costs of ecological surveys monitoring the land and facilities transferred to the Management Company in accordance with the LEMP (monitoring to be undertaken twice a year for 15 years);

**Maintenance Period**

means a period of 12 (twelve) 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 any LAP and/or LEAP and/or SUDS have been rectified or if the LAP and/or LEAP and/or SUDS have not been maintained in accordance with the LEMP during that period;

**Management Company**

means a body established or appointed by the Owner and agreed in writing by the District Council to carry out the long term management and maintenance of the Open Space (or any part of the Open Space) and/or SUDS 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):-

- setting the level of charges for funding the running of the body and collecting such Service Charges from residents (such term to include but is not limited to owners occupiers lessees and tenants of the Dwellings) Index Linked from the start of the first quarter after Final Completion of the Open Space and/or SUDS;
- ensuring that the level of any charges levied against any Affordable Housing Dwellings that are not owned outright by Registered Providers shall not materially affect the ability of these Dwellings to remain as Affordable Housing;
- ensuring accountability to residents of the Development; and
- allowing the ability of residents to require the transfer of the maintenance and management responsibilities of the Open Space from the Management Company to the District Council (or its nominee) in the circumstances set out in the Management Company Structure Scheme such petition to be on grounds of dissatisfaction with the maintenance and management responsibilities of the Management Company only and in such circumstance to allow for any accrued Service Charges to be transferred to the District Council or its nominee that will assume management and maintenance;

**Management Company  
Default Deposit**

means the sum calculated as follows:

a) the relevant commuted sum for the Open Space and/or SUDS being transferred to the Management Company + 15

plus

b) 10% of the capital cost of the Open Space (or any part of the Open Space) and/or SUDS being transferred to the Management Company;

payable towards the costs to the District Council of rectifying any maintenance defects and damage to the Open Space and/or SUDS by employing a landscape contractor to carry out those rectification works;

**Management Company  
Structure Scheme**

means a scheme that addresses the following in relation to the Management Company:

a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;

b) proposed banking arrangements for the Management Company;

c) details of how the Management Company will be properly funded and able to undertake its management and maintenance obligations, including procedures and justification that the Management Company will follow for drawing down monies from the ManCo Maintenance Escrow Account;

d) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any of the facilities managed and maintained by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing;

e) details of the mechanism together with suitable documentation to ensure the transfer of ownership and responsibility for any facilities (that are in the ownership of the Management



Company) from the Management Company to the District Council on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered (either a written petition by at least 66% of households on the Development or a survey of residents carried out by the District Council that shows at least 66% of households on the Development are dissatisfied with the Management Company), settlement of outstanding management posts prior to transfer and liability for Legal costs/expenses associated with the transfer);

**ManCo Default Escrow Account**

means an escrow account set up by the Owner:

- a) to contain the Management Company Default Deposit(s);
- b) monies within which can be drawn against by the District Council in the circumstances set out in paragraph 9.6 of this Schedule; and
- c) that shall be opened and closed in accordance with the provisions of this Schedule;

**Mature Trees**

means those trees identified as such in the Open Space Scheme and "Mature Tree" shall be construed accordingly;

**Mature Trees Commuted Sum**

means the Index Linked sum being either:

Option A

three hundred and fifty-six pounds and twenty-one pence (£356.21) per Mature Tree, or

Option B

four hundred and thirty seven pounds and fifty seven pence (£437.57) per Mature Tree

towards the future management and maintenance of the Mature Trees by the District Council or Approved Body;

**New Woodland** means any New Woodland to be planted in the Open Space Scheme;

**New Woodland Commuted Sum** means the Index Linked sum being either:

Option A

forty-four pounds and fifty-four pence (£44.54) per square metre of new woodland (to be assessed); or

Option B

thirty one pounds and thirty five pence (£31.35) per square metre of new woodland (to be assessed)

towards the future management and maintenance of the New Woodland by the District Council or Approved Body;

**Open Space** means the areas within the Site to be provided for recreation and informal amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include the Incidental Open Space, LAP, LEAP, New Woodland, Mature Trees and the Hedgerows;

**Open Space Commuted Sum** means the total sum comprising the following sums:

- the Incidental Open Space Commuted Sum;
- the Hedgerows Commuted Sum;
- the Mature Trees Commuted Sum
- the New Woodland Commuted Sum
- the LAP Commuted Sum;
- the LEAP Commuted Sum;
- Play Area Signage

or such proportion of the above sums as may be payable for the relevant Reserved Matters Area AND FOR THE AVOIDANCE OF DOUBT where a Reserved Matters Area contains no Incidental Open

Space, LAP, LEAP, New Woodland, Mature Trees, Hedgerows or Play Area Signage the commuted sum payment for the Incidental Open Space, LAP, LEAP, New Woodland, Mature Trees, Hedgerows or Play Area Signage shall not be included within the Open Space Commuted Sum for that Reserved Matters Area

**Open Space Scheme**

means a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the Open Space to be submitted to and approved in writing by the District Council for approval in accordance with paragraph 2.1.1 which shall include:

- i.) details of the locations of the Incidental Open Space, any LAP, LEAP, New Woodland, Mature Trees and Hedgerows to which the scheme relates; and
- ii.) a timetable for carrying out the works and any planting comprised in the laying out and landscaping of the Incidental Open Space, any LAP, LEAP, New Woodland, Mature Trees and Hedgerows to which the scheme relates;

**Play Area Signage**

means the Index Linked sum of nine hundred and fifty-four pounds (£954.00) per sign;

**Practical Completion Certificate**

means a certificate issued by the District Council confirming the practical completion of the landscaping of the Incidental Open Space and the laying out and equipping of any LAP, LEAP and provision of the SUDS in accordance with the relevant scheme or specification approved pursuant to this Deed;

**RoSPA Inspection Report**

means 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 and/or leap is fit for purpose in accordance with the appropriate standards set by the Royal Society for the Prevention of Accidents;

**Service Charge**

means the charge set by the Management Company as a relevant proportion of the costs of managing and maintaining the Open Space transferred to it payable by the Occupiers of each Dwelling and which charge may vary depending on the size of each Dwelling;

<b>SUDS</b>	means any balancing ponds, attenuation basins, ditches watercourses, swales 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 the Planning Permission or Qualifying Permissions;
<b>SUDS Commuted Sum</b>	means the Index Linked sum being either:  Option A  one hundred and fifty three pounds and five pence (£153.05) per linear metre of ditches, watercourses swales and similar features and in addition the separate sum of eight-four pounds and two pence (£84.02) in respect of the balancing pond; or  Option B  forty three pounds and ten pence (£43.10) per linear metre of ditches, watercourses swales and similar features and in addition the separate sum of fourteen pounds and fifty four pence (£14.54) in respect of the balancing pond  towards the future management and maintenance of the SUDS by the District Council or Approved Body;
<b>SUDS Scheme</b>	means scheme for the provision and onward management of the sustainable urban drainage systems to be provided as part of the Development which is to be submitted and approved in writing by the District Council in accordance with paragraph 2.1.5 which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development and the timescales for when the said works and features are to be carried out;
<b>Transfer</b>	means the transfer of the freehold of the Open Space and/or SUDS from the Owner to the Management Company, District Council or Approved Body (as the Owner may elect) or from the Management Company to the District Council (or such other person or body as the District Council may direct) the terms of which:

- a) shall not include any terms which would restrict access save for the purposes of maintenance works or in the case of emergency;
- b) shall 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) shall include any reasonable reservation of rights of access and services over the Open Space (excluding any LAP or LEAP) and/or SUDS 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) shall include for the benefit of the Open Space and SUDS 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) shall be a transfer of the entire freehold interest of the Open Space and/or SUDS with full title guarantee and vacant possession on completion;
- f) shall 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;

## **2 PRE-COMMENCEMENT**

2.1 Before Commencement of Development there shall be submitted to the District Council the proposed:

2.1.1 Open Space Scheme;

2.1.2 LAP Scheme;

2.1.3 LEAP Scheme

2.1.4 New Woodland Scheme

2.1.5 SUDS Scheme; and

2.1.6 LEMP

and the Development shall not be Commenced until the District Council has approved each of them.

## **3 OPEN SPACE**

3.1 The Open Space for a Reserved Matters Area shall be provided in accordance with the Open Space Scheme prior to Occupation of more than seventy-five per cent (75%) of the Dwellings in that Reserved Matters Area and implemented in accordance with the details to be agreed pursuant to the phasing condition in the Planning Permission

3.2 Save as set out in the Open Space Scheme and/or the SUDS Scheme and/or LAP Scheme and/or the LEMP and/or BS5837 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the Open Space Scheme or the efficient implementation of the LAP, LEMP, New Woodland or protection of the Mature Trees or implementation of the SUDS Scheme that the District Council considers materially affects the costs associated with the maintenance and operation of the Open Space and in particular:

3.2.1 no materials or equipment shall be stored on the LAP and/or LEAP, New Woodland or any Mature Trees area, or Tree and Hedgerow Root Protection Areas (as provided for in BS5837); and

- 3.2.2 no services shall be run over, under or through the LAP and/or LEAP, New Woodland or any Mature Trees area, or Tree and Hedgerow Root Protection Areas (as provided for in BS5837); and
- 3.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on the LAP and/or LEAP, New Woodland or any Mature Trees area, or Tree and Hedgerow Root Protection Areas; and
- 3.2.4 no parking area or temporary roadway shall be created or designated on the LAP and/or LEAP New Woodland or any Mature Trees area, or Tree and Hedgerow Root Protection Areas (as provided for in BS5837); and
- 3.2.5 no structure or erection that is intended to remain after the Maintenance Period but is not shown in the Open Space Scheme the LEMP and/or the SUDS Scheme shall be erected or set up on the LAP and/or LEAP, New Woodland or any Mature Trees area, or the Tree and Hedgerow Root Protection Areas (as provided for in BS5837);

shall be located on any part of the Site that is to accommodate the Open Space unless the express prior written permission of the District Council has been requested and given.

- 3.3 All trees and/or hedgerows currently on the Site shall be protected as set out in BS5837 unless shown in the Open Space Scheme or the LEMP as being removed and shall only be disturbed in accordance therewith.
- 3.4 The District Council shall be entitled on reasonable and no less than three (3) Working Days' written notice to enter the Site with workmen and contractors to remedy any default in compliance with paragraphs 3.2 and 3.3 above and to recover the reasonable cost thereof 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 written notice specifying:
  - 3.4.1 the nature of the breach;
  - 3.4.2 the steps required by the District Council to remedy the breach; and
  - 3.4.3 a time period for compliance (having regard to the nature of the breach).

3.5 Before taking action to enforce any of the terms of this Schedule the District Council shall have given the Owner a reasonable time period for remedying 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.

3.6 The Open Space shall be provided, laid out, landscaped and equipped (as appropriate) in accordance with the approved Open Space Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing.

#### **4 SUDS**

4.1 The SUDS shall be provided in accordance with the SUDS Scheme prior to first Occupation of any of the Dwellings a Reserved Matters Area containing SUDS.

4.2 Save as set out in the SUDS Scheme and/or the LEMP and/or with BS5837 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the SUDS Scheme or its efficiency or the efficient implementation of the LEMP or that the District Council considers materially affects the costs associated with the maintenance and operation of the SUDS and in particular:

4.2.1 no materials or equipment shall be stored on;

4.2.2 no services other than particular to the SUDs shall be run over, under or through without the prior written consent of the District Council;

4.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;

4.2.4 no parking area or temporary roadway shall be created or designated on;

4.2.5 no structure or erection that is intended to remain after the Maintenance Period but is not shown in the Open Space Scheme and/or the SUDS Scheme shall be erected or set up on;

any part of the Site that is to accommodate the SUDS or any part of it (save as set out in the SUDS Scheme) without the express prior written permission of the District Council having been requested.



4.3 The SUDS shall be constructed and laid out in accordance with the approved SUDS Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing.

4.4 The SUDS shall not be used for any purpose that may prejudice its function as

4.4.1 part of the drainage for the Development; or

4.4.2 subject to paragraph 4.4.1 above public open space land as an amenity for the occupiers of the Development and surrounding area;

but with the prior written consent of the District Council the subsoil of the SUDS may accommodate services provided such services do not prejudice the maintenance and function of the SUDS.

4.5 The District Council shall be entitled on reasonable and no less than three (3) Working Days' written notice to enter the Site with workmen and contractors to remedy any default in compliance with paragraph 4.2 above and to recover the reasonable cost thereof 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 written notice specifying:

4.5.1 the nature of the breach;

4.5.2 the steps required by the District Council to remedy the breach; and

4.5.3 a time period for compliance (having regard to the nature of the breach).

4.6 Before taking action to enforce any of the terms of this Schedule the District Council shall have given the Owner a reasonable time period for remedying 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.

## **5 COMPLETION OF OPEN SPACE AND SUDS**

5.1 No Dwellings within twenty (20) metres of the further-most landscaped boundary of the LAP and no Dwellings within thirty (30) metres of the further-most landscaped boundary of the LEAP shall

be Occupied unless and until the respective Practical Completion Certificate for the LAP and/or LEAP has been issued by the District Council.

5.2 Upon completion of the Open Space and/or the SUDS for a Reserved Matters Area the District Council shall be notified and invited to inspect the Open Space and/or the SUDS and Council shall within twenty-eight (28) Working Days of receipt of such invitation inspect or alternative timescale agreed in writing with the District Council or arrange for a contractor or agent acting on its behalf to inspect with a view to either:

5.2.1 issuing within (14) Working Days of inspection a Practical Completion Certificate that certifies that the Open Space and/or the SUDS for that Reserved Matters Area have been provided in accordance with the Open Space Scheme and/or the SUDS Scheme to the satisfaction of the District Council; OR

5.2.2 issuing within fourteen (14) Working Days of inspection a notice or notices ("Defects Notice") which state that the Open Space and/or the SUDS (as the case may be) for that Reserved Matters Area have not been provided in accordance with the Open Space Scheme and/or SUDS Scheme to a standard that satisfies the District Council and sets out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done;

but in the event that the District Council considers that any failure to comply with the Open Space Scheme and/or the SUDS Scheme is minor and can be remedied within the Maintenance Period a Practical Completion Certificate may still be issued but endorsed with a note of the minor works to be done and the period in which the District Council expects them to be completed.

5.3 If a Defects Notice is issued the works specified in the Defects Notice shall be carried out and the District Council invited to re-inspect the Open Space and/or the SUDS for that Reserved Matters Area with a view to securing the issue of the Practical Completion Certificate and the steps outlined in paragraph 5.2 shall be repeated until the District Council is satisfied that all Defects have been rectified so as to issue of the Practical Completion Certificate.

5.4 In addition to the above the Owner shall produce a RoSPA Inspection Report that certifies that any LAP, LEAP in a Reserved Matters Area have been completed to an appropriate safety standard and the District Council shall not be obliged to issue a Practical Completion Certificate until that report has been supplied to it.

5.5 Once the Practical Completion Certificate is issued the Maintenance Period shall begin and the Owner shall then comply with any Defects Notices that the District Council is satisfied may be complied with during the Maintenance Period as soon as reasonably practical and implement the LEMP.

5.6 Upon completion of the Maintenance Period for a Reserved Matters Area:

5.6.1 the Owner shall:

- (i) produce a RoSPA Inspection Report that certifies that the LAP and LEAP for that Reserved Matters Area continue to meet an appropriate safety standard and the District Council shall not be obliged to issue a Final Completion Certificate until that report has been supplied to it; and
- (ii) pay to the District Council the LEMP Monitoring Fee AND FOR THE AVOIDANCE OF DOUBT this payment shall be paid only once on the completion of the Maintenance Period for the first (if there are more than one) Reserved Matters Area;

5.6.2 the District Council:

- (i) if satisfied that the Open Space and/or the SUDS for that Reserved Matters Area have both been maintained throughout the Maintenance Period in accordance with the LEMP and the LAP and LEAP have been maintained as evidenced by the supply of a satisfactory further RoSPA Inspection Report and that any minor defects set out in the Practical Completion Certificate have been remedied shall issue a Final Completion Certificate; or
- (ii) if not so satisfied shall issue a Defects Notice and the relevant provisions of paragraphs 5.2 and 5.3 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate.

5.7 Upon complying with all necessary and reasonable health and safety requirements officers servants and agents of the District Council shall be entitled on reasonable written notice to enter the Site for the purpose of inspecting the Open Space and/or the SUDS.

## **6 ELECTION**

6.1 If not already confirmed within the LAP Scheme, LEAP scheme, including LEMP, the Open Space Scheme or the SUDS Scheme (as appropriate) before any Dwelling is Occupied in a Reserved Matters Area the Owner shall elect by written notice whether they wish:

6.1.1 to secure the maintenance and management of the Open Space and/or the SUDS for that Reserved Matters Area as one entity through a Management Company or Approved Body; or

6.1.2 for the District Council to acquire the Open Space and/or the SUDS for that Reserved Matters Area.

6.2 In the event that no such written notice is served in the time specified in paragraph 6.1 above (time being of the essence) the Owner shall be deemed to have elected to secure arrangements through a Management Company or Approved Body.

6.3 If the Owner shall elect or is deemed to have elected to secure the maintenance and management of the Open Space and the SUDS through a Management Company (sub-paragraph 6.1.1 above) then

6.3.1 the provisions of paragraphs 7, 8 and 9 below shall thereafter apply; and

6.3.2 the Owner shall no longer be entitled to elect by written notice to require the District Council to acquire the Open Space and/or the SUDS (or any such part or parts thereof).

6.4 If the Owner shall elect for the District Council to acquire the Open Space and/or the SUDS (paragraph 6.1.2 above) the provisions of paragraph 10 below shall apply.

## **7 MANAGEMENT COMPANY**

The Owner covenants with the District Council as follows:

7.1 That in the event the Owner elect or have deemed to have elected to secure the maintenance and management of the Open Space and/or the SUDS for a Reserved Matters Area through a Management Company they shall:

7.1.1 before any Dwelling is Occupied in that Reserved Matters Area submit a draft Management Company Structure Scheme to the District Council for its approval;

7.1.2 not Occupy or cause or permit the Occupation of more than five (5) Dwellings in that Reserved Matters Area until:

(i) the District Council shall have approved the submitted Management Company Structure Scheme; and

(ii) the Management Company has been established in accordance with the approved Management Company Structure Scheme and evidence thereof has been submitted to the District Council that it has been so established.

7.2 Not to dispose of an interest in any Dwelling in that Reserved Matters Area without putting in place in the plot documentation for each of the Dwellings in that Reserved Matters Area a covenant whereby the owner/occupiers of each Dwelling (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge which shall be collected and ring-fenced by the Management Company as successor in title to the Owner for application for the management and maintenance of the Open Space and/or the SUDS in that Reserved Matters Area.

7.3 To procure that the Management Company is obliged to employ certified auditors to assess the performance of the Management Company in terms of financial performance and annual statement of accounts and to procure that the Management Company submit the auditor's report to the District Council every year for 15 years, or until the Management Company no longer exists.

## **8 TRANSFER TO THE MANAGEMENT COMPANY OR APPROVED BODY**

8.1 The Owner shall secure the Transfer of the Open Space and/or the SUDS in a Reserved Matters Area to the Management Company or Approved Body within a reasonable time of the completion of the Open Space and/or the SUDS in that Reserved Matters Area in accordance with the relevant scheme.

8.2 The Owner shall remain liable to maintain the Open Space and/or the SUDS in that Reserved Matters Area in accordance with the LEMP and/or the Open Space Scheme and/or the SUDS Scheme (as appropriate) until the completion of the Transfer thereof to the Management Company or Approved Body and thereafter the Management Company or Approved Body shall

maintain the Open Space and/or the SUDS in that Reserved Matters Area in accordance with the relevant schemes and/or the LEMP.

- 8.3 Where Transfer of the Open Space and/or the SUDS is to the Approved Body, upon completion of the Transfer of the Open Space and/or the SUDS for that Reserved Matters Area referred to in paragraph 8.1 above to that Approved Body, the Open Space Commuted Sum and/or SUDS Commuted Sum for that Reserved Matters Area shall be paid to the Approved Body AND FOR THE AVOIDANCE OF DOUBT where the Transfer of the Open Space and/or the SUDS is to the Management Company the Open Space Commuted Sum and/or SUDS Commuted Sum shall not be payable.

## 9 MANAGEMENT COMPANY FINANCIAL PROVISIONS

- 9.1 On or before the Transfer to the Management Company of the Open Space and/or the SUDS in a Reserved Matters Area and in accordance with this Schedule, the Owner shall:

9.1.1 set up the ManCo Default Escrow Account and provide evidence to the District Council that the account has been set up;

9.1.2 pay the Management Company Default Deposit for that Reserved Matters Area into the ManCo Default Escrow Account and provide evidence to the District Council that such payment has been made; and

- 9.2 The ManCo Default Escrow Account shall be retained for a period expiring fifteen (15) years after the date the ManCo Default Escrow Account is first opened and the ManCo Default Escrow Account shall be closed at this point (or earlier if the Management Company is wound up prior to the expiration of the said fifteen (15) years) and any monies whether capital or interest sums remaining in the ManCo Default Escrow Account at that time shall be released to the person who made the payments or to such other person or body as the District Council at the request of the Owner shall permit.

- 9.3 In the event that:

9.3.1 the Management Company fails to maintain any part or aspect of the Open Space and/or SUDS in a Reserved Matters Area in accordance with the approved Management Scheme; or

9.3.2 the Management Company;

- (i) 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 Insolvency Act 1986;
- (ii) 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;
- (iii) 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 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);
- (iv) 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;
- (v) 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, or a notice of intention to appoint an administrator is given;
- (vi) 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;
- (vii) 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;
- (viii) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (whether or not that part of the business involves maintaining the Open Space and the SUDS);

the District Council may enter on to the relevant area of the Open Space and/or the SUDS together with relevant personnel and equipment to ensure the performance of the obligations contained in this Schedule and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage or reinstate the relevant area of the Open Space or the SUDS ("**Works in Default**") and shall be entitled to full reimbursement by the Management Company of all reasonable costs and expenses incurred in performing the said obligations.

9.4 In the event that the Management Company:

9.4.1 shall have failed to maintain the Open Space and/or the SUDS in a Reserved Matters Area in accordance with the approved LEMP and/or the Open Space Scheme and/or the SUDS Scheme (as appropriate) the District Council will not exercise the right in paragraph 9.3.2 to carry out Works in Default before having given written notice to the Management Company stating the nature of the failure, the steps required to remedy the failure, and a reasonable time period for remedying it and shall afford the Management Company the opportunity to remedy the failure in accordance with the steps and time period in the written notice;

9.4.2 shall have failed for whatever reason to reimburse the reasonable costs and expenses incurred by Council in carrying out any Works in Default within a reasonable time of a written demand, the District Council shall be entitled to recover such costs and expenses from monies held in the ManCo Default Escrow Account.

9.5 The District Council shall be entitled to draw down from the ManCo Default Escrow Account all sums to recover such unpaid costs and expenses incurred pursuant to paragraph 9.4 above.

9.6 In the event that:

9.6.1 the District Council shall have served notice on the Management Company requiring it to remedy any failure to maintain the Open Space and/or the SUDS in a Reserved Matters Area in accordance with the approved Management Scheme and:

(i) the Management Company has failed to remedy that failure within the time given in the notice; and/or

(ii) at that point in time the funds in the ManCo Default Escrow Account are insufficient to defray the costs of the Works in Default; and/or



- (iii) the Management Company otherwise ceases to be able to carry out its obligations pursuant to the LEMP and/or the Open Space Scheme and/or the SUDs Scheme (as appropriate)

then the provisions of paragraph 9.7 below shall apply.

9.7 The Management Company (or the such other person or body as shall then have control over the Management Company's assets) as successor in title to the Owner shall, at the election of the District Council either:

9.7.1 transfer all its interest in the Open Space and/or SUDS in that Reserved Matters Area to the District Council or its nominee together with all responsibilities for management and maintenance of the same; or

9.7.2 transfer the responsibility for management and maintenance of the Open Space and/or the SUDS in that Reserved Matters Area to the District Council or its nominee; and

9.7.3 pay any accrued Service Charges for that Reserved Matters Area to the District Council or its nominee and assign;

- (i) its right to collect and receive payments of the Service Charge for that Reserved Matters Area; and

- (ii) any rights it has to draw down funds from the ManCo Default Escrow Account for that Reserved Matters Area.

## 10 TRANSFER TO THE DISTRICT COUNCIL

10.1 The Owner shall not transfer the Open Space and/or the SUDS for a Reserved Matters Area to any person or body other than the District Council or such other person or body as the District Council shall nominate in writing but subject to compliance with the terms hereof the District Council covenants to accept a Transfer of the Open Space and/or the SUDS for that Reserved Matters Area.

10.2 Upon completion of the Transfer of the Open Space and/or the SUDS for that Reserved Matters Area referred to in paragraph 10.1 above the Open Space Commuted Sum and/or SUDS Commuted Sum for that Reserved Matters Area shall be paid to the District Council.

10.3 Upon completion of the Maintenance Period and issue of the Final Completion Certificate for a Reserved Matters Area the Owner shall offer to transfer the freehold interest in the Open Space and/or the SUDS for that Reserved Matters Area to the District Council or such other body as the District Council may direct on the following terms:

10.3.1 Save as is inconsistent herewith:

- (i) the Transfer shall be on the Law Society's Standard Conditions of Sale applicable at the time of the issue of the Final Completion Certificate;
- (ii) consideration for the Transfer shall be no more than one pound (£1);
- (iii) the Transfer shall be with:
  - (A) full title guarantee, and
  - (B) vacant possession on completion; and
- (iv) the Transfer shall include such rights as may be necessary for the District Council to access the Open Space and/or the SUDS for purposes of maintenance repair improvement and replacement of any aspect of the Open Space and/or the SUDS.

10.4 The Transfer may contain a covenant not to use or permit to be used the Open Space, the LAP/LEAP and/or the SUDS for anything other than the purposes that they are provided for under this Deed.

10.5 A draft transfer shall be prepared by the Owner and sent to the District Council for approval or amendment within a reasonable time 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 a reasonable time.

10.6 Notwithstanding the issue of a Final Completion Certificate the Open Space and/or the SUDS in a Reserved Matters Area shall continue to be maintained in accordance with the LEMP until its transferred in accordance with paragraph 10.3.

10.7 If at the end of the Maintenance Period for a Reserved Matters Area the District Council shall not issue a Final Completion Certificate but shall issue a Defects Notice the Owner shall deposit

with the District Council a further sum equal to the Open Space Commuted Sum and/or SUDS Commuted Sum for that Reserved Matters Area and:

10.7.1 subject to 5.2.2, when the requirements of the Defects Notice are complied with that sum shall be returned to the person or body that deposited it; but

10.7.2 if the Defects Notice is not complied with within twelve (12) months of the end of the Maintenance Period for that Reserved Matters Area the said Open Space Commuted Sum and/or SUDS Commuted Sum for that Reserved Matters Area shall be forfeited and the District Council shall use the Open Space Commuted Sum and/or SUDS Commuted Sum for that Reserved Matters Area to remedy any defects as set out in the Defects Notice so as to bring the Open Space and/or the SUDS for that Reserved Matters Area to a condition deemed to be satisfactory by the District Council;

and thereupon the District Council covenants to issue the Final Completion Certificate for that Reserved Matters Area and accept the Transfer of the Open Space and/or the SUDS.

### SCHEDULE 3

#### OPEN GREEN SPACE AND SPORTS FACILITIES

##### 1 DEFINITIONS

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

<b>Approved Body</b>	means in the first instance, the Parish Council (unless confirmed in writing by the District Council that the Parish Council has elected to refuse to manage the Sports Facilities and/or the Open Green Space) otherwise a company, charitable trust, parish council or other body experienced in the management and maintenance of facilities such as the Sports Facilities and Open Green Space to be approved in writing by the District Council (such approval not to be unreasonably withheld or delayed);
<b>Certificate of Practical Completion</b>	a certificate issued by a Qualified Professional in accordance with paragraphs 5 and 6 below to the effect that any or all of the Sports Facilities are practically complete;
<b>Football Pitch</b>	means 1 x grassed senior football pitch to be provided by the Owner on the Sports Facilities and Open Green Space Land in accordance with Sport England Guidance and a Qualifying Permission;
<b>Football Pitch Commuted Sum</b>	means an Index Linked (calculated from Q2 BCIS 2023) sum being either:  Option A  three hundred and twenty-five thousand and fifty pounds (£325,050.00); or  Option B  ninety one thousand six hundred an eighty nine pounds and forty eight pence (£91,689.48)  towards the future management and maintenance of the Football Pitch by the Approved Body;

**Junior Football Pitch** means 1 x grassed junior football pitch which may be provided by the Owner on the Sports Facilities and Open Green Space Land in accordance with Sport England Guidance and a Qualifying Permission

**Junior Football Pitch Commuted Sum** means an Index Linked (calculated from Q2 BCIS 2023) sum being either:

Option A

two hundred and seventy-two thousand seven hundred pounds (£272,000.00); or

Option B

eighty thousand four hundred and forty eight pounds and thirty nine pence (£80,448.39)

towards the future management and maintenance of the Junior Football Pitch by the Approved Body;

**Multi Use Games Area** means a multi-use games area which may be provided by the Owner on the Sports Facilities and Open Green Space Land in accordance with Sport England Guidance and a Qualifying Permission;

**Multi Use Games Area Commuted Sum** means an Index Linked (calculated from Q2 BCIS 2023) sum payable where it is confirmed as part of a Qualifying Permission that the Multi Use Games Area will be provided being either:

Option A

forty-eight thousand and six hundred pounds (£48,000.00); or

Option B

£0.00

towards the future management and maintenance of the Multi Use Games Area by the Approved Body;

**NEAP** means a neighbourhood equipped area for play facility to be provided by the Owner on the Site comprising an equipped activity zone of at least 1000 square metres set within a non-equipped landscaped area of at least 7500 square metres designed to provide a safe area for alternative play for children aged 8 to 12 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 8 items

of play equipment is required for the NEAP activity area (in combination with multi-play structures). The equipped activity zone within the landscaped area should be located a minimum of 30 metres from the nearest Dwelling boundary. The landscaped area around the equipped activity zone could be used to incorporate this buffer.

**NEAP Commuted Sum**

means the Index Linked sum being either:

Option A

five hundred and forty thousand and forty-eight pounds and thirty-one pence (£540,048.31); or

Option B

three hundred and twenty six thousand five hundred and fourteen pounds and fifty seven pence (£326,514.57)

towards the future management and maintenance of the NEAP by the Approved Body;

**Open Green Space**

means the 3.6ha of open green space less those areas on which the Sports Facilities are to be provided (or such other area approved by the District Council) which comprises the Sports Facilities and Open Green Space Land and which is to be retained and maintained as public open space to serve the Development and wider community in accordance with the provisions of this Schedule and the Sports Facilities and Open Green Space Scheme

**Open Green Space  
Commuted Sum**

means the Index Linked sum being either :

Option A

sixteen pounds and nine pence (£16.09) per square metre; or

Option B

fourteen pounds and thirty seven pence (£14.37) per square metre

towards the future management and maintenance of the Open Green Space by the Approved Body;

**Qualified Professional**

a suitably-qualified and experienced architect, landscape architect or other professional with a chartered membership of a professional institution previously approved by the District Council (such approval not to be unreasonably withheld or delayed);

<b>RoSPA Inspection Report</b>	means 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 and/or leap is fit for purpose in accordance with the appropriate standards set by the Royal Society for the Prevention of Accidents;
<b>Sports Facilities</b>	means the Football Pitch, NEAP, Junior Football Pitch, Tennis Court/s, Multi Use Games Area, picnic area and car parking area or such agreed combination of these facilities to support formal sport and recreation as determined as part of the Qualifying Application ;
<b>Sports Facilities and Open Green Space Commuted Sum</b>	means together the Football Pitch Commuted Sum, NEAP Commuted Sum, Junior Football Pitch Commuted Sum, Open Green Space Commuted Sum and any, Multi Use Games Area Commuted Sum and Tennis Court/s Commuted Sum;;
<b>Sports Facilities and Open Green Space Land</b>	the area of land within the Development upon which the Sports Facilities and Open Green Space will be provided, the indicative location of which is shown on the Sports Facilities and Open Green Space Land Plan and the exact location of which shall be determined by a Qualifying Permission
<b>Sports Facilities and Open Green Space Land Plan</b>	means the Sports Facilities and Open Green Space Land Plan attached to this Deed at Appendix 3
<b>Sports Facilities and Open Green Space Scheme</b>	means a detailed scheme for the provision of the Sports Facilities and which shall include: (1) details of the exact layout of the Sports Facilities and location of the Open Green Space (2) confirmation that the Sports Facilities will comply with Sports England Guidance (3) a timetable for the laying out and landscaping of the Sports Facilities and (4) details of ongoing management and maintenance of the Sports Facilities and Open Green Space
<b>Tennis Court/s</b>	means up to 2 tennis courts to be provided by the Owner within the Sports Facilities and Open Green Space Land in accordance with Sport England Guidance and a Qualifying Permission;
<b>Tennis Court/s Commuted Sum</b>	means the Index Linked sum payable where it is confirmed as part of a Qualifying Permission that the Tennis Court/s are to be provided being either:  Option A

fifty eight thousand and eight hundred pounds (£58,800) per tennis court; or

Option B

seventy one thousand seven hundred and sixty two pounds and twenty one pence (£71,762.21) per tennis court towards the future management and maintenance of the Tennis Court/s by the Approved Body;

The Owner covenants with the District Council as follows:

#### **APPROVAL OF THE SPORTS FACILITIES SCHEME**

1. The Owner covenants with the District Council not to cause or permit the Occupation of more than ten (10) Market Dwellings until a Qualifying Application has been submitted to the District Council for the Sports Facilities and Open Green Space Land to include a detailed layout of the Sports Facilities and Open Green Space Land including confirmation of the type and number of Sports Facilities to be provided on the Sports Facilities and Open Green Space Land which FOR THE AVOIDANCE OF DOUBT will include the Football Pitch, Junior Football Pitch, NEAP, Open Green Space, Tennis Court/s, Multi Use Games Area, picnic area and car parking as determined as part of the Qualifying Application unless the District Council agrees otherwise in writing that the Tennis Court/s and/or Multi Use Games Area and/or picnic area and/or car parking area are to be excluded from the Qualifying Application.
2. The Owner covenants with the District Council not to cause or permit the Occupation of more than twenty-five (25) Market Dwellings until the Sports Facilities and Open Green Space Scheme has been submitted to and agreed in writing by the District Council.

#### **SPORTS FACILITIES**

3. The Owner shall not cause or permit the Occupation of more than seventy four (74) Dwellings until the Sports Facilities and Open Green Space have been completed in accordance with any conditions on the Planning Permission and any relevant Qualifying Permission and in accordance with the Sports Facilities and Open Green Space Scheme. Completion of the Sports Facilities shall be evidenced by the issue of a Certificate of Practical Completion.
4. Upon completion of the provision of the Sports Facilities the Owner shall procure that a Qualified Professional inspects the works and issues a Certificate of Practical Completion addressed to and served on the District Council stating that the Sports Facilities have been provided in accordance with the requirements of this Deed and expressly confirming that the District Council and Approved Body may rely on such certificate.



5. If after inspection by the Qualified Professional the Owner receives a notice from that Qualified Professional which states the relevant Sports Facilities have not been provided in accordance with the requirements of this Deed (“Defects Notice”) they shall use reasonable endeavours to complete the works specified in the Defects Notice as soon as reasonably practicable and in any event no longer than 8 (eight) weeks (unless otherwise agreed in writing by the District Council) and repeat the procedure under clause 5 until such time as the works are defect-free and the Qualified Professional issues a Certificate of Practical Completion addressed to and served on the District Council stating that the Sports Facilities have been provided in accordance with the requirements of this Deed and expressly confirming that the District Council and Approved Body may rely on such certificate.
6. In addition to the above the Owner shall produce a RoSPA Inspection Report that certifies that the NEAP been completed to an appropriate safety standard and the Qualified Professional shall not be obliged to issue a Practical Completion Certificate until that report has been supplied to it.
7. Within 20 Working Days of the issue of a Certificate of Practical Completion for the Sports Facilities the Owner will offer to transfer the unencumbered freehold or leasehold of the Sports Facilities and Open Green Space Land to the Approved Body in consideration of the sum of £1.00 and for the avoidance of doubt the Owner shall bear their own legal and administrative costs and the reasonable legal and administrative costs incurred by the Approved Body to complete and register the Transfer) to and subject to no other contribution by the Approved Body such transfer to be with full title guarantee, vacant possession on completion and free and unrestricted rights of access for the general public at all times (the “Transfer”).
8. The Transfer will contain a covenant not to use or permit to be used the Open Green Space for anything other than the purpose of providing public open space.
9. The Owner shall not cause or permit the Occupation of more than one hundred and ten (110) Dwellings until the Transfer has been executed by the Owner and delivered to the Approved Body.
10. The Owner will prior to completion of the Transfer pay the Sports Facilities and Open Green Space Commuted Sum for the Sports Facilities and Open Green Space to the Approved Body.
11. The Owner will on completion of the Transfer above hand over to the Approved Body all contract documents and documents of guarantee relating to any equipment and its installation on the Sports Facilities and Open Green Space Land.

12. The Owner shall remain liable to maintain the Sports Facilities and Open Green Space in accordance with the Sports Facilities and Open Green Space Scheme and this Deed until the completion of the Transfer thereof to the Approved Body and thereafter the Approved Body shall maintain the Sports Facilities and Open Green Space in accordance with the Sports Facilities and Open Green Space Scheme.

## SCHEDULE 4

### SUSTAINABLE TRANSPORT SCHEDULE

#### 1. DEFINITIONS

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

<b>Car Club</b>	means a car hire scheme operated by a Car Club Operator which residents of the Development and members of the general public may join and which makes cars available to members to hire either on a commercial or part-subsidised basis;
<b>Car Club Operator</b>	means Enterprise or such other operator of the Car Club as may be agreed in writing by the Council at the Development appointed by the Owner who will be responsible for the operation of the Car Club including bookings and charges;
<b>Car Club Space</b>	means a car club parking space or car club spaces (if required) located within the Site and "Car Club Spaces" shall be construed accordingly;
<b>Electric Bike Voucher</b>	means a voucher to the value of five hundred pounds (£500) towards the purchase or hire of an electric bicycle which can be used in shops across Oxfordshire;
<b>Free Car Club Membership</b>	means a standard plan 12-month membership made available by the Car Club Operator or such other equivalent plan in place at the time the offer is made pursuant to this Schedule;

The Owner covenants and agrees with the District Council as follows:-

2.1 To provide an Electric Bike Voucher to the first household to Occupy each Dwelling upon first Occupation of that Dwelling.

2.2 Not to Occupy or cause or permit Occupation of the Dwellings until such time as:-

- 2.2.1 the Owner has entered into an agreement with the Car Club Operator to operate a Car Club from at least one (1) Car Club Space for a period of five (5) years from first Occupation of each Dwelling;
  - 2.2.2 the Owner has made available the Car Club Space or if required by the Car Club Operator the Car Club Spaces to the Car Club Operator for the purposes of operating the Car Club on the Site.
- 2.3 To offer Free Membership of the Car Club to the first household to Occupy each Dwelling such offer to remain valid for six (6) months from the date of the offer.
- 2.4 To provide Free Membership of the Car Club to the first household to Occupy each Dwelling upon acceptance of the offer pursuant to Paragraph 2.3 in writing above provided the offer is accepted within six (6) months of being made.
- 2.5 Where Free Membership of the Car Club is accepted pursuant to Paragraph 2.4:
  - 2.5.1 to make this available every year for a period of five (5) years from first Occupation by the first occupier of the relevant Dwelling; and
  - 2.5.2 to provide a fifty pound (£50.00) "Drive Time Credit" for use on Car Club journeys as a one-off payment.
- 2.6 To promote the Car Club within the Development and to notify all prospective first occupiers of the Dwellings of the availability of the Car Club and to provide evidence of such notifications to the District Council on request.
- 2.7 To give the District Council ten (10) Working Days written notice prior to entering into an agreement with the Car Club Operator and to provide with that notice details of the agreement, the Car Club Operator and the anticipated date of commencement of the Car Club for the District Council's approval.
- 2.8 To permit general members of the public not resident at the Development to enter the publicly accessible parts of the Site to the extent necessary to gain access to the Car Club Space for the purposes of using the Car Club.
- 2.9 In the event that:-

2.9.1 usage data submitted by the Car Club Operator to the District Council indicates that the Car Club is unviable and the District Council agrees in writing that it is not viable to continue the Car Club beyond the initial Car Club Membership period of five (5) years beginning with the date of commencement of operation of the Car Club; or

2.9.2 the District Council do not agree that it is not viable to continue the Car Club beyond the initial Car Club Membership period of five (5) years beginning with the date of commencement of operation of the Car Club and the Owner has used reasonable endeavours to procure an alternative Car Club Operator and has failed to do so;

then the obligations in this Deed in respect of the operation of the Car Club shall be deemed fully complied with and discharged.

## SCHEDULE 5

### FINANCIAL CONTRIBUTIONS PAYABLE TO THE DISTRICT COUNCIL

#### 1 DEFINITIONS

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

**Community Development Fund Contribution** the sum Index Linked calculated in accordance with the following formula:

$$(A \times B) = \text{£}$$

where:

A means the number of Dwellings;

B means the figure of £45.00 being the cost per occupier of each Dwelling

to be paid towards community development work which will include initiatives to support groups for residents of the Development.

**Community Development Worker Contribution** The sum of £16,995.89 Index Linked being a contribution towards employment of a community development worker to work to integrate residents into the community and wider area.

**Community Hall Facilities Contribution** the sum Index Linked calculated in accordance with the following formula:

$$(A \times B) = C$$

$$(C \times D) = E$$

$$(E \times F) = \text{£}$$

where:

A means the number of Dwellings;

B means the figure of 2.49 being the average occupancy per Dwelling;

D means the figure of 0.185 being the m2 of community space

required per resident

F means the figure of £2,482.00 being the cost per m2 of

provision of community space

to be paid towards improvements at Chesterton Village Hall, in order to increase the capacity and upgrade the kitchen

**Council Financial Contributions** means together the Community Development Fund Contribution, Community Development Worker Contribution, Community Hall Facilities Contribution, Indoor Sport Contribution, Outdoor Sport Contribution and Police Infrastructure Contribution

**Indoor Sport Contribution** the sum Index Linked calculated in accordance with the following formula:

$$(A \times B) = C$$

$$(C \times D) = \text{£}$$

where:

A means the number of Dwellings;

B means the figure of 2.49 being the average occupancy per Dwelling;

D means the figure of £335.32 being the cost per occupier of each Dwelling

to be paid towards improvements at Bicester Leisure Centre by the addition of a new learner pool.

**Outdoor Sport Contribution** the sum Index Linked calculated in accordance with the following formula:

$$A \times B$$

where:

A means the number of Dwellings;

B means the figure of £2,017.03 per dwelling

to be paid towards the expansion of the changing pavilion on the

perimeter of the Site to accommodate an increase in users.

**Police Infrastructure  
Contribution**

means the sum of twenty-seven thousand seven hundred and twenty-eight pounds (£27,728) Index Linked towards the purchase of infrastructure to serve the Development calculated as follows;

- Staff set up - On the basis that the development generates 1.40 uniformed officers and 0.40 CID/staff the set up costs equate to £1357 ( $2906 \times 0.41 + 1508 \times 0.11$ ).
- Vehicles - This equates to a cost of £22.30 per household. Accordingly therefore in order to maintain this level of provision the development would generate a required contribution of £3278 ( $22.3 \times 147$ )
- Mobile IT - Cost of each item = £4250, therefore for this development (which generates 0.7 additional uniformed officers, the cost would be £1743 ( $4250 \times 0.41$ ).
- ANPR contribution of £5550 towards the provision of ANPR in the area
- Premises - This development will generate 1.80 officers/staff the cost is £15,800 ( $16.88 \times 1800 \times 0.51$ )

The Owner covenants with the District Council as follows:

1. Prior to Commencement of Development of a Reserved Matters Area to provide to the District Council with a calculation of the District Council Financial Contributions payable based on the number of Dwellings in that Reserved Matters Area approved by a Qualifying Permission for the Development; and
  - 1.2 not Occupy or cause permit or allow the Occupation any Dwelling in a Reserved Matters Area until 50% (fifty percent) of the District Council Financial Contributions for that Reserved Matters Area have been paid to the District Council.
  - 1.3 not Occupy or cause permit or allow the Occupation of more than 50% (fifty percent) of the Dwellings in a Reserved Matters Area until the remaining 50% (fifty percent) of the District Council Financial Contributions for that Reserved Matters Area have been paid to the District Council.



## SCHEDULE 6

### FINANCIAL CONTRIBUTIONS PAYABLE TO THE COUNTY COUNCIL

#### 1 DEFINITIONS

1.1 In this Schedule the following additional definitions shall apply (and 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):

**Approval (Initial)** means if paragraph 5.1 of this Schedule applies the approval of a Qualifying Application which first establishes the Composition of the Development; or if paragraph 5.2 of this Schedule applies the Composition of Development for the purposes of this definition only is deemed to be 15 x 1 Bed Dwellings and 45 x 2 Bed Dwellings and 53 x 3 Bed Dwellings and 34 x 4+ Bed Dwellings

**Approval (Variation)** means any approval (further to an application for approval of reserved matters; a Qualifying Application; or approval of a non-material change to a Qualifying Permission, the Planning Permission or otherwise) which alters the Composition of the Development as established further to the Approval (Initial) in the event that paragraph 5.1 of this Schedule applies; or as defined in the Approval (Initial) in the event that paragraph 5.2 of this Schedule applies or as established in any preceding Approval (Variation) (as applicable)

**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;

	<ul style="list-style-type: none"> <li>• 4+ Bed Dwelling means a Dwelling with 4 or more Bedrooms;</li> </ul>
<b>Composition of the Development</b>	means the aggregate number of Dwellings comprised in the entire Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling;
<b>Education Payment</b>	means any instalment of the Secondary Education Contribution and/or the Primary Education Contribution and/or the SEND Contribution and/or the Secondary Land Contribution;
<b>Indexed</b>	Means index linked in relation to <ul style="list-style-type: none"> <li>• the Public Transport Services Contribution and the Travel Plan Monitoring Fee adjusted according to any increase occurring between 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</li> <li>• the Secondary Land Contribution and any additional payments calculated further to paragraph 3.1.4(h) and made in accordance with paragraph 4.1 adjusted according to any increase occurring between April 2023 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</li> <li>• the Public Transport Infrastructure Contribution adjusted according to any increase occurring between December 2021 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</li> </ul>

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 Public Rights of Way Contribution adjusted according to any increase occurring between December 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 Primary Education Contribution and the Secondary Education Contribution and the SEND Contribution and the Waste Contribution and any additional payments calculated further to paragraphs 3.1.4(b) and/or 3.1.4(d) and/or 3.1.4 (f) and made in

accordance with paragraph 4.1 below 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;

**Matrix Sum**

means the sum calculated in accordance with the following formula:

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

where:

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 or more Bed Dwellings;

And W, X, Y and Z are as set out on the Secondary Education line, Primary Education line, SEND line and the Secondary Land line (as applicable) in the table in Annex 1 to this Schedule;

**Notification (Initial)**

means written notification confirming whether paragraph 5.1 or paragraph 5.2 of this Schedule applies and if paragraph 5.1 applies notification of the Approval (Initial) containing a copy of that approval and details of the Composition of the Development established by that approval;

<b>Notification (Variation)</b>	means written notification of an Approval (Variation) containing a copy of that approval and details of the Composition of the Development established applying that approval;
<b>Primary Education Contribution</b>	<p>means if the Development is not to be brought forward in a Single Phase the sum of one million four hundred and ninety four thousand five hundred and eighty four pounds (£1,494,584) Indexed or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule Indexed towards the expansion of capacity at St Edburg's CE Primary School payable in two instalments as follows:</p> <ul style="list-style-type: none"> <li>• Primary Education Contribution Instalment 1 being 50% of the Primary Education Contribution; and</li> <li>• Primary Education Contribution Instalment 2 being the remaining 50 % of the Primary Education Contribution;</li> </ul>
<b>Public Rights of Way Contribution</b>	means the sum of £30,000 (Thirty thousand pounds) Indexed towards improvements to the public rights of way within the vicinity of the Site;
<b>Public Transport Services Contribution</b>	means the sum of £166,551 (one hundred and sixty six thousand five hundred and fifty one pounds) Indexed towards new or improved bus service(s) to serve Chesterton;
<b>Public Transport Infrastructure Contribution</b>	means the sum of £11,223 (eleven thousand two hundred and twenty three pounds) Indexed towards the provision of bus stop infrastructure in the vicinity of the Green Lane/Alchester Road junction;
<b>Revised Contribution</b>	means the Revised Primary Education Contribution and/or the Revised Secondary Education Contribution and/or the Revised Secondary Land Contribution and/or the Revised SEND Contribution

**Revised Primary Education Contribution** means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix Sum using the Primary Education line of the table in Appendix 1 where this is higher than the Primary Education Contribution or in the event that there is more than one Approval (Variation) then the Revised Primary Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix Sum using the Primary Education line of the table in Appendix 1 if that sum is higher;

**Revised Secondary Education Contribution** means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix Sum using the Secondary Education line of the table in Appendix 1 where this is higher than the Secondary Education Contribution or in the event that there is more than one Approval (Variation) then Revised Secondary Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix Sum using the Secondary Education line of the table in Appendix 1 if that sum is higher;

**Revised Secondary Land Contribution** means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix Sum using the Secondary Land line of the table in Appendix 1 where this is higher than the Secondary Land Contribution or in the event that there is more than one Approval (Variation) then Revised Secondary Land Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix Sum using the Secondary Land line of the table in Appendix 1 if that sum is higher;

**Revised SEND Contribution** means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix Sum using the SEND line of the table in Appendix 1

where this is higher than the SEND Contribution or in the event that there is more than one Approval (Variation) then Revised SEND Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix Sum using the SEND Education line of the table in Appendix 1 if that sum is higher;

**Secondary Education Contribution**

means if the Development is not to be brought forward in a Single Phase the sum of one million one hundred and ninety six thousand five hundred and thirty two pounds (£1,196,532) Indexed or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule Indexed towards secondary education capacity (which is anticipated to be provided on land forming part of the Bicester 1 allocation) serving the Site payable in two instalments as follows:

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

**Secondary Land Contribution**

means if the Development is not to be brought forward in a Single Phase the sum of one hundred and nine thousand and eight hundred pounds (£109,800) Indexed or if the Development is to be brought forward as a Single Phase the sum determined in accordance with paragraph 5.1 of this Schedule Indexed towards the purchase of land (which is anticipated to be land forming part of the Bicester 1 allocation) for the provision of secondary education capacity serving the Site;

**SEND Contribution**

means if the Development is not to be brought forward in a Single Phase the sum of eighty thousand seven hundred and sixty seven pounds (£80,767) Indexed or if the Development is to be brought forward as a Single Phase the sum

determined in accordance with paragraph 5.1 of this Schedule Indexed towards special education and disability needs capacity serving the Site payable in two instalments as follows:

- SEND Instalment 1 being 50% of the SEND Contribution; and
- SEND Instalment 2 being the remaining 50% of the SEND Contribution;

<b>Single Phase</b>	means a Qualifying Application of not less than 140 Dwellings
<b>Speed Reduction Contribution</b>	means the sum of £10,000 (ten thousand pounds) Indexed toward the costs of obtaining a Traffic Regulation Order for the implementation of a 20mph speed limit and installation of roundels along Green Lane;
<b>Travel Plan</b>	means an approved residential travel plan for the Development to promote sustainable modes of travel and seek to reduce car based travel, particularly single car use;
<b>Travel Plan Monitoring Fee</b>	means the sum of £1,588 (one thousand five hundred and eighty eight pounds) Indexed toward the monitoring of the Travel Plan for a period of five years;
<b>Waste Contribution</b>	means the sum of £13,812 (thirteen thousand eight hundred and twelve pounds) Indexed toward the expansion and efficiency of Household Waste Recycling Centres serving the Site.

## 2 COVENANTS

The Owner covenants with the County Council as follows:

- 2.1 not to cause or permit the Commencement of Development until it has paid the Public Rights of Way Contribution, and the Public Transport Services Contribution, and the Public Transport



Infrastructure Contribution and the Waste Contribution, Speed Reduction Contribution, and the Travel Plan Monitoring Fee to the County Council; and

2.2 [REDACTED] to pay the Public Rights of Way Contribution, and the Waste Contribution, and the Public Transport <sup>Services</sup> Contribution, and the Public Transport Infrastructure Contribution, Speed Reduction Contribution, and the Travel Plan Monitoring Fee to the County Council prior to the Commencement of Development;

2.3 [REDACTED] not to cause or permit the first Occupation of any Dwelling until it has paid Secondary Education Instalment 1, and Primary Education <sup>Contribution</sup> Instalment 1, and the SEND Instalment 1 and the Secondary Land Contribution to the County Council; and

2.4 [REDACTED] to pay Secondary Education Instalment 1, and Primary Education <sup>Contribution</sup> Instalment 1, SEND Instalment 1 and the Secondary Land Contribution to the County Council prior to first Occupation of any Dwelling ;

2.5 [REDACTED] not to cause or permit the first Occupation of more than the Fiftieth Dwelling until it has paid Secondary Education Instalment 2 and Primary Education <sup>Contribution</sup> Instalment 2 and SEND Instalment 2 to the County Council; and

2.6 [REDACTED] to pay Secondary Education Instalment 2, and Primary Education Contribution Instalment 2, and SEND ~~Education Contribution~~ Instalment 2 to the County Council prior to first Occupation of more than the Fiftieth Dwelling.

### 3. OWNER'S COVENANTS (NOTIFICATION AND ASSESSMENT)

3.1 The Owner covenants with the County Council as follows:

3.1.1. to give to the County Council the Notification (Initial) within 14 Working Days of the issue of the Approval (Initial);

3.1.2 not to cause or permit Commencement of Development until the Notification (Initial) has been given to the County Council;

3.1.3 to give to the County Council a Notification (Variation) within 14 Working Days of the issue of every Approval (Variation);

3.1.4 where a Notification (Variation) has been given (or is required to be given further to paragraph 3.1.3) and the relevant Approval (Variation) results in the establishment of a Revised Contribution then:

- (a) for the purposes of calculating any Primary Education Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Primary Education Contribution shall be applied in place of the Primary Education Contribution;
- (b) there shall be calculated the difference between any Primary Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Primary Education Contribution would have been if it had been calculated by reference to the Revised Primary Education Contribution (disregarding index linking);
- (c) for the purposes of calculating any Secondary Education Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Secondary Education Contribution shall be applied in place of the Secondary Education Contribution;
- (d) there shall be calculated the difference between any Secondary Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Secondary Education Contribution would have been if it had been calculated by reference to the Revised Secondary Education Contribution (disregarding index linking);
- (e) for the purposes of calculating any SEND Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised SEND Contribution shall be applied in place of the SEND Contribution;
- (f) there shall be calculated the difference between any SEND Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such SEND Contribution would have been if it had been calculated by reference to the Revised SEND Contribution (disregarding index linking);
- (g) for the purposes of calculating any Secondary Land Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the

Revised Secondary Land Contribution shall be applied in place of the Secondary Land Contribution;

- (h) there shall be calculated the difference between any Secondary Land Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Secondary Land Contribution would have been if it had been calculated by reference to the Revised Secondary Land Contribution (disregarding index linking).

#### 4. ADDITIONAL EDUCATION PAYMENT

- 4.1 The Owner covenants with the County Council to pay to the County Council any sum calculated further to paragraphs 3.1.4(b) and 3.1.4(d) and 3.1.4 (f) and 3.1.4(h) Indexed with the next Education Payment subsequent to the date of grant of the relevant Approval (Variation) or if all the Education Payments have been paid to pay such sum ~~Index Linked~~ *Indexed* within 14 Working Days of the grant of the Approval (Variation).

#### 5. DETERMINATION OF THE EDUCATION CONTRIBUTION

The Owner covenants with the County Council that:

- 5.1 in the event that the Dwellings comprised in the Development are brought forward in a Single Phase as part of a Qualifying Permission then;
  - 5.1.1 the Primary Education Contribution shall be sum calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Permission where W, X, Y and Z are the Primary Education figures set out in the first line of the table at Annex 1 of this Schedule Indexed; and
  - 5.1.2 the Secondary Education Contribution shall be sum calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Permission where W, X, Y and Z are the Secondary Education figures in the second line of the table at Annex 1 of this Schedule Indexed; and
  - 5.1.3 the Secondary Land Contribution shall be sum calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Permission where W, X, Y and Z are the Secondary Land figures in the third line of the table at Annex 1 of this Schedule Indexed; and

5.1.4 the SEND Contribution shall be sum calculated by applying the Matrix to the Composition of the Development as identified in that Qualifying Permission where W, X, Y and Z are the SEND figures in the fourth line of the table at Annex 1 of this Schedule Indexed

5.2 In the event that the Dwellings comprised in the Development are not brought forward in a Single Phase then:

5.2.1 the Primary Education Contribution shall be the sum of one million four hundred and ninety four thousand five hundred and eighty four pounds (£1,494,584) Indexed

5.2.2 the Secondary Education Contribution shall be the sum of one million one hundred and ninety six thousand five hundred and thirty two pounds (£1,196,532) Indexed

5.2.3 the Secondary Land Contribution shall be the sum of one hundred and nine thousand and eight hundred pounds (£109,800) Indexed

5.2.4 the SEND Contribution shall be the sum of eighty thousand seven hundred and sixty seven pounds (£80,767) Indexed

**Annex 1**

	<u>W = 1 Bed</u>	<u>X= 2 Bed</u>	<u>Y = 3 Bed</u>	<u>Z= 4+ Bed</u>
Primary Education	£0	£9,411.74	£12,100.81	£12,638.62
Secondary Education	£0	£7,038.42	£9,719.73	£10,725.22
Secondary Land	£0	£645.88	£891.93	£984.20
SEND	£0	£487.57	£656.72	£706.47

## SCHEDULE 7

### HIGHWAYS AND TRANSPORT

#### 1 DEFINITIONS

1.1 In this Schedule the following additional definitions shall apply (and 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):

**1980 Act** means the Highways Act 1980 (as amended);

**Highway Agreement** means an agreement under Section 278 (and if appropriate section 38) of the 1980 Act in accordance with the form annexed to this Deed as Appendix 5 (subject to any amendments that the circumstances may reasonably and properly require) which provides for the execution of the Works by the Owner at the Owner's expense;

**Works** means the principal works together with associated preparatory and ancillary works and the amenity and accommodation works described in Part 2 of this Schedule.

#### Part 1

#### Highway Works

1. The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act.

2. The parties intend to enter into the Highway Agreement or Highway Agreements.

#### 3 WORKS OBLIGATIONS

3.1 The Owner covenants with and undertakes to the County Council not to cause or permit the first Occupation of any Dwelling on the Site until:

3.1.1 there have been submitted to the County Council and approved by it in writing in principle drawings for the Works together with associated drawings and technical

information as set out in the County Council's Section 278 application form as adjusted from time to time;

3.1.2 there have been submitted to the County Council and approved by it in writing plans detailing the land (if any) to be dedicated following completion of the Works and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated; and

3.1.3 the anticipated duration of construction of the Works has been agreed with the County Council together with the longstop date for completion of the Works and commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works, has been agreed.

3.1.4 a Highway Agreement incorporating in those in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 3.1.1 to 3.1.3 of this Schedule has been entered into by the Owner in respect of the Works together with all parties with an interest in any land to be dedicated further to the Highway Agreement and any mortgagee of such land has released it fully and effectively from its charge.

3.2 Not to cause or permit the first Occupation of any Dwelling on the Site unless and until the Works have been completed pursuant to and in accordance with the Highway Agreement.

## **Part 2**

### **The Works**

#### **1 PRINCIPAL WORKS**

1.1 The provision and construction of the following works as shown indicatively on the identified plans:

1.1.1 a new access to the Site as shown on drawings ITB14377-GA-001 Rev F and ITB14377-GA-006 Rev A attached to this Deed as Appendix 4;

1.1.2 provision of signage, wayfinding signs and cycle road markings, in both directions on Green Lane, The Hale and the unnamed road to the east as shown on drawings ITB14377-GA-003 Rev D and ITB14377-GA-004 Rev B attached to this Deed as Appendix 4;

## **2 PREPARATORY AND ANCILLARY WORKS**

**2.1** The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Works such alteration thereof) as the County Council shall reasonably consider requisite for the proper construction and functioning of the Works including:

2.1.1 all earthworks and other things necessary to prepare the Site and provide proper support for the Works;

2.1.2 all culverts ditches and other things necessary to ensure the satisfactory movement of surface water;

2.1.3 all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Works;

2.1.4 all ducts cables columns lamps and other things necessary for the permanent lighting of the Works and the illumination of traffic signs;

2.1.5 all kerbs islands verges and reservations including the grading and seeding of grassed areas;

2.1.6 all measures necessary to ensure visibility for drivers at any bend or junction;

2.1.7 all traffic signs road markings bollards and safety barriers; and

2.1.8 all tapers joints and reinstatements necessary where the Works abut the existing highway.

## **3 AMENITY AND ACCOMMODATION WORKS**

**3.1** The provision and construction of all such amenity and accommodation works as the County Council shall reasonably consider requisite for the protection of the local environment and private and public rights and property in consequence of the Works including:

3.1.1 any earth bunds and/or planting necessary to screen the Works;



- 3.1.2 all fences gates hedges and other means of separation of the Works from adjoining land;
- 3.1.3 any necessary alteration of any private access or private or public right of way affected by the Works; and
- 3.1.4 any necessary embankments retaining walls or other things necessary to give support to adjoining land.

## SCHEDULE 8

### DISTRICT COUNCIL'S COVENANTS WITH THE OWNER

#### 1 REPAYMENT OF CONTRIBUTIONS

- 1.1 The District Council covenants with the Owner to use all sums received from the Owner under the terms of Schedule 5 for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree.
- 1.2 Subject to the proviso to clause 4.2 if the Appeal is dismissed the District Council covenants to return the District Monitoring Fee less five hundred pounds (£500.00) paid pursuant to clause 10.1(c) to the party or person who paid it.
- 1.3 The District Council covenants with the Owner that following written request from the person who made the relevant payment the District Council will repay to that person the balance (if any) of any payment made by that person to the District Council under the terms of Schedule 5 in accordance with the provisions of this Deed which has not been expended or committed at the date of such written request together with Interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always:
- 1.3.1 that no such request will be made prior to the expiry of ten (10) years of the date of receipt by the District Council of such payment;
- 1.3.2 that 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; and
- 1.3.3 that if any capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph;

AND FURTHER PROVIDED THAT the District Council shall not be obliged pursuant to this paragraph to return monies that do not relate to Council functions or have been passed to persons/bodies other than the District Council.

- 1.4 The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of Schedule 5 upon a written request by the Owner such request not to be made more than once in any year.

## 2 DISCHARGE OF OBLIGATIONS

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.

**SCHEDULE 9**

**COUNTY COUNCIL'S COVENANTS WITH THE OWNER**

- 1 The County Council covenants with the Owner that following a written request from the person who made the relevant contribution it will repay to the person that made the payment the balance (if any) of the contributions paid to the County Council in accordance with Schedule 6 of this Deed which at the date of the receipt of such written request has not been expended provided always that no such request shall be made prior to the expiration of ten years from the date of receipt of payment of the last instalment of the relevant contribution or ten years from expiration of the due date for payment of the relevant contribution (whichever is later). 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.
  
- 2 The County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the County Council under this Deed upon receiving a written request from the Owner such request not being made more than once in any year.

**THE COMMON SEAL of  
CHERWELL DISTRICT COUNCIL**

was affixed in the presence of:



Authorised Signatory



21250.

**THE COMMON SEAL of  
OXFORDSHIRE COUNTY COUNCIL**

was affixed in the presence of:



~~Director of Law and Governance  
(the officer appointed for this purpose)~~

Authorised Officer



2210/23

EXECUTED as a DEED by DEBORAH ANN DAVIES

in the presence of:

Signature (Witness)

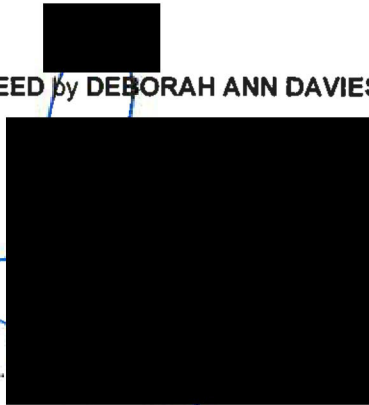
Print Name

Address

52-54 The Green, Banbury,....

OX16 9AB.

Occupation



Andrew Woods  
Solicitor  
S E SOLICITORS  
52-54 The Green, Banbury,....  
OX16 9AB.



EXECUTED as a deed by WATES DEVELOPMENTS LIMITED acting by two directors

Signature of director		Director
Signature of director or secretary		Director

**APPENDIX 1**

**Plan**



**NOTES:**

**DO NOT SCALE. USE FIGURED DIMENSIONS ONLY.**  
 All dimensions to be checked on site.  
 Drawing to be read with all relevant Architectural, Interiors, Structural, M&E, Drainage/Public Health, Landscape, Civils and Interiors drawings and specifications. Any discrepancies between consultant's drawings to be referred to the Architect before any work commences.  
 The Contractor's attention is drawn to the Health & Safety matters identified in the Health & Safety plan as being potentially hazardous.  
 These items should not be considered as a full and final list.  
 The Work Package Contractor's normal Health & Safety obligations still apply when undertaking constructional operations both on and off site.  
 Ayre Chamberlain Gaunt takes no responsibility for the location of legal boundaries indicated on this drawing and advise a separate drawing be completed by a specialist surveyor in order to establish exact boundaries. Dwg files provided for information only. Refer to PDF records.  
 The copyright of this drawing is held by Ayre Chamberlain Gaunt Ltd. Not to be used for any purpose without consent.

 Application Site



**ACGARCHITECTS.CO.UK**

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 Belvedere House  
 Basing View  
 Basingstoke  
 Hampshire, RG21 4HG

+44 (0)256 363 987  
 mail@acgarchitects.co.uk



**PROJECT**  
 Chesterton  
 Land South of Green Lane

**DRAWING TITLE**  
 SITE LOCATION PLAN

REV	DATE	DESCRIPTION
1	3/08/2022	Issue for Planning
2	26/09/2022	Issued to Client - Plot boundary updated on eastern parcel
3	03/11/2022	Issue for Planning

REV.	VER.	APPROVED BY
P3	.00	DA

**DRAWING NO.**  
 Project code - area name - volume - level - type - title - number  
 353-ACG-XX-00-DR -A-1000

**SUITABILITY**  
 A2 APPROVED FOR PLANNING STAGE



## APPENDIX 2

**Admin Fees for period 1st April 2023 to 31st March 2024**  
 Approved by Cabinet 24th January 2023

Aggregate of contributions secured in S106	Up to £10,00	£10K - £25K	£25,001 - £50K	£50,001 - £150K	£150,001 - £500K	£500,001 - £1m	£1,000,001 - £2m	Over £2m
Administration and Monitoring Fee	£130	£320	£635	£1,910	£4,700	£6,350	0.8% of aggregate contribution amount	£16K + 0.08% of any amount over £2m

**APPENDIX 3**

**Sports Facilities and Open Green Space Land Plan**



**APPENDIX 4**

**Highways Works**

EXAMPLE - CYCLE ROADMARKINGS



'ROUTE RECOMMENDED FOR PEDAL CYCLES ON THE MAIN CARRIAGEWAY' SIGNAGE  
TSRGD DIAGRAM 967



NORTHBOUND CYCLE ROADMARKINGS  
(SEE EXAMPLE)

THE HAILE

SOUTHBOUND CYCLE ROADMARKINGS  
(SEE EXAMPLE)

'ROUTE RECOMMENDED FOR PEDAL CYCLES ON THE MAIN CARRIAGEWAY' SIGNAGE  
TSRGD DIAGRAM 967



20MPH ROUND EL ROADMARKINGS

EASTBOUND CYCLE ROADMARKINGS  
(SEE EXAMPLE)

GREEN LANE

GREEN LANE

PROPOSED GATEWAY FEATURE WITH SPEED LIMIT SIGNAGE  
(SEE ITB14377-GA-001)

EXISTING TRAFFIC CALMING FEATURE TO BE RETAINED  
(SEE IMAGE 1)

EXISTING CHANGE OF SPEED LIMIT SIGNAGE TO BE RELOCATED

WESTBOUND CYCLE ROADMARKINGS  
(SEE EXAMPLE)



REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE LICENCE No. 100044286 © CROWN COPYRIGHT RESERVED.

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CLIENT: WATES DEVELOPMENTS LTD



The Square, Basing View, Basingstoke, Hampshire, RG21 4EB  
Tel 01256 637940  
www.i-transport.co.uk

POTENTIAL CYCLE IMPROVEMENTS TO THE HAILE & GREEN LANE

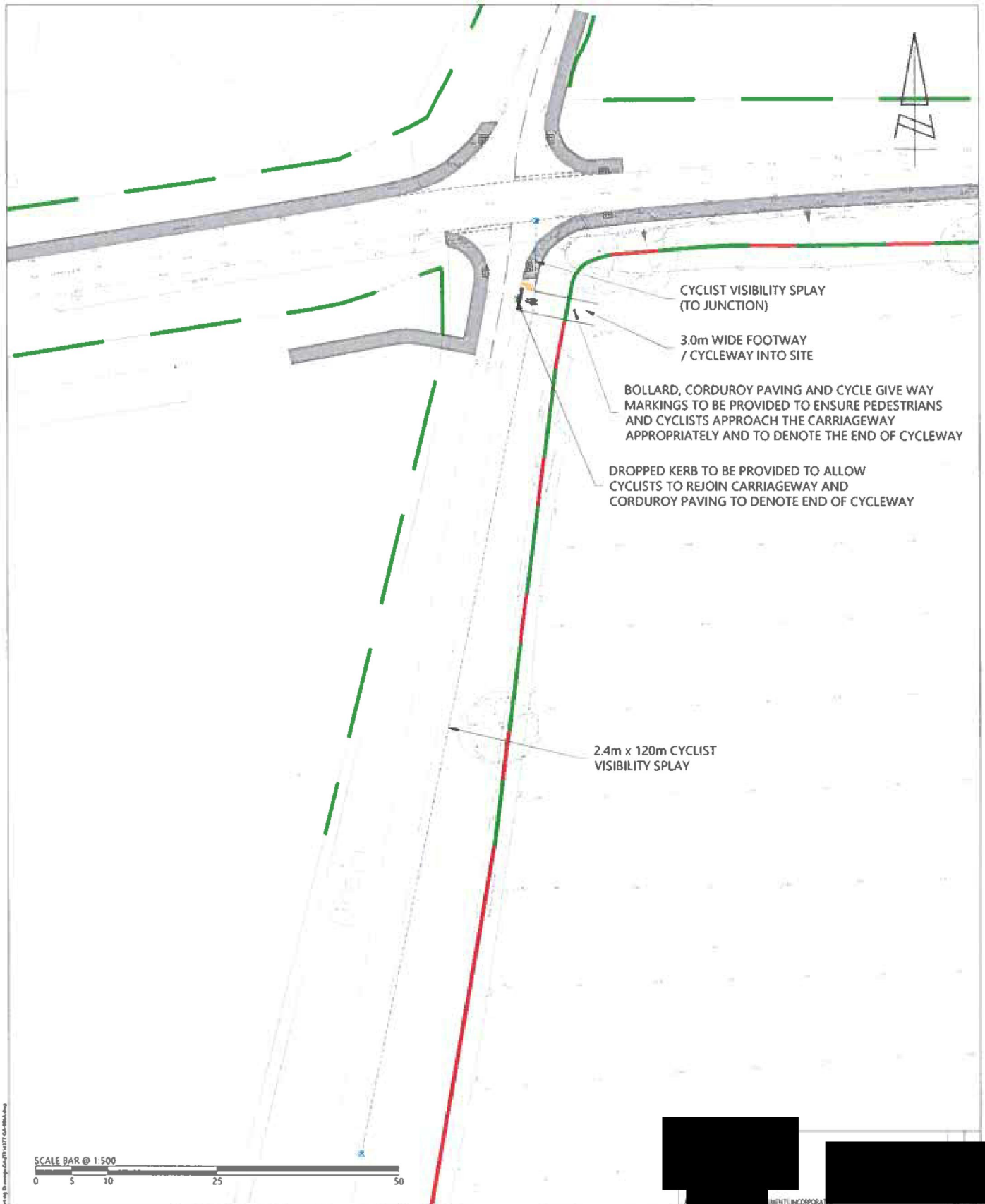
LAND SOUTH OF GREEN LANE, CHESTERTON

REV	DATE	BY	DESCRIPTION	CHK	APP
B	05.05.22	JD			
A	21.04.22	JR			

STATUS	INFORMATION
DRAWN	APPROVED
PROJECT	DATE
DRAWING	REV

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T:\Project\14377\14377\_006\14377\_GA-006.dwg

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CLIENT

WATES DEVELOPMENTS LTD

DATE INCORPORATED

DESCRIPTION

CHK

APD

STATUS

FOR INFORMATION

DRAWN

CHECKED

APPROVED

PROJECT

SCALE @ A3

DATE

REV



POTENTIAL PEDESTRIAN / CYCLE ACCESS ARRANGEMENT

ID

IN

TW

1:500

07.03.22

REV

TB14377-GA-006

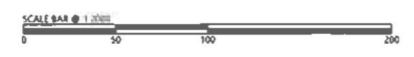
A

The Square, Basing View,  
Basingstoke, Hampshire, RG21 4EB  
Tel. 01256 637940  
www.i-transport.co.uk

LAND SOUTH OF GREEN LANE, CHESTERTON



The Square, Beving Vale,  
Basingstoke, Hampshire, RG21 4EB  
Tel: 01256 637540  
www.i-transport.co.uk



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NO.	DATE	BY	DESCRIPTION	REV.
0	07/02/22	JD	MANAGEMENT LOGS	01
1	12/02/22	JD	ACCESS MANAGEMENT PLAN	02
2	15/02/22	JD	SCHEMATIC DEVELOPMENT	03
3	22/02/22	JD	FINAL SCHEMATIC	04

FOR INFORMATION

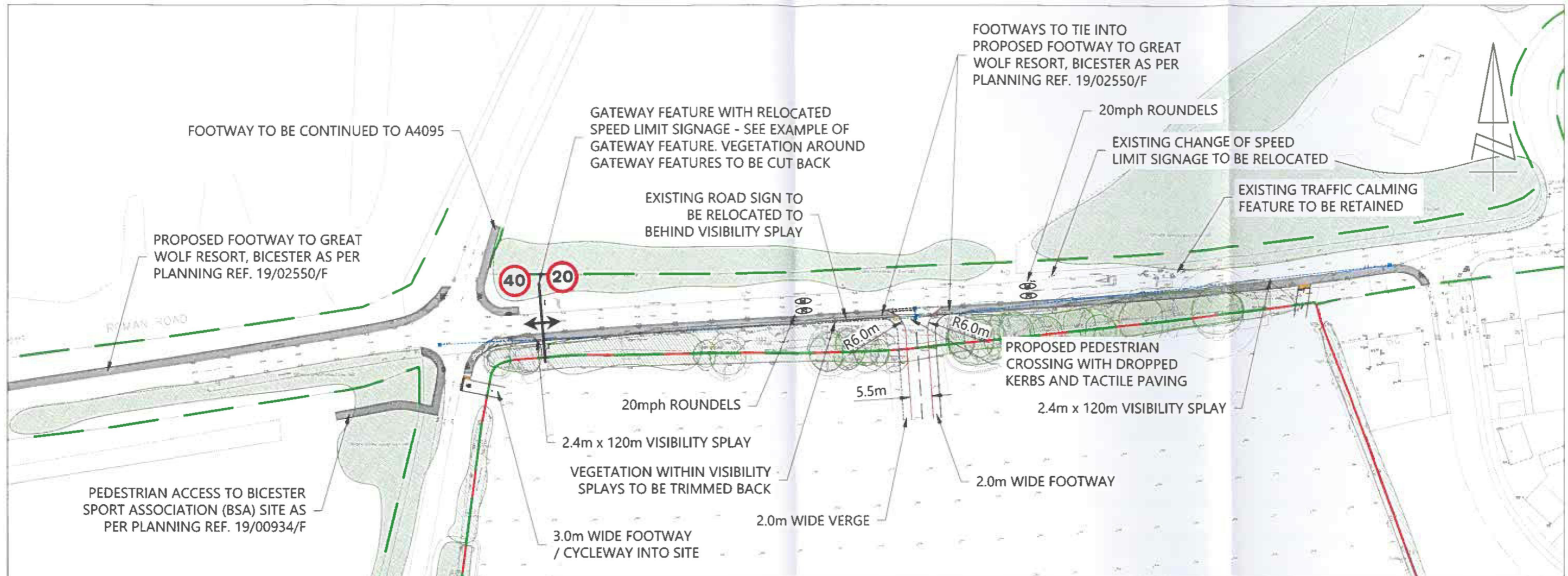
POTENTIAL CYCLE IMPROVEMENTS TO THE UNNAMED ROAD FROM GREEN LANE TO WENDLEBURY ROAD

LAND SOUTH OF GREEN LANE, CHESTERTON

WATES DEVELOPMENTS LTD

DATE	JD	CHECKED	BN	APPROVED	TW
PROJECT NO	ITB14377	SCALE	1:2000	DAT	07/02/22
DRAWING NO	ITB14377-GA-003			REV	D

K. Jordan

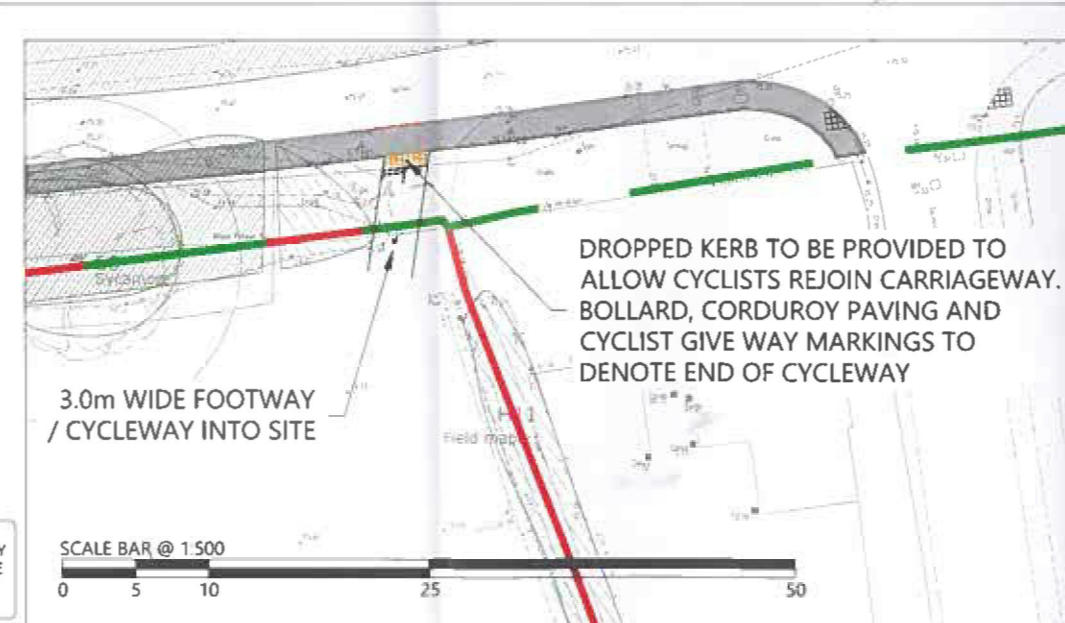


**KEY:**

- SITE BOUNDARY
- HIGHWAY BOUNDARY
- COMMITTED FOOTWAY IMPROVEMENTS

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EXAMPLE OF GATEWAY FEATURE



The Square, Basing View,  
Basingstoke, Hampshire, RG21 4EB  
Tel: 01256 637940  
www.i-transport.co.uk

F	05.05.22	JD	RSA COMMENTS INCORPORATED	IN	TW
E	21.04.22	JB	ROADMARKINGS ADDED	IN	TW
D	07.03.22	JD	SITE ACCESS AMENDED	IN	TW
C	17.02.22	JD	SITE ACCESS AMENDED	IN	TW
B	06.01.22	JD	FOOTWAYS ADDED	IN	TW
A	25.08.20	JD	TREE SURVEY ADDED	IN	TW

REV	DATE	BY	DESCRIPTION	CHK	APD
STATUS:					
FOR INFORMATION					

TITLE		POTENTIAL SITE ACCESS ARRANGEMENT	
PROJECT:	LAND SOUTH OF GREEN LANE, CHESTERTON	CLIENT:	WATES DEVELOPMENTS LTD

DRAWN	CHECKED
JD	JD
PROJECT No:	SCALE @ A3:
ITB14377	1:1000
DRAWING No:	ITB14377-GA-



**APPENDIX 5**

**Highway Agreement**

DATED \_\_\_\_\_ 20[ ]

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

-----  
Agreement relating to highway works at [ ] to be undertaken  
by Developer  
-----

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

**THIS DEED** is made on the \_\_\_\_\_ day of

Two Thousand and [       ]

**BETWEEN:-**

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) \_\_\_\_\_ ("the Owner")
- (3) \_\_\_\_\_ (company registration  
number) ("the Developer")

(4)

1. **Interpretation**

In this Deed:-

- 1.1 "the 1980 Act" means the Highways Act 1980
- 1.2 "the 1990 Act" means the Town and Country Planning Act 1990
- 1.3 "As-Built Drawings" means detailed plans and drawings showing the Works in the form in which they have actually been executed and completed required under Condition 29 of the Standard Conditions
- 1.4 "Certificate of Completion" means a certificate issued under Condition 30 of the Standard Conditions
- 1.5 "the Council" means the said Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority or planning authority and any duly appointed employee or agent of the Council or such successor

- 1.6 "the Dedication Plan" means the plan marked 'B' / drawing reference [ ] annexed to this Deed or such other plan as the Owner [the Developer and the Mortgagee] and the Council agree should be substituted for it
- 1.7 ["the Developer" means of/ whose registered office is at and its successors in title and assigns]
- 1.8 "the Development" means [ ]
- 1.9 "Implementation" means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and "implement" and "implemented" shall be construed accordingly
- 1.10 "including" means including without limitation and 'include' shall be construed accordingly
- 1.11 "Index-Linked" means adjusted according to any increase occurring between and the date of payment to the 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 & Bitumous Products	20%

or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the Owners and the County Council

- 1.12 "the Maintenance Costs" means the sum of ( ) Index Linked as calculated in respect of the cost of future maintenance of the Works
- 1.13 ["the Mortgagee" means the said of/whose registered office is at and its successors in title and assigns]
- 1.14 "the Off-Site Works" means such part of the Works (if any) as is to be executed outside the Site
- 1.15 "the Owner" means the said of/ whose registered office is at and its successors in title and assigns
- 1.16 "the Planning Permission" means planning permission reference number [ ] for the Development of the Site
- 1.17 "the Site" means the land Oxfordshire shown edged black on the Site Plan
- 1.18 "the Site Plan" means the plan marked "Plan A" annexed to this Deed

- 1.19 "the Standard Conditions" means the Council's Standard Conditions for the Control of Highway Works in Conjunction with Development (2016 Edition) a copy of which is annexed to this Deed
- 1.20 "the Works" means the works specified in the Schedule
- 1.21 "the Works Plan" means the drawing(s) numbered [       ] annexed to this Deed
- 1.22 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply
- 1.23 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation
- 1.24 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed
- 1.25 Where the context so requires:-
- 1.25.1 the singular includes the plural and vice versa
  - 1.25.2 the masculine includes the feminine and vice versa
  - 1.25.3 persons includes bodies corporate associations and partnerships and vice versa
- 1.26 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons

1.27 Where more than one party enters into any obligation or liability those parties are jointly and severally liable

1.28 Words denoting an obligation on a party to do any act 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 this restriction

## 2. **Preliminary**

2.1 The Owner is the owner of freehold of the Site registered with absolute title under title number [ ] [subject to an Option in favour of the Developer (and/or) a Charge in favour of the Mortgagee but otherwise] free from incumbrances as the Owner hereby warrants

2.2 For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Site

2.3 For the purposes of the 1980 Act, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Council is the highway authority and the traffic authority for certain highways in the area which includes the Site

2.4 The Owner has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990 dated [ ] and made between [ ] that [the Development shall not be [implemented [as therein defined]] / [occupied] / [no more than [ ] dwellings shall be occupied] prior to the completion of this Deed and shall not be

occupied prior to the completion of the Works in accordance with the Deed

2.5 The Off-Site Works are works which the Council is

authorised to execute by virtue of Part V of the 1980 Act

2.6 It has been agreed between the Owner and the Council that

in lieu of the Owner paying the cost of the Off-Site Works

the Off-Site Works should be executed by the Owner in

conjunction with the carrying out of the Development

2.7 This Deed (which the Council are satisfied will be of benefit

to the public) is made under Sections 38 72 and 278 of the

1980, Act Section 106 of the 1990 Act, Section 111 of the

Local Government Act 1972 and all other enabling powers

and is a planning obligation for the purposes of Section 106

of the 1990 Act entered into by the Owner the Developer

and the Mortgagee in respect of the Site and enforceable by

the Council

### 3. Covenants

The Owner and the Developer covenant:-

3.1 not to cause or permit [any planning permission obtained for

the Development/the Planning Permission to be

implemented (save insofar as is necessary for the execution

of the Works)] [any building forming part of the Development

[to be occupied] [to open for business] before the Works

have been completed



- 3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council
- 3.3 in executing the Works to observe and perform all the obligations which fall on "the Developer" under the Standard Conditions and
- 3.4 to complete the Works not later than \_\_\_\_\_ and in any event within \_\_\_\_\_ from the date on which the Works started
- 3.5 not to commence the Works until the Maintenance Costs have been paid to the Council and to pay Maintenance Costs to the Council prior to commencing the Works
- 3.6 to give the Council written notice of any disposal of an interest in the Site and of the name and address of the new owner and the date of the disposal within 14 days of such disposal
- 3.7 if any payment to be made to the Council is not paid on or before the due date for payment to pay interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc from such due date to the date of payment<sup>1</sup>

4. **Adoption as Highway**

- 4.1 On the issue of a Certificate of Completion for the Works the whole of the land shown [hatched black] on the Dedication Plan (subject to modification as provided in clause 4.2) shall be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically

propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of the Standard Conditions be a highway maintainable at public expense

4.2 The Council may after consideration of the As-Built Drawings require the substitution of a modified dedication plan in which event that shall be agreed with the Owner [the Developer the Mortgagee] and the dedication as provided in clause 4.1 shall have effect in respect of the modified area

4.3 the Owner consents to the noting of the provisions of clause 4 of this Deed on the register under title number [ ]

5/6 **Act Reasonably**

Where a matter falls within a party's discretion that party shall exercise such discretion in a reasonable and expeditious manner and shall give any requisite notice of that decision and any other notice provided for by this Deed (including the Standard Conditions) without undue delay

6/7 **[the Mortgagee (*consider further amendment to accord with mortgagee provision in Section 106 agreement*)**

The Mortgagee acknowledges that the Site is bound by the obligations contained in this Deed [and in the event that the dedication area is revised further to clause 4.2 the Mortgagee agrees that any part of the dedication area which is subject to its charge shall be released from such charge on dedication pursuant to clause 4.1 and the Mortgagee will execute such further documentation as may be required to effect this]

7/8 **Costs**

- 7.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of this Deed
- 7.2 The Owner will reimburse the Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Deed including correspondence monitoring and site visits by or on behalf of the Council
- 7.3 [The Owner will not claim any compensation in respect of the provision of this Deed]

8 **Third Party Rights**

This Deed does not create any right enforceable by any person not a party to it except that it may be enforced by the successors in title and assigns of the parties and by any successor to the Council's statutory functions

9 **Notice**

Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning & Place of the Council (Ref ) County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the Council shall direct from time to time [and any notice or notification to be given to [ ] shall be sent to [ ] or to such other person at such address as the [ ] shall notify in writing to the Council from time to time

10 **No Waiver**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the Council in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Owner/the Developer/the Mortgagee from any liability under this Deed

11 **No Fetter**

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

12 **VAT**

All works undertaken pursuant to and all payments made in accordance with the terms of this Deed shall be exclusive of value added tax and the Owner shall pay the Council any value added tax properly payable on any sums paid to the Council or works undertaken under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner

13 **Jurisdiction**

This Deed is governed by and interpreted in accordance with the Law of England

14 **Delivery**

The provisions of this Deed shall be of no effect until this Deed has been dated

**IN WITNESS** whereof the parties hereto have executed this Deed as a  
deed the day and year first before written

## SCHEDULE

### The Works

(1) **Principal Works**

The provision and construction in the position indicated in principle on the Works Plan of the following works ("the Principal Works")

(a)

(b)

(c)

(2) **Preparatory and Ancillary Works**

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

(a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works

(b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water

(c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works

- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and safety barriers
- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

The provision and construction of all such amenity and accommodation works as the Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

**[ATTACH STANDARD CONDITIONS]**

**[INSERT EXECUTION CLAUSES FOR ALL PARTIES]**