

Dated

28 AUGUST

2012

- (1) CHERWELL DISTRICT COUNCIL
 - (2) OXFORDSHIRE COUNTY COUNCIL
 - (3) UPPER HEYFORD GP LIMITED AND UPPER HEYFORD NOMINEE LIMITED
 - (4) DORCHESTER HEYFORD PARK GP LIMITED AND DORCHESTER (HEYFORD PARK) LIMITED
 - (5) FREP 2 (HEYFORD PARK) LIMITED
 - (6) INVESTEC BANK PLC
-

Supplemental Agreement

Under Section 106 and Section 106A of the Town and Country Planning Act 1990 relating to the former RAF base at Upper Heyford

THIS DEED is made on *28 AUGUST*

2012

BETWEEN

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxon OX15 4AA ("**the District Council**"); and
- (2) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND ("**the County Council**"); and
- (3) **DORCHESTER HEYFORD PARK GP LIMITED** (Jersey Co Reg No. 103763) whose registered office is at 47 Esplanade, St Helier, Jersey JE1 0BD and **DORCHESTER HEYFORD PARK NOMINEE LIMITED** (Jersey Co Reg No. 103763) whose registered office is at 47 Esplanade, St Helier, Jersey JE1 0BD ("**the First Owner**"); and
- (4) **UPPER HEYFORD GP LIMITED** (Jersey Co Reg No. 103760) whose registered office is at 47 Esplanade, St Helier, Jersey JE1 0BD and **UPPER HEYFORD NOMINEE LIMITED** (Jersey Co Reg No. 103759) whose registered office is at 47 Esplanade, St Helier, Jersey JE1 0BD ("**the Second Owner**")
- (5) **FREP 2 (HEYFORD PARK) LIMITED** (Jersey Co Reg No. 103645) of 3rd Floor, Windward House, La Roue De La Liberation, Jersey JE2 3BQ ("**the First Mortgagee**"); and
- (6) **INVESTEC BANK PLC** (Co Reg No. 489604) of 2 Gresham Street, London, EC2V 7QP ("**the Second Mortgagee**").

BACKGROUND

- (A) For the purposes of the 1990 Act, the District Council is the local planning authority and the County Council is the county planning authority for the area within which the Site is located.
- (B) The County Council is also the local highway authority for the purposes of the Highways Act 1980 the local traffic authority for the purposes of the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 and the local education authority for the purposes of the Education Acts and the local transport authority for the area within which the Site is located and also has powers and duties in respect of waste disposal, the provision of library facilities and social and health care.
- (C) The First Owner is the freehold owner of the Site subject to charges in favour of the First Mortgagee and the Second Mortgagee and the Second Owner is the freehold owner of the Adjoining Land.
- (D) Pursuant to the Planning Application the First Owner applied to the District Council for outline planning permission for Development of the Site and Planning Permission (as hereinafter defined) was granted on 22 December 2011 and the Principal Agreement (as hereinafter defined) entered into.

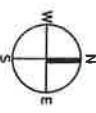
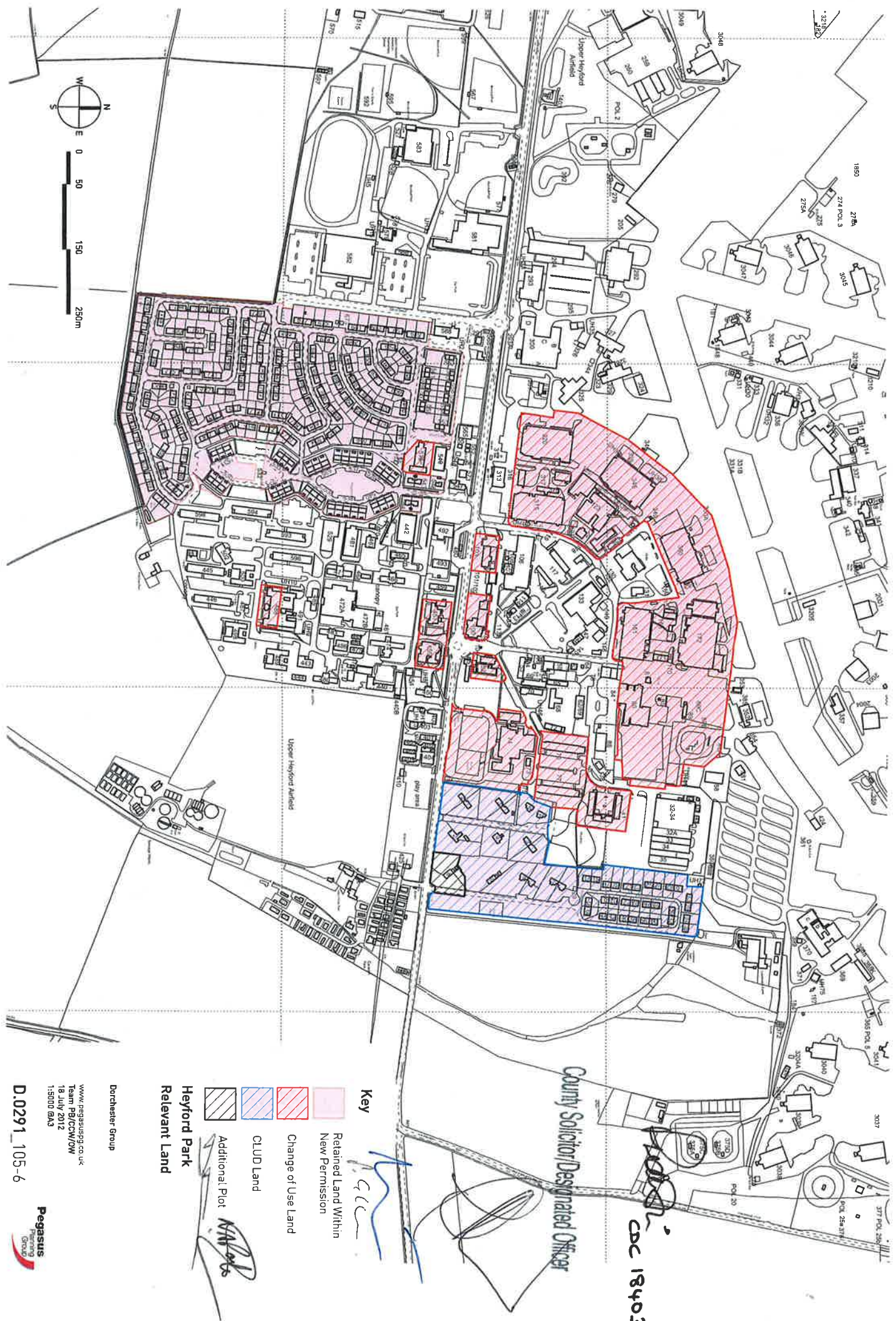
- (E) This Agreement is supplemental to the Principal Agreement.
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in the Principal Agreement shall continue to be enforceable and may be enforced by the Council against the First Owner the Second Owner the First Mortgagee the Second Mortgagee and their successors in title and assigns subject to the provisions of this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings.

"Additional Plot"	the plot adjacent to the CLUD Land edged and hatched black on the Plan
"Change of Use Land"	the buildings granted permission for commercial change of use under the Planning Permission and other buildings intended to be used for B1 B2 B8 commercial uses, heritage uses or (in the case of building 41) C1 all shown edged and hatched red on the Plan
"CLUD Land"	that part of the land edged and hatched blue on the Plan on which there are 45 Dwellings at the date of this Agreement
"Plan"	the Plan attached to this Agreement
"Planning Permission"	the planning permission granted for the Development dated 22 December 2011 carrying the reference 10/01642/OUT
"Principal Agreement"	the Agreement pursuant to Section 106 of the 1990 Act dated 22 December 2011 and entered into by the same parties as have entered into this Agreement
"Relevant Land"	the Retained Housing Land the CLUD Land and the Change of Use Land as shown coloured pink on the Plan attached to this Agreement



Key

- Retained Land Within New Permission
- Change of Use Land
- CLUD Land
- Additional Plot
- Heyford Park
- Relevant Land

Dorchester Group

www.pegasuspg.co.uk
 Team PB/CCW/DW
 18 July 2012
 1:5000 BA3

D.0291_105-6



CDC 18403

County Solicitor Designated Officer

"Retained Housing Land" has the meaning given to it in the Principal Agreement

- 1.2 Subject to clause 1.1 of this Agreement, clause 1 of the Principal Agreement has effect in relation to words and expressions used in this Agreement.
- 1.3 This Agreement is supplemental to the Principal Agreement and clause 2 of the Principal Agreement has effect in relation to it.
- 1.4 This Agreement does not release any party to it from any breaches of the Principal Agreement existing at the date of this Agreement.

2. **SUPPLEMENTAL PROVISIONS TO THE PRINCIPAL AGREEMENT**

Notwithstanding the provisions of the Principal Agreement it is hereby agreed that:

- 2.1 No owner of any part of the Relevant Land shall be liable for the observance or performance of the obligations in the Principal Agreement which require works to be undertaken on or restrict the use of parts of the Site outside the Relevant Land but FOR THE AVOIDANCE OF DOUBT this release does not extend to the obligations contained at paragraphs 4 to 13 and paragraph 21 of Schedule 11 of the Principal Agreement which shall continue to bind the Relevant Land
- 2.2 Subject to clauses 2.3 and 2.4 below, owners of any part of the Relevant Land shall only be liable to pay to the District Council or the County Council a maximum aggregate sum of two million six hundred and fifty thousand pounds (£2,650,000) BCIS Index Linked in respect of any financial contributions or indemnities pursuant to the Principal Agreement
- 2.3 Subject to clause 2.4, the owners of any part of the Relevant Land will be released from all liability in relation to any financial contributions required pursuant to the Principal Agreement on the later of the dates on which:
 - 2.3.1 the sum of two million six hundred and fifty thousand pounds (£2,650,000) BCIS Index Linked has been paid in respect of any financial contributions or indemnities pursuant to the Agreement: and
 - 2.3.2 the relevant Contribution Bond is delivered by the Landowner to the County Council pursuant to part 10 of Schedule 12 of the Principal Agreement (as varied by this Agreement).
- 2.4 For the avoidance of doubt

- 2.4.1 the obligations in Schedules 4, 5, 6, 7 and 8 of the Principal Agreement to expend money on or make contributions towards the cost of future maintenance of particular facilities attach to the land on which those facilities are or are to be provided and where those facilities are on the Relevant Land are not subject to the cap on liability referred to in clauses 2.2 and 2.3 above
- 2.4.2 the First Owner and the Second Owner have requested the inclusion within the Change of Use Land of buildings 41, 52, 73, 77, 78, 81, 85, 89, 89B, 89C, 121, 124, 157, 170, 171, 316, 317, 318, 339, 349, 350A, 1483, UH37, UH38, UH39, UH 40, UH41 notwithstanding that they are not specifically identified in the Planning Permission as they have advised and acknowledge that the prospect of any of those units being used other than for B1 B2 B8 commercial uses, heritage uses or (in the case of building 41) C1 (or a planning application being made for any other uses) is minimal
- 2.5 The First Owner and the Second Owner covenant with the District Council and separately with the County Council not to cause or permit any of the New Build Dwellings permitted by the Planning Permission and referred to in paragraph 1) e of Schedule 1 to the Principal Agreement to be constructed on the Relevant Land or the Additional Plot
3. Schedule 12 (Education) of the Principal Agreement is varied as follows:
- 3.1 The definition of Education Contribution Bond is deleted and replaced by the definition of Contribution Bond as follows:
- "Contribution Bond" means a bond (or in the circumstances set out in this Schedule a further or replacement bond) provided by a Surety substantially in the form of the draft contribution bond attached at Appendix 14.1 or as applicable 14.2. in such sum as is provided for in this Schedule or pursuant to the terms of the relevant contribution bond representing a reasonable estimate of the potential financial liability of the Landowner to the County Council at the relevant time in respect of the Contributions as defined in the relevant form of contribution bond.
- 3.2 The following definition of "Bonded Sum" is inserted:
- "Bonded Sum" has the meaning assigned to it in the Contribution Bond to be supplied further to paragraphs 49 A and 49.

- 3.3 Part 10 – Education Contribution Bond (paragraphs 49 – 51) are deleted and replaced by the following:

“Part 10 – Contribution Bond

49A. The Landowner shall not unless otherwise agreed in writing by the County Council Occupy more than 315 Dwellings until the Contribution Bond in the form set out in Appendix 14.1 or as applicable 14.2 has been delivered to the County Council executed by a Surety.

49.1 if immediately prior to the Occupation of the 316th Dwelling it has been established that the Landowner shall construct the Primary School the Contribution Bond shall be in the form set out in Appendix 14.1

49.2 if immediately prior to the Occupation of the 316th Dwelling it has not (or not yet) been established that the Landowner shall construct the Primary School the Contribution Bond shall be in the form set out in Appendix 14.2.

In the event that any Dwelling has been Occupied or the Contribution Bond has been supplied at the date on which the Landowner (in this clause meaning Upper Heyford GP Limited Upper Heyford Nominee Limited Dorchester Heyford Park GP Limited and Dorchester Heyford Park GP Nominee Limited) parts with the whole of its interest in the Site then Clause 4.7 of this Agreement is varied so that the Landowner will remain liable for payment of the Contributions (as defined in the Contribution Bond) after parting with the whole of its interest in the Site unless and until there has been delivered to the County Council without expense to the County Council a further Contribution Bond for the then Bonded Sum duly executed as a deed by the owner of the freehold of the Site (or a significant part of it) and a Surety and this paragraph shall apply (mutatis mutandis) on disposal of its interest in the Site by any successor owner who provides a Contribution Bond.

In the event that the Contribution Bond is called upon by the County Council, no Occupations of further Dwellings shall be permitted and no further construction shall be undertaken in respect of any Dwellings from the date on which that bond is called upon until a further (replacement) Contribution Bond from a Surety has been provided free of expense to the County Council for the shortfall between the remaining amount secured by the original Contribution Bond and the County Council’s then assessment of the Bonded Sum.”

4. Appendix 14 is replaced by Appendices 14.1 and 14.2 attached to this Agreement.

5. **CONDITIONALITY**

This agreement shall not take effect unless and until the Landowner has served notice pursuant to clause 4.4.5 of the Principal Agreement.

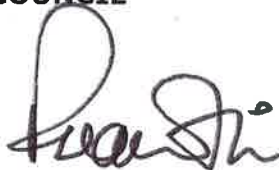
6. **MORTGAGEES**

The First Mortgagee and the Second Mortgagee acknowledge that the Site is bound by the obligations contained in this Agreement to the intent that the securing of their respective interests over the Site shall take effect subject to this Agreement

7. **EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out herein.

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


Authorised signatory



CDC
18403

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


County Solicitor/
Designated Officer

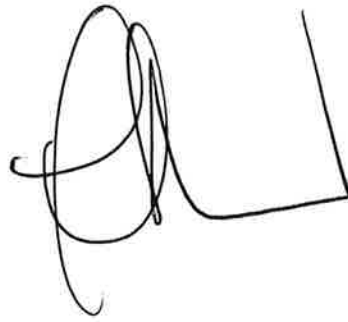


599/12

EXECUTED (but not delivered until the date inserted herein) **AS A DEED** on behalf of **UPPER HEYFORD GP LIMITED** a company incorporated in Jersey by

PAUL SILVER

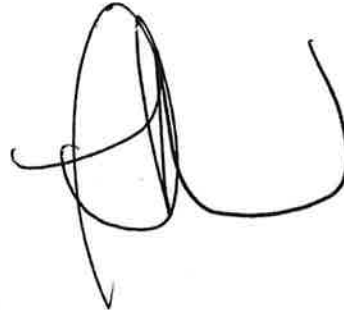
being a person who in accordance with the laws of that territory is acting under authority of the Company



EXECUTED (but not delivered until the date inserted herein) **AS A DEED** on behalf of **UPPER HEYFORD NOMINEE LIMITED** a company incorporated in Jersey by

PAUL SILVER

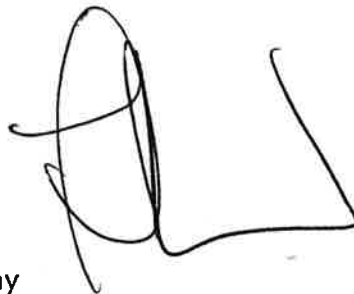
being a person who in accordance with the laws of that territory is acting under authority of the Company



EXECUTED (but not delivered until the date inserted herein) **AS A DEED** on behalf of **DORCHESTER HEYFORD PARK GP LIMITED** a company incorporated in Jersey by

PAUL SILVER

being a person who in accordance with the laws of that territory is acting under authority of the Company



EXECUTED AS A DEED on behalf of **DORCHESTER HEYFORD PARK NOMINEE LIMITED**

a company incorporated in Jersey by

PAUL SILVER

being a person who in accordance with the laws of that territory is acting under authority of the Company



EXECUTED AS A DEED on behalf of
FREP 2 (HEYFORD PARK) LIMITED

a company incorporated in Jersey by

Ben Hampton

being a person who in accordance with the laws
of that territory is acting under authority of the Company

EXECUTED AS A Deed by
INVESTEC BANK PLC

By two Attorneys under a Power of
Attorney dated 18 March 2010:-

Attorney:

NIGEL A. PORTER

Attorney:

DAVID IRVINE

WITNESS:

DANIEL CARLOW

Investec Bank plc
2 Gresham Street
London
EC2V 7QP

APPENDICES

APPENDIX 14.1

Bond

DATED _____ **20[]**

THE OXFORDSHIRE COUNTY COUNCIL

- and -

...

- and -

...

(CONTRIBUTION) BOND

relating to land at

P G Clark
County Solicitor
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS BOND is dated the _____ day of _____ made
BETWEEN:-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall New Road
Oxford ("the Council")
- (1) _____ (company number _____) whose registered
office is at _____ ("the Owner")
- (2) _____ (company number _____) whose registered
office is at _____ ("the Surety")

WHEREAS by [a deed of covenant] ("the Deed of Covenant") [further to] a Section 106 Agreement ("the Agreement") dated the _____ day of December 2011 between the Owner and the Council the Owner is under obligation to make payments to the Council as set out in Schedule 11, 12 and 15 to the Agreement including the sums set out in clause 1 of this deed and defined as the Contributions

NOW THIS DEED WITNESETH AS FOLLOWS

1. In this Deed
"the Bonded Sum" shall mean the sum of three million pounds (£3,000,000) subject to clause 8.
2. "the Contributions" shall mean
 - the second instalment of the Bus Services Contribution (being £395,000 Index Linked (Transport) as provided in Schedule 11;
 - the second instalment of the Traffic Calming Contribution (being £40,000 Baxter Index Linked) as provided in Schedule 11
 - the Education Sum being £1,850,000 BCIS Index Linked as provided in Schedule 12 (and subject to adjustment as therein provided);
 - the second and third instalments of the General County Infrastructure Contribution being £211,000 BCIS Index Linked as provided in Schedule 12;
 - the first and second instalments of the SEN Contribution being £121,376 BCIS Index Linked as provided in Schedule 12;
 - the Tackley Contribution being £40,000 BCIS Index Linked as provided in Schedule 12;
 - the second instalment of the Off-Site Countryside Access payment being £147,000 Baxter Index Linked as provided in Schedule 15;All the expressions BCIS Index Linked, Baxter Index Linked and Index Linked (Transport) have the meanings ascribed to them in the Agreement
3. The Owner and the Surety are jointly and severally bound to the Council for the Bonded Sum.
4. If the Owner shall fail to pay any part of the Contributions under the terms of the Agreement/Deed of Covenant the Council may call for the Surety to make payment of the amount unpaid.
5. Any claim hereunder shall be accompanied by a certificate signed by the County Solicitor to the Council that the amount claimed represents the amount payable and that such payment then due has not been paid and such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council.
6. The Surety shall within 21 days after service of any such claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment for any reason notwithstanding any objection by the Owner or any other party

provided always that the maximum aggregate liability of the Surety does not exceed the Bonded Sum.

7. The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bonded Sum.
8. Whenever any payment is made to the Council after the date of this Bond in respect of any of the Contributions the Bonded Sum shall if appropriate be reduced on written notice from the Council to such sum as the Council acting reasonably and taking into account index linking and the trigger dates for payment of the constituent elements of the Contributions then estimated to be outstanding in respect of the Contributions (being the amount of the Contributions remaining to be paid adjusted for index linking and including reasonable allowance for future index linking) plus any outstanding interest on account of late payment and all such reductions shall be notified in writing by the Council to the Owner and the Surety within 4 months of the relevant payment.
9. Without prejudice to the generality of clause 5 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:
 - 9.1 any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety ;
 - 9.2 any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time);
 - 9.3 any obligation on the part of the Owner being void;
 - 9.4 the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;
 - 9.5 any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary.
10. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.
11. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.

THIS BOND has been executed as a Deed and is delivered the day and year first before written

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

County Solicitor/Designated Officer

THE COMMON SEAL of)
)
was hereunto affixed in the)
presence of:-)

Director
Secretary

THE COMMON SEAL of)
)
was hereunto affixed in the)
presence of:-)

EXECUTED and **DELIVERED** as a)
DEED by)
acting by its duly authorised)
attorney in the presence of:-)

APPENDIX 14.2

Bond

DATED _____ **20[]**

THE OXFORDSHIRE COUNTY COUNCIL

- and -

...

- and -

...

(CONTRIBUTION) BOND

relating to land at

P G Clark
County Solicitor
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS BOND is dated the _____ day of _____ made
BETWEEN:-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall New Road
Oxford ("the Council")
- (1) _____ (company number _____) whose registered
office is at _____ ("the Owner")
- (2) _____ (company number _____) whose registered
office is at _____ ("the Surety")

WHEREAS by [a deed of covenant] ("the Deed of Covenant") [further to] a Section 106 Agreement ("the Agreement") dated the _____ day of December 2011 between the Owner and the Council (as varied by a supplemental agreement of _____ 2012) the Owner is under obligation to make payments to the Council as set out in Schedule 11, 12 and 15 to the Agreement including the sums set out in clause 1 of this deed and defined as the Contributions

NOW THIS DEED WITNESETH AS FOLLOWS

1. In this Deed

"the Bonded Sum" shall mean the sum of four million seven hundred thousand pounds (£ 4,700,000) subject to clause 8.
2. "the Contributions" shall mean
 - the second instalment of the Bus Services Contribution (being £395,000 Index Linked (Transport) as provided in Schedule 11;
 - the second instalment of the Traffic Calming Contribution (being £40,000 Baxter Index Linked) as provided in Schedule 11
 - the Education Sum being £5,600,000 BCIS Index Linked as provided in Schedule 12 (and subject to adjustment as therein provided);
 - the second and third instalments of the General County Infrastructure Contribution being £211,000 BCIS Index Linked as provided in Schedule 12;
 - the first and second instalments of the SEN Contribution being £121,376 BCIS Index Linked as provided in Schedule 12;
 - the Tackley Contribution being £40,000 BCIS Index Linked as provided in Schedule 12;
 - the second instalment of the Off-Site Countryside Access payment being £147,000 Baxter Index Linked as provided in Schedule 15;All the expressions BCIS Index Linked, Baxter Index Linked and Index Linked (Transport) have the meanings ascribed to them in the Agreement
3. The Owner and the Surety are jointly and severally bound to the Council for the Bonded Sum.
4. If the Owner shall fail to pay any part of the Contributions under the terms of the Agreement/Deed of Covenant the Council may call for the Surety to make payment of the amount unpaid.
5. Any claim hereunder shall be accompanied by a certificate signed by the County Solicitor to the Council that the amount claimed represents the amount payable and that such payment then due has not been paid and such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council.
6. The Surety shall within 21 days after service of any such claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment

for any reason notwithstanding any objection by the Owner or any other party provided always that the maximum aggregate liability of the Surety does not exceed the Bonded Sum.

7. The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bonded Sum.
8. Whenever any payment is made to the Council after the date of this Bond in respect of any of the Contributions the Bonded Sum shall if appropriate be reduced on written notice from the Council to such sum as the Council acting reasonably and taking into account index linking and the trigger dates for payment of the constituent elements of the Contributions then estimated to be outstanding in respect of the Contributions (being the amount of the Contributions remaining to be paid adjusted for index linking and including reasonable allowance for future index linking) plus any outstanding interest on account of late payment and all such reductions shall be notified in writing by the Council to the Owner and the Surety within 4 months of the relevant payment.
9. Without prejudice to the generality of clause 5 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:
 - 9.1 any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety ;
 - 9.2 any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time);
 - 9.3 any obligation on the part of the Owner being void;
 - 9.4 the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;
 - 9.5 any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary.
10. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.
11. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.

THIS BOND has been executed as a Deed and is delivered the day and year first before written

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

County Solicitor/Designated Officer

THE COMMON SEAL of)
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was hereunto affixed in the)
presence of:-)

Director
Secretary

THE COMMON SEAL of)
)
was hereunto affixed in the)
presence of:-)

EXECUTED and **DELIVERED** as a)
DEED by)
acting by its duly authorised)
attorney in the presence of:-)