

## SIXTEENTH SCHEDULE

### District Council's Covenants

1. The District Council covenants with the Owner and Developer to use all sums received by the District Council from the Owner and the Developer under the terms of the Schedules for the purposes specified in the Schedules for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Developer and the District Council shall agree;
2. The District Council covenants with the Owner and the Developer that following written request from the person who paid the contribution it will pay to that person such amount of any payment made by that person to the District Council under the terms of the Schedules in accordance with the provisions of this Deed which has not been expended at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law PROVIDED ALWAYS that no such request will be made prior to the expiry of ten years from the date of receipt by the District Council of such payment. Any contribution or part of a contribution which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the District Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph AND FURTHER PROVIDED THAT the District Council shall not be obliged pursuant to this paragraph to return monies that do not relate to District Council functions or have been passed to persons/bodies other than the District Council;
3. The District Council shall provide to the Owner and the Developer such evidence as the Owner and the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Owner and the Developer to the District Council under the terms of the Schedules upon a written request by the Owner or the Developer such request not to be made more than once in any year;
4. At the written request of the Owner or the Developer 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.

## SEVENTEENTH SCHEDULE

### OFF-SITE HIGHWAYS WORKS

#### PART 1

##### **Definitions**

In this schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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):

**“Highways Agreement“** means an agreement under inter alia Section 278 of the Highways Act 1980 in accordance with the form annexed to this Deed at Appendix 18 (subject to any amendments that the circumstances may reasonably and properly require) which provides for the execution of the Works by the Developer and/or the Owner at the expense of the Owner and the Developer.

**“Works”** means the works as set out in Part 2 of this Schedule and comprise the following elements:

- North Entrance Works
- South Entrance Works
- Footway/Cycleway Works
- Bus Lay-by Works
- Bucknell Road/Howes Lane Junction Works (Interim Measures)
- A4095 Lords Lane/B4100 Banbury Road Roundabout Improvements

##### **Covenants (Works)**

The Owner and the Developer covenant with the County Council

2.1 Not to cause or permit the Development to be Implemented until

the Highways Agreement has been completed by the Developer and the Owner and all parties with an interest in the land to be dedicated as highway have joined in the Highways Agreement and any mortgagee of any part of the land to be dedicated has released it.

- 2.2 Not to cause or permit the Development to be Implemented until the South Entrance Works have been completed in accordance with the Highways Agreement.
- 2.3 Not to cause or permit the first Occupation of the 50th Dwelling to be Occupied at Phase 1 and/or Phase 2 and not to cause or permit the Implementation of any part of Phase 3 or Phase 4 (save for the North Entrance Works and the provision of a haul road and sustainable drainage infrastructure works (SUDS)) until the Northern Entrance Works have been completed in accordance with the Highways Agreement.
- 2.4 Not to cause or permit the Occupation of any Dwelling until the Footway/Cycleway Works, the Bus Lay-by Works and the A4095 Lords Lane/B4100 Banbury Road Roundabout Improvements have been completed in accordance with the Highways Agreement.
- 2.5 Not to cause or permit the Occupation of more than 50 Dwellings until the Bucknell Road/Howes Lane Junction Works (Interim Measures) have been completed in accordance with the Highways Agreement.

## **PART 2**

### **(1) Principal Works**

The provision and construction of the following Works

1. North Entrance Works (in principle drawing 7206 UA001881 Issue 7)  
Priority junction from the Site onto the B4100 incorporating a right turn lane, splitter island with tapers and lighting and alterations to the adjoining lay-by and these works include the proposal that the lay-by should become one-way.
2. South Entrance Works (in principle drawing 7207 UA001881 Issue 6)  
Priority junction from the Site onto the B4100 incorporating a right turn lane, splitter islands with tapers and lighting and these works include a proposed speed limit restriction on the B4100

3. Footway/Cycleway Works (in principle drawing 7207 UA001881 Issue 6)]  
Provision of 3 metre wide shared footway and cycleway on the western side of the B4100 from the Southern Entrance Works to the proposed toucan crossing on B4100 – see below - and then along both sides of the B4100 to A41095/B4100/Banbury Road junction to link up to the existing footway/cycleway at that junction together with a toucan crossing on the B4100 and a toucan crossing on the A4095 to the west of the junction
4. Bus Lay-By Works (in principle drawing 7207 UA001881 Issue 6)  
Bus lay-by on the western side of the B4100 to the north of the South Entrance Works together with associated footway works linking up to the South Entrance Works and to include
  - (a) sheltered Sheffield stand cycle parking; and
  - (b) a bus shelter with seats of a design to be approved by the County Council and which accommodates the installation and operation of a real time information display unit at the shelter and associated works including ducting to accommodate the cabling for a real time information display unit with cabling to the junction where the sub-surface ducting connects to the 'riser' ducting at the shelter.
5. Bucknell Road/Howes Lane Junction Works(Interim Measures) (in principle drawing 1011 UA001881 Issue 01)  
Installation of mini roundabout with geometric improvements consisting of road widening
6. A4095 Lords Lane/B4100 Banbury Road Roundabout Improvements (in principle drawing 1012 UA001881 Issue 01)  
Geometric improvements to existing roundabout to consist of widening the eastern and northern arms (Southwold Lane and B4100) to incorporate 3 lane entries and widening the western arm (Lords Lane) to provide 2 wider 3.5 metre entry lanes.

(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 County 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 County 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:-

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

## EIGHTEENTH SCHEDULE

### ON-SITE HIGHWAYS WORKS

#### PART I

##### Definitions

1. In this Schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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 unless the context otherwise requires)  
**“Bridges”** means the bridges shown indicatively on the On Site Highways Plan and marked as “Bridge A” and “Bridge B”  
**“On Site Highways Plan”** means the indicative drawings attached at Appendix 19  
**“Section 38 Agreement”** means an agreement for the construction and adoption of new roads in accordance with or substantially in accordance with the County Council’s standard form of agreement further to Section 38 Highways Act 1980 for the construction and adoption of new roads (a copy of which is appended at Appendix 20 together with conditions as selected by the County Council from the County Council’s Standard Conditions for the Control of Highway Works in conjunction with Development)  
**“Spine Road Phase 1”** means the section of road and associated facilities shown indicatively between points A - B on the On Site Highways Plan and **“Spine Road Phase 1 (Stage 1)”** means the section of the Spine Road Phase 1 marked A – X on the On Site Highways Plan  
**“Spine Road Phase 2”** means the section of the road and associated facilities shown indicatively on the On Site Highways Plan between points C – D on the On Site Highways Plan

##### Bridges

2. The Owner and the Developer covenant with the County Council not to cause or permit Implementation of the Development until the Owner and the Developer have secured all approvals and consents required for the construction and use of the Bridges

including the approval in principle of the County Council (Bridges Section) and copies of all other such approvals and consents have been obtained and supplied to the County Council and the County Council has approved them including any conditions attached to them

### **Spine Road Phase 1**

3. The Owner and the Developer covenant with the County Council
  - 3.1 not to cause or permit the first Occupation of the 50<sup>th</sup> Dwelling at Phase 1 until the Spine Road Phase 1 (Stage 1) has been completed to adoption standard to binder course level (but with iron work flush with the binder course) in accordance with the provisions of the Section 38 Agreement for the construction and adoption of the Spine Road Phase 1 and opened to vehicular and pedestrian traffic (including buses)
  - 3.2 not to cause or permit the first Occupation of any Dwelling on Phase 2 until the entirety of the Spine Road Phase 1 has been completed in accordance with the provisions of the Section 38 Agreement for the construction and adoption of the Spine Road Phase 1 and opened to pedestrian and vehicular traffic (including buses)
  - 3.3 not to cause or permit commencement of any works in respect of the Spine Road Phase 1 until
    - 3.3.1 there has been submitted to and approved by the County Council drawings and technical information for the Spine Road Phase 1 (including the Bridges) in accordance with requirements set out in Part 2 of this Schedule
    - 3.3.2 there has been agreed commuted maintenance in respect of the Spine Road Phase 1 (including the Bridges) and
    - 3.3.3 there has been submitted to and approved by the County Council a scheme for temporary turning areas as the construction of the Spine Road Phase 1 (Stage 1) progresses
    - 3.3.4 a Section 38 Agreement for the construction and adoption of the Spine Road Phase 1 has been entered into with the County Council

such agreement to incorporate the approved drawings, provisions for payment of the agreed commuted maintenance, provisions for the construction and maintenance of the temporary turning areas in accordance with the approved scheme and additional provisions in accordance with paragraph 3.4

3.4 The Section 38 Agreement for the Spine Road Phase 1 shall additionally provide for the Owner and the Developer

3.4.1 to construct and install at their own expense as part of the Roads (as defined in that agreement)

3.4.1.1 two bus shelters with seats such shelters to be of a design to be approved by the County Council and which accommodate the installation and operation of real time information display units at the shelters together with associated works; the associated works shall include ducting at the shelters to accommodate cabling for the real time information display units and underground ducting and cabling to the junction where the subsurface ducts connect to the 'riser' ducts at the shelters. Such shelters are to be in the approximate locations marked on the On Site Highways Plan

3.4.1.2 cycle parking with Sheffield hoop stands adjoining the bus shelters

3.4.1.3 (for the avoidance of doubt) the Bridges all in accordance with consents and the approvals referred to in paragraph 2 (and paragraphs 3.3.1 and 3.4.2)

3.4.1.4 (for the avoidance of doubt) temporary turning areas all in accordance with the approved scheme referred to in paragraph 3.3.3



- 3.4.2 not to commence works until the certificate of approval in detail has been issued in respect of the Bridges which are to be designed in accordance with the approval in principle referred to in paragraph 2
- 3.4.3 to pay to the County Council the sum of £17,818 Index Linked (Baxter) in respect of real time information display units such payment to be made prior to the Occupation of any Dwelling
- 3.4.4 that the Certificate of Practical Completion (as referred to in the Section 38 Agreement) shall not be issued until arrangements have been made with the electricity distribution network operator selected by the County Council (being Scottish and Southern Electricity) so that the cabling for the real time information units is fully operational
- 3.4.5 to deliver to the County Council without any cost to the County Council on the same days as and immediately following adoption a deed of grant of freehold easement and covenant in such form as the County Council has approved in accordance with the details set out in Part 3 to this Schedule and as a pre-condition to adoption there shall be provided evidence satisfactory to the County Council that this will be undertaken
- 3.4.6 to deliver to the County Council without expense to the County Council (on the same day as and immediately following adoption) a deed of grant of freehold easement and covenant (in such form as the County Council has approved) in accordance with the details set out in Part 4 to this Schedule and as a precondition to adoption there shall be provided evidence satisfactory to the County Council that this will be undertaken

### **Spine Road Phase 2**

4. The Owner and the Developer covenant with the County Council
- 4.1 not to cause or permit Implementation in respect of any part of Phase 3 or Phase 4 (other than levelling works and provision of haul road) until the Spine

Road Phase 2 has been completed to adoption standard to binder course level (but with iron work flush with the binder course) in accordance with the provisions of the Section 38 Agreement for the Spine Road Phase 2 and opened to vehicular and pedestrian traffic (including buses)

4.2 not to cause or permit commencement of any works in respect of the Spine Road Phase 2 until there has been approved in writing by the County Council (with or without amendments and conditions) a scheme for the installation of cameras for monitoring the use of the part of the Spine Road Phase 2 that is to constitute a bus only route (as shown indicatively on the On Site Highways Plan) such scheme to address the location of cameras their specification and installation which shall comply with all regulations and good practice guidance for cameral enforcement of bus lanes (including Statutory Instruments 2005/2756 and Provisional Guidance of the 7 November 2005 as updated and replaced from time to time)

4.3 not to cause or permit commencement of any works relating to Spine Road Phase 2 until

4.3.1 there has been submitted to and approved by the County Council drawings and technical information for the Spine Road Phase 2 in accordance with the requirements set out in Part 2 of this Schedule ;

4.3.2 there has been agreed commuted maintenance in respect of the Spine Road Phase 2; and

4.3.3 a Section 38 Agreement for construction and adoption of the Spine Road Phase 2 has been entered into with the County Council such agreement to incorporate the approved drawings, provision for payment of the agreed commuted maintenance and to incorporate additional provisions in accordance with paragraph 4.4

4.4 The Section 38 Agreement for the construction and adoption of the Spine Road Phase 2 shall additionally provide for the Owner and the Developer:-

4.4.1 to construct and install at their own expense as part of the Roads as defined in that agreement

4.4.1.1 A bus shelter with seating such shelter to be of a design which has been approved by the County Council and which accommodates the installation and operation of a real time information display unit at the shelter together with associated works and such associated works shall include ducting at the shelter to accommodate cabling for the real time information display unit and underground ducting and cabling to the junction where the sub surface ducting connects to the 'riser' ducting at the shelter. Such bus shelter is to be in the approximate location marked on the On Site Highways Plan.

4.4.1.2 Cameras and associated apparatus in accordance with the scheme approved further to paragraph 4.2

4.4.2 to pay to the County Council the sum of £8,909 Index Linked (Baxter) in respect of the real time information display unit such payment to be made prior to the Occupation of any Dwelling at Phase 3 or Phase 4

4.4.3 to pay to the County Council the sum of £12,000 on account of promoting traffic orders for speed limits weight restrictions and a bus route (as shown indicatively on the On Site Highways Plan) and a parking order for the control of parking at electric vehicle charging points; such payment to be made prior to commencing works and the Section 38 Agreement for the Spine Road Phase 2 will be adapted accordingly (so that clause 10.5 provides for payment of the balance of costs in respect of the proposed order(s))

4.4.4 the Certificate of Practical Completion (as referred to in the Section 38 Agreement) shall not be issued until arrangements have been made with the distribution network operator selected by the County Council (being Scottish and Southern Electricity) so that the cabling for the real time information unit and the cameras is fully operational

- 4.4.5 to deliver to the County Council without any cost to the County Council on the same day as and immediately following adoption a deed of grant of freehold easement and covenant in accordance with the details set out in Part 3 of this Schedule and as a pre-condition to adoption there shall be provided evidence satisfactory to the County Council that this will be undertaken

### **Spine Road - Use**

5. The Owner and the Developer further covenant with the County Council
- 5.1 Immediately following practical completion of any section of the Spine Road to adoption standard to binder course level (but with iron work flush with the binder course) and the issue by the County Council of a certificate of practical completion to permit its use by vehicular and pedestrian traffic (including buses) prior to its adoption as a public highway
- 5.2 To take out and maintain from the first opening to traffic of any part of the Spine Road until adoption as highway maintainable at the public expense such insurance as is reasonably satisfactory to the County Council and the bus service operators as may be necessary to enable bus services to operate on that part of the Spine Road

## **PART 2**

### **Location Plan and two copies of each of the following**

1. Typical cross sections
2. Longitudinal sections
3. Contoured drawing for junctions
4. Layout drawings at 1:1250 scale showing all drainage and service strips
5. Layout drawings 1:1250 scale with proposed adoption areas outlined in red – see note below

6. Layout drawing 1:1250 scale identifying easement areas (see Parts 3 and 4)
7. Typical drainage details
8. If the street lighting has been designed a copy of the type of light source and design calculations
9. Landscaping drawing
10. Estimated costs of the works including services and estimated time to complete the works
- 11 Information on the Bridges as required for the approval in detail.

Note: For purposes of the S38 Agreement there will be required 6 copies of layout drawing 1:1250 scale with adoption areas coloured up as follows:-

- Brown – roads
- Grey – footways
- Green – grass and landscaping
- Blue – highway drainage (and any easement for highway drainage to be coloured yellow)
- Pink - works on existing highway

### PART 3

1. In this part of this Schedule the following words and phrases shall have the following meanings unless the context otherwise requires.

**“The Access Routes”** means the access routes shown [*plan to be agreed for Section 38 Agreement for Spine Road Phase 1 or Spine Road Phase 2 as applicable*] comprising access routes to the Ponds suitable for vehicles and maintenance equipment and approved further to the Twenty Third Schedule (SUDS)

**“the Drainage Infrastructure”** means the drainage infrastructure (swales cascades and if

applicable drainage pipes) shown [plan to be agreed for Section 38 Agreement for Spine Road Phase 1 or Spine Road Phase 2 as applicable] comprising drainage infrastructure for the passage of drainage from the Roads to the Ponds (and as applicable from the Ponds) and approved further to the Twenty Third Schedule (SUDS) and Drainage "Infrastructure (Swales)" means that part of the Drainage Infrastructure which comprises swales, cascades and the like

**"Highway"** means the Roads as defined in the relevant Section 38 Agreement and any highway for which the County Council is the highway authority and which may benefit from the rights and covenants set out below

**"Ponds"** means the ponds taking drainage from the Roads shown [plan to be agreed for Section 38 Agreement for Spine Road Phase 1 or Spine Road Phase 2 as applicable] comprising ponds for the sustainable drainage system at the Site and approved further to the Twenty Third Schedule (SUDS)

**"Strip"** means the part of the Site shown [plan to be agreed for Section 38 Agreement for Spine Road Phase 1 or Spine Road Phase 2 as applicable] comprising an easement strip for a distance of 3 metres on either side of any drainage pipe which constitutes part of the Drainage Infrastructure

And any reference to the Access Routes, Drainage Infrastructure, Ponds and the Strip below means the Access Routes, the Drainage Infrastructure, the Ponds and the Strip for the purposes of the Section 38 Agreement for the Spine Road Phase 1 or as applicable the Section 38 Agreement for the Spine Road Phase 2

2. The Owner and the Developer agree that as a pre-condition to adoption of the Spine Road Phase 1 or as applicable the Spine Road Phase 2 it shall provide evidence satisfactory to the County Council that on the same day as and immediately following adoption there shall be completed and delivered to the County Council without any cost to the County Council a deed of grant of freehold easement (with all parties with any interest in the Ponds, the Drainage Infrastructure, the Access Routes and the Strip joining in such deed) of the rights set out in paragraph 3 below and the covenants set out in paragraph 4 below for the benefit and protection of the Highway and with intent to bind

the grantor and its successors in title, owners and occupiers for the time being of the Ponds, the Drainage Infrastructure , the Access Routes and the Strip in whosoever hands the same may come

3. The rights referred to in paragraph 2 are:

3.1. the right of drainage for the purpose of conveying surface water from the Highway on, over and through the Drainage Infrastructure and into the Ponds and as applicable from the Ponds including to streams ;

3.2. the right to enter upon the Access Routes and the Ponds with or without vehicles, plant, tools, equipment and apparatus for the purpose of access to and inspection of the condition of the Ponds and further for purpose of exercising the rights referred to in paragraph 4;

3.3. the right to enter upon the Drainage Infrastructure (Swales) with or without vehicles, plant, tools, equipment, apparatus for the purpose of inspecting the condition of the Drainage Infrastructure (Swales) and further for the purpose of exercising the rights referred to in paragraph 4.1

3.4. the right to enter upon the Strip with or without vehicles, plant, tools, equipment and apparatus for the purpose of inspecting, cleaning, repairing, maintaining, renewing and replacing (with the same or updated apparatus) or removing the Drainage Infrastructure at the Strip from time to time on prior reasonable notice except in case of emergency when no notice will be required including the right to open up the surface of the Strip for such purposes subject to the person exercising such right causing as little damage as reasonably practicable and making good all damage caused

4. The covenants referred to in paragraph 2 are

4.1. covenants by the grantor that without prejudice to any other right or remedy of the County Council if the grantor fails to comply with its maintenance obligations contained in the Twenty Third Schedule the County Council shall be entitled (without any obligation so to do) after giving not less than 7 days' notice to the grantor informing him of such failure and affording him a reasonable opportunity to rectify it to undertake remedial works and the County Council may charge the grantor with the

expense of carrying out such remedial works such expense being a debt due to the County Council and recoverable by the County Council by action or otherwise

4.2. covenants by the grantor:-

4.2.1. not to build or erect any building or structure whether of a temporary or permanent nature upon the Strip

4.2.2. not to plant any tree, shrub or hedge in/on the Strip

4.2.3. not to carry out mole ploughing or sub soil drainage works at the Strip or otherwise carry out or omit at the Strip anything which may damage or otherwise adversely affect or interfere with the Drainage Infrastructure at the Strip

**PART 4**

1. In this part of the Schedule the following words and phrases shall have the following meanings unless the context otherwise requires.

**“The Working Areas”** means the working areas adjoining the Bridges shown

*[plan to be agreed for Section 38 Agreement at Spine Road Phase 1 – shown indicatively on the On Site Highways Plan]*

2. The Owner and the Developer agree that as a precondition to adoption of the Spine Road Phase 1 it shall provide evidence satisfactory to the County Council that on the same day as and immediately following adoption there shall be completed and delivered to the County Council without any cost to the County Council a deed of grant of freehold easement (with all parties with any interest in the Working Areas joining in such deed) of the rights set out in paragraph 3 below and the covenants set out in paragraph 4 below for the benefit and protection of the Bridges and with intent to bind the grantor and its successors in title, owners and occupiers for the time being of the Working Areas in whosoever hands the same may come.
3. The rights referred to in paragraph 2 are:



the right enter upon the Working Areas with or without vehicles plants tools equipment and apparatus for the purpose of inspecting repairing maintaining renewing and replacing (with the same and/or updated apparatus) or removing the Bridges from time to time subject to the person exercising such right causing as little damage as reasonably practicable and economically prudent and making good all damage caused (excluding damage to any play area and/or play area equipment located in the Working Areas that does not arise from the negligence of the person exercising such right)

4. The covenants referred to in paragraph 2 are covenants by the grantor:-

4.1 not to build or erect any building or structure whether of a temporary or permanent nature upon the Working Areas

4.2 not to plant any tree shrub or hedge in or on the Working Areas  
4.3 not to otherwise carry out or omit at the Working Areas anything which may damage or otherwise adversely affect the safety or stability of the Bridges

4.4 to maintain the Working Areas in suitable repair and condition for the exercise without let or hindrance of the rights set out in paragraph 3

5 The County Council agrees that in the exercise of the rights set out in paragraph 3 above the County Council shall so far as reasonably practicable and economically prudent seek to minimise interference with the play area to be located at the Working Areas and any strategic open space at the Working Areas and so far as reasonably practicable and economically prudent seek to minimise works undertaken from the streams.

## NINETEETH SCHEDULE

### TRAVEL PLAN MONITORING AND INCENTIVES

#### PART 1

##### 1. Definitions

In this schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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):

<b>“Car”</b>	means any mechanically propelled vehicle but excluding electric or hybrid vehicles (being vehicles which use one or more electric motors for propulsion or vehicles that use an on-board rechargeable energy storage system and a fuel based power source for vehicle propulsion respectively) motor- cycles, taxis, school coaches and any community transport vehicle (e.g. a dial a ride vehicle) and accordingly “Car Mode” means travel by Car
<b>“Car Trip”</b>	means a trip by a person travelling (for the whole or part of the journey) in a Car (being either the driver or a passenger) but excluding a Car Trip undertaken using a Car Club Car (being a Car of the Car Club further to the Car Club Scheme as defined in the Twentieth Schedule)
<b>“Follow Up Week”</b>	means each week selected as the follow-up week for the purposes of paragraph 2.3.4 which shall be a week during school term time in September or October (excluding half term).
<b>“Measurements”</b>	means the travel mode measurements and the low carbon measurements as set out in Part 2 of this Schedule and M2, M3, M4, M5 and M6 shall be construed accordingly

**“Monitoring Year”**

means a year commencing on the Start Date and each subsequent year commencing on the anniversary of that date so that Monitoring Year 1 is the year commencing on the Start Date and ending on the day before the first anniversary of the Start Date and Monitoring Year 2 means the year commencing on the first anniversary of the Start Date and ending on the day before the second anniversary of the Start Date and so on.

**“Monitoring Years (Selected)”**

means Monitoring Year 5, Monitoring Year 7, Monitoring Year 9, Monitoring Year 11, Monitoring Year 13, Monitoring Year 15 and in the event that by the end of Monitoring Year 15 10 years has not elapsed from the date of Occupation of the final Dwelling to be Occupied at the Site every second Monitoring Year subsequent to Monitoring Year 15 until 10 years have elapsed from the date of Occupation of the final Dwelling to be Occupied at the Site.

**“Non-Car Mode”**

means travel by any mode other than by Car.

**“Resident”**

means a person whose primary place of residence is at a Dwelling at the Site.

**“School Survey”**

means a School Survey as detailed in part 4 of this Schedule.

**“Site Survey”**

means a Site Survey as detailed in part 4 of this Schedule and which comprises a residential survey and a non residential survey

**“Specified Week”**

means each week selected for a Site Survey which shall be a week during school term time in September or October (excluding half term)

**“Start Date”**

means the date of Occupation of the 50<sup>th</sup> Dwelling to be Occupied at the Site.

**“Targets”**

means the targets for each Measurement as

set out in part 3 of this Schedule for the relevant Monitoring Year (Selected) as set out in part 3 of this Schedule.

**“Travel Plan Co-ordinator”**

has the meaning assigned to it in the Twentieth Schedule

**“Trip”**

means a journey which satisfies the following criteria:

- the journey is by a person who is either a Resident or who works at the Site but excluding a journey by a child accompanied by an adult when the final destination of both the adult and the child is the same; and
- the journey commences at premises at the Site; and
- the destination of the journey may be either at the Site or beyond the Site but excluding any journey whose destination is less than 400 metres from its start.

2. **Surveys**

The Owner and the Developer covenant with the County Council that they will ensure that:

2.1 during Monitoring Year 4 the Travel Plan Co-ordinator<sup>1</sup> submits to the County Council for its approval

- a form of questionnaire for the residential survey and form of questionnaire for the non-residential survey to be undertaken for the purposes of the Site Survey during Monitoring Year 5;
- the proposed week during Monitoring Year 5 when the Site Survey will be undertaken and the related Follow Up Week; and

- the methodology for analysing the information supplied by the Site Survey and the proposed format in which such analysis will be presented.

And the Travel Plan Co-ordinator will adjust the forms of questionnaire, the timing of the Specified Week and Follow Up Week in Monitoring Year 5 and the methodology and format of the analysis in accordance with the County Council's requirements.

2.2 the Travel Plan Co-ordinator reviews with the County Council in each Monitoring Year prior to each of the other Monitoring Years (Selected) the forms of questionnaire for the Site Survey, the proposed Specified Week and Follow Up Week in the following Monitoring Year and the methodology and format of the analysis of the Site Survey and adjusts them in accordance with the County Council's requirements.

2.3 a Site Survey and a School Survey are undertaken during each Monitoring Year (Selected) in accordance with the following provisions

2.3.1 Each Site Survey will be undertaken by the Travel Plan Co-ordinator or by a reputable firm or company which is independent of the County Council, the Owner and the Developer

2.3.2 The Travel Plan Co-ordinator will distribute a questionnaire as approved by the County Council pursuant to paragraph 2.1 or as applicable paragraph 2.2 to each Dwelling at the Site that is Occupied in readiness for it to be completed in respect of the Specified Week as approved by the County Council.

2.3.3 The Travel Plan Co-ordinator will distribute a questionnaire as approved by the County Council pursuant to paragraph 2.1 or as applicable paragraph 2.2 to each non-residential premises at the Site (excluding the school) in readiness for completion in respect of the Specified Week as approved by the County Council.

2.3.4 the Travel Plan Co-ordinator will use all reasonable endeavours to secure that a questionnaire is fully completed by the household at each Dwelling that is Occupied and for this purpose will arrange a prize draw or other reasonable incentive and will collect all such questionnaires within 1 week of the Specified Week and in the event that there is not secured from 50% or more of the Dwellings at the Site that are Occupied completed

questionnaires with full information relating to all the Residents at the relevant Dwelling the Travel Plan Co-ordinator will contact and encourage Residents at those Dwellings who have not completed questionnaires to complete such questionnaires with reference to the Follow Up Week (as approved by the County Council) and will collect those questionnaires.

- 2.3.5 the Travel Plan Co-ordinator will use all reasonable endeavours to ensure that there is completed by a senior member of staff at each non-residential premise at the Site (excluding the school) a questionnaire in a form approved by the County Council for the non-residential survey for a week day (that is Monday to Friday inclusive excluding bank holidays or any other public holiday) during the Specified Week and that it is returned to him and for this purpose will arrange a prize draw or other reasonable incentive.
- 2.3.6 the Travel Plan Co-ordinator will use all reasonable endeavours to ensure that there is undertaken by staff employed at the school at the Site a survey in accordance with Part 4 of this Schedule on a typical school day during September or October (as agreed with the school and the County Council) during each of the Monitoring Years (Selected) and the results of such survey provided to the Travel Plan Co-ordinator within 1 week of the survey
- 2.3.7 the Travel Plan Co-ordinator will supply to the County Council within 12 weeks of the Specified Week or if later within 4 weeks of the day on which the School Survey is undertaken in each Monitoring Year (Selected) a report on the information provided by the Site Survey and the School Survey and an analysis of such information all in accordance with the methodology and format approved by the County Council further to paragraph 2.1 or as applicable paragraph 2.2. The report shall also address such other matters as agreed between the County Council and the Travel Plan Co-ordinator
- 2.3.8 the Travel Plan Co-ordinator will co-operate with the County Council in such manner and on such occasions as the County Council reasonably requires in the

verification of the accuracy of any data used in compiling the report and without prejudice to the generality of the foregoing the Travel Plan Co-ordinator will ensure that the originals of the completed residential survey questionnaires the completed non-residential survey questionnaires and of the School Survey are retained by the Travel Plan Co-ordinator for no less than 12 months and that representatives of the County Council will be permitted to study such original questionnaires as completed at all reasonable times following request and that copies of them will be provided promptly to the County Council if so required.

**3 Measurements**

The Measurements set out in column 2 below shall be ascertained from information comprised in the Site Survey and as applicable School Survey undertaken during the Monitoring Year (Selected) as listed in column 1 below and for this purpose the notes set out in Schedule 2 apply.

<b>Monitoring Year (Selected)</b>	<b>Measurements</b>
Year 5	M2, M3 and M4
Year 7	M2 and M3
Year 9	M2, M3, M4, M5 and M6
Year 11	M2, M3, M4, M5 and M6
Year 13	M2, M3, M4, M5 and M6
Year 15	M2, M3, M4, M5 and M6
All other Monitoring Years (Selected)	M2, M3, M4, M5 and M6

**4. Payments**

In the event that any of the Measurements for a Monitoring Year (Selected) as set out in column 1 below fails to attain all the Targets for that Monitoring Year (Selected) the Developer and the Owner covenant to pay to the County Council within 14 days of the submission of the report further to paragraph 2.3.7 (or if earlier within 14 days of the due date for submission of that report) the sum set out in column 2 below subject to reduction as set out in paragraphs 5 and 6.

<b>Monitoring Year (Selected)</b>	<b>Payment</b>
Year 5	£10,000 Index Linked (RPIX)
Year 7	£20,000 Index Linked (RPIX)
Year 9	£30,000 Index Linked (RPIX)
Year 11	£40,000 Index Linked (RPIX)
Year 13	£50,000 Index Linked (RPIX)
Year 15	£100,000 Index Linked (RPIX)
All other Monitoring Years (Selected)	£100,000 Index Linked (RPIX)

5. In the event that for a Monitoring Year (Selected) both of the travel mode Targets are attained but one of the low carbon Targets is not attained (and the other two low carbon Targets are attained) payment pursuant to paragraph 4 shall be reduced by 50%.
  
6. In the event that all of the low carbon targets for a Monitoring Year (Selected) are attained but one of the travel mode Measurements fails to attain its Target (and the other travel mode Measurement does attain its Target) payment pursuant to paragraph 4 shall be reduced as follows:
  - 6.1. If the travel mode Measurement that fails to attain its Target is within 2% of its target the payment shall be reduced by 90%.
  - 6.2. If the travel mode Measurement that fails to attain its Target is within 4% of its Target the payment shall be reduced by 70%.
  - 6.3. If the travel mode Measurement that fails to attain its Target is within 6% of its Target the payment shall be reduced by 50%.
  - 6.4. If the travel mode Measurement that fails to attain its Target is within 8% of its Target the payment shall be reduced by 30%.
  - 6.5. If the travel mode Measurement that fails to attain its Target is within 10% of its Target the payment shall be reduced by 10%  
The calculations as to whether the relevant Measurement is within the specified percentage of its Target shall be calculated by reference to the Target figure (constituting 100%).
  
7. The County Council covenants with the Owner and the Developer that it shall not use any payment made further to paragraph 4 for any purpose other than one or more of the following at such times and in such form as the County Council in its discretion may decide (but subject always to prior consultation with the Travel Plan Co-ordinator):
  - 7.1. Where payment is made because of failure to attain a Target for a travel mode Measurement: measures to encourage the use of Non-Car Modes of travel to or from premises at the Site which may include one or more of the following:



enhancements to the bus service, bus stop improvements at any stop on the Bus Route(as defined in the Twenty First Schedule), promotional activities to encourage new users of Non-Car Modes of travel, promotion of walking and cycling including provision of vouchers, cycle loans to businesses operating at the Site and other incentives and improvements to off-site routes used by the Residents.

- 7.2. Where payment is made because of failure to attain a Target for a low carbon Measurement; infrastructure and support mechanisms which may provide for one or more of the following; measures to enable Residents to work from home effectively, publicity events and individual discussions to promote opportunities, publicity for and events to advertise the benefit of low vehicle emissions, additional electric charging points, offers for Residents who buy a car with reduced carbon emissions and/or personal travel planning and other actions to incentivise Residents to reduce their use of Cars.

#### **8. General**

8.1 Without prejudice to the above provisions if any report indicates that any of the objectives of the Travel Plan have not been achieved then the Owner the Developer and the County Council shall seek to agree amendments to the Travel Plan in order to remedy this.

8.2 The Owner and the Developer covenant to pay to the County Council prior to the first Occupation of the 50<sup>th</sup> Dwelling to be Occupied the sum of £25,200 Index Linked (RPIX) towards monitoring and administration in relation to the Nineteenth, Twentieth and Twenty First Schedules and not to cause or permit the first Occupation of the 50<sup>th</sup> Dwelling to be occupied until such sum has been paid to the County Council

## MEASUREMENTS

### PART 2

<b>The Travel Mode Measurements</b>		
	<b>Measurements - Core Provisions</b>	<b>Supplemental Notes for Establishing Measurements further to Site Survey/School Survey</b>
M2	The percentage of Trips undertaken by Non-Car Mode.	The total number of Trips and the number of Trips undertaken by Non-Car Mode are to be as recorded by the relevant Site Survey.
M3	The percentage of all the pupils attending the school at the Site on a typical school day who arrive at the school by Car on that day.	The typical school day signifies the school day selected for the relevant School Survey.
<b>The Low Carbon Measurements</b>		
M4	The percentage of all adult Residents, who are in employment, that work from home.	A Resident who works for part of a day from home and part of that day elsewhere shall not be treated as working from home on that day and a Resident who works part time (or full time) who works for less than 3 hours on a day shall not be treated as working from home on that day.
M5	The average vehicle emissions (Carbon dioxide emitted per kilometre – CO <sub>2</sub> /Km) according to the manufacturer's specifications for all Cars owned by Residents	<p>A Car is treated as owned by a Resident where:</p> <ul style="list-style-type: none"> <li>(a) the Resident is designated as the owner in the vehicle registration document of the vehicle (and the vehicle is registered at the Driver and Vehicle Licensing Agency in his name); or</li> <li>(b) the Resident has the permanent use of the Car and the Resident's employer is designated as the owner in the vehicle registration document of the vehicle (and the vehicle is registered at the Driver and Vehicle Licensing Agency in the name of the employer); or</li> <li>(c) the Resident has an arrangement with a vehicle leasing business for the lease of the Car for a minimum period of 12 months and the vehicle leasing business is designated the owner in the vehicle registration document of the vehicle (and the vehicle is registered at the Driver and Vehicle Licensing Agency in the name of the vehicle leasing business); or</li> <li>(d) the Resident has the permanent use of the Car and his employer has an arrangement</li> </ul>

		with a vehicle leasing business for the lease of the Car and the vehicle leasing company is designated the owner in the vehicle registration document of the vehicle (and the vehicle is registered at the Driver and Vehicle Licensing Agency in the name of the vehicle leasing business).
M6	The average annual mileage (in kilometres) travelled by the Cars owned by Residents during the whole of the year ending at the end of the Specified Week (or as applicable part of that year where ownership has been for part of the year)	Annual mileage per Car (owned by a Resident applying the above notes) is to be established from information in the questionnaire for each Dwelling.  The average annual mileage is then established by means of averaging the annual mileage of these Cars.

## TARGETS

### PART 3

The target for each Measurement as set out in column 2 – 6 below applies for the corresponding Monitoring Year (Selected) as listed in column 1 below:

<b>Monitoring Year (Selected)</b>	<b>M2 Travel Mode Target</b>	<b>M3 Travel Mode Target</b>	<b>M4 Low Carbon Target</b>	<b>M5 Low Carbon Target</b>	<b>M6 Low Carbon Target</b>
Year 5	45% or more	20% or less	16% or more	-	-
Year 7	46% or more	20% or less	-	-	-
Year 9	47% or more	20% or less	16% or more	Less than 110G	13,250km or less
Year 11	48% or more	20% or less	16% or more	Less than 110G	13,250km or less
Year 13	49% or more	20% or less	16% or more	Less than 110G	13,250km or less
Year 15	50% or more	20% or less	16% or more	Less than 110G	13,250km or less
All other Monitoring Years	50% or more	20% or less	16% or more	Less than 110G	13,250km or less

In the event that in the year prior to the relevant Monitoring Year (Selected) it is apparent that the proposed primary school at the Site will not be open in that Monitoring Year (Selected) then notwithstanding that it is the preference that Targets M2 M3 and M6 for that Monitoring Year (Selected) should not be altered the County Council the Owner and the Developer may review and if agreed adapt the Targets M2 M3 and M6 for that Monitoring Year (Selected) having regard inter alia to the distance from the Site to the principal primary school accommodating children from the Site, the availability of a bus service to that school and the annual monitoring statistics as to travel mode share for that particular school And the references in this Schedule to the school at the Site shall instead apply to that school

## SURVEYS

### PART 4

**School Survey** – This will comprise –

1. A staff travel survey in the form of a questionnaire; and

2. A pupil survey undertaken by means of the "hands up" methodology with each class teacher asking his pupils at registration to put up their hands according to mode or mode(s) of travel used on their journey to school that day. The teacher will check this against information supplied in the previous survey and if there is any change in the travel mode will confirm by conversation with the relevant pupils.

The information to be recorded shall include:

- the number of pupils attending the school on the survey date;
- the mode/modes of transport used by each pupil attending the school on the survey date on his journey to school;
- the number of those pupils attending the school on the survey date whose journey to school in whole or in part was by Car
- the mode of transport used by each member of staff working at the school at the survey date

#### **Site Survey – Non Residential Survey**

This will comprise a questionnaire to be completed by a senior member of staff at each non-residential premise (excluding the School).

The information to be recorded shall include:

- For each person working at the premises on the survey day where they have travelled from to reach the premises and the mode or modes of transport used on that journey. If by Car the number of passengers in the Car
- The aggregate number of Trips undertaken by all persons working at the premises on the survey day
- The mode of transport used on each Trip
- The number of Trips undertaken by Car
- The number of passengers in the Car on each such Trip and whether the person employed at the premises was the driver or a passenger.

#### **Site Survey – Residential Survey**

This will comprise a questionnaire for each Dwelling at the Site that is Occupied and will entail the Residents at each such Dwelling completing a travel diary for the Specified Week or as applicable Follow Up Week. All references below to Specified Week shall where applicable signify Specified Week or as appropriate Follow Up Week.

#### **Notes**

1. The questionnaire shall explain what constitutes a Car, a Car owned by a Resident, a Resident and a Trip.

2. "relevant year" means the year ending at the end of the Specified Week.

The information to be recorded in each travel diary shall include

- A record of all Trips undertaken by each Resident residing at the Dwelling during the Specified Week detailing:-
  - Mode of travel used on each Trip and identifying whether it was by Car/partly by Car;
  - If more than one mode of travel was used details of each mode and the length of each limb of the journey (according to the mode of travel used); the mode used when leaving his Dwelling and the mode used when arriving at his destination
  - If by Car or partly by Car whether the Resident was the driver or a passenger and the number of passengers;
  - The purpose of each Trip (purpose choices to be work, on employers business, education attendance, escorting (e.g. to school), shopping, recreation/leisure, visiting friends and relatives, personal business, other);
  - The final destination of each Trip.
  
- The number of Residents at the Dwelling during the Specified Week and their age profiles (by banding).
- The number of Cars owned by Residents at the Dwelling during the Specified Week.
- The number of adult Residents at the Dwelling during the Specified Week who are in employment.
- For each such Resident the number of 'work days' on which he worked from home. This excludes a day when all the work undertaken at home is in excess of the Resident's contracted hours (or for any person who is self employed there is excluded a day when all the work undertaken is outside standard hours)
- The type, age and engine size of each Car owned by each Resident at the Dwelling during the Specified Week and when it was acquired during the relevant year. The same information for any Car owned by the Resident at any time during the relevant year and the period of time during that year when he owned that Car.
- There is to be supplied a reading from the milometer of each Car owned by each Resident during the Specified Week. If the Resident has changed Car since the last survey there is to be supplied an estimate of annual mileage (according to mileage banding agreed with the County Council and provided in the questionnaire) travelled by each Car owned by that Resident during the relevant year. This estimate of annual mileage is to include all travel undertaken by the relevant Car irrespective of whether the Resident was travelling in it.

The survey shall also be designed to ascertain measures that will assist in encouraging Trips by Non-Car Mode



**TWENTIETH SCHEDULE  
TRANSPORT (MISCELLANEOUS)**

**1. Definitions**

In this schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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);

<b>“Car Club Scheme”</b>	means a car club scheme in the form of the document attached to this Deed at Appendix 22
<b>“Cycling Payment”</b>	means the sum of £100,000 (One hundred thousand pounds) Index Linked (RPIX)
<b>“Electric Vehicle Scheme”</b>	means an electric vehicle scheme substantially in the form of the document attached to this Deed at Appendix 23
<b>“Parking Scheme”</b>	means a parking scheme substantially in the form of the document attached to this Deed at Appendix 24
<b>“Travel Plan”</b>	means a travel plan attached to this Deed at appendix 25 (subject always as provided in paragraph 7)
<b>“Travel Plan Co-ordinator”</b>	means the person responsible for securing the implementation of the Travel Plan and as set out in paragraph 6.1 of the Travel Plan



<p><b>“Work Place Travel Plan” (Specific)</b></p>	<p>means a travel plan for the encouragement of sustainable travel to and from a non-residential building comprised in the Development that takes account of the Travel Plan</p>
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## 2. Travel Plans

The Owner and the Developer covenant with the County Council as follows

2.1. not to cause or permit the opening of any show home to visitors (or if earlier Occupation of any Dwelling or any other building at the Site) until the Travel Plan Co-ordinator has been appointed and is in post and the Owner and the Developer further covenant that

2.1.1 a Travel Plan Co-ordinator shall be in post from the date of appointment of the first Travel Plan Co-ordinator until 10 years from the date of Occupation of the final Dwelling;

2.1.2 a Travel Plan Co-ordinator may be employed on a part time basis but the aggregate of the hours worked by the Travel Plan Co-ordinator plus his support team (which may include as appropriate consultants) shall be no less than 22 hours per week.

2.1.3 the Travel Plan Co-ordinator or his representative with responsibility for liaising with and assisting residents/proposed residents of any Dwelling at the Site and those employed at premises at the Site shall be employed to work from a location at the Site on no less than 3 days per week and preferably over

5 days per week until the Occupation of the final Dwelling and thereafter on this basis pending agreement of a revised schedule by the Developer and the Owner and the County Council (all parties acting reasonably)

- 2.2. not to cause or permit the Occupation of any premises comprised in the Development prior to the implementation at no cost to the County Council of those parts of the Travel Plan that are capable of being implemented prior to such Occupation and to implement such parts at no cost to the County Council prior to the Occupation of any premises comprised in the Development
- 2.3. at no cost to the County Council to implement those parts of the Travel Plan which are capable of implementation only after first Occupation in accordance with the timetable contained in the Travel Plan and to procure that the Travel Plan continues to be implemented at no cost to the County Council as long as any part of the Development is Occupied.
- 2.4. not to cause or permit the Occupation of any non residential premises comprised in the Development (excluding the Primary School) until a Work Place Travel Plan (Specific) relating to those premises has been submitted to the County Council for its approval and it has been approved in writing by the County Council (with or without amendments) and a Work Place Travel Plan (Specific) incorporating any such amendments shall constitute an approved Work Place Travel Plan (Specific).

2.5. to procure that each approved Work Place Travel Plan (Specific) is implemented in accordance with the timetable contained in it and to procure that any lease or other document effecting the disposal of the whole or any part of the relevant premises includes a covenant on the part of the tenant to observe and perform the provisions of the approved Work Place Travel Plan (Specific) and to take reasonable steps to ensure compliance with such covenant.

2.6. Not to cause or permit the disposal of their interest in the Site until the County Council is satisfied that arrangements have been put in place so that the provisions of this Schedule are enforceable by the County Council against a person with sufficient interest and control to secure their performance.

### **3. Cycling Initiatives**

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

3.1. not to cause or permit the Occupation of any Dwelling until it has placed the Cycling Payment in an interest bearing account with a major bank and provided evidence to this effect to the County Council

3.2. all interest accruing to such account shall be added to the monies deposited in the account

3.3. to use the monies deposited in the account to fund the provision of incentives for new residents at the Development as set out in paragraph 5.3.4 (bullet point 4) of the Travel Plan and which may include free bikes, free folding bikes, free bike servicing, free high visibility waterproofs, free bike lights or locks and free panniers and

not to cause or permit any monies to be withdrawn from the account other than for such purposes

3.4. once a year to report to the County Council as to the use of the monies deposited in the account and in the event that any monies remain in the account following the Occupation of the final Dwelling at the Site to transfer the balance to the County Council for the purposes of promoting cycle measures in Bicester.

#### **4. Car Club Scheme**

The Owner and the Developer covenant with the County Council to implement and comply fully with the Car Club Scheme

#### **5. Electric Vehicle Scheme**

The Owner and the Developer covenant with the County Council:

5.1 Prior to Implementation of the Development to submit to the County Council for approval the Electric Vehicle Scheme

5.2 Not to cause or permit the Implementation of the Development until the Electric Vehicle Scheme has been approved in writing by the County Council (with or without amendments) and the Electric Vehicle Scheme incorporating any such amendment shall constitute the approved Electric Vehicle Scheme

5.3 To implement and comply fully with the approved Electric Vehicle Scheme

## **6. Parking Scheme**

The Owner and the Developer covenant with the County Council:

6.1 Prior to first Occupation of the first Dwelling to be Occupied to

submit to the County Council for approval the Parking Scheme

6.2 Not to cause or permit the first Occupation of the first Dwelling to be

Occupied until the Parking Scheme has been approved in writing by

the County Council (with or without amendments) and the Parking

Scheme incorporating any such amendment shall constitute the

approved Parking Scheme

6.3 To implement and comply fully with the approved Parking Scheme

**7** It is agreed that in the event of any conflict between (a) the provisions in the Travel Plan and (b) the provisions of this Schedule and/or the provisions of the Nineteenth Schedule the provisions contained in these Schedules will prevail

**TWENTY FIRST SCHEDULE  
BUS SERVICES**

**PART 1**

**1. Definitions**

In this schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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):

**“Account”** means the account established further to paragraph 2.1

**“Bicester Station”** means Bicester Bus Station prior to the operation of the New Rail Service and thereafter Bicester Town Railway Station

**“Bicester Bus Station”** means the Bicester bus hub which is temporarily located at Market Square and whose permanent location is intended to be Manorsfield Road so that during its temporary location it signifies the bus hub at Market Square and on its return to Manorsfield Road it signifies the bus hub at Manorsfield Road

**“Bus Expenses”** means any sum paid by the Owner and/or the Developer to an operator of the Bus Service further to any Bus Service Agreement less any refund, price/cost reduction, discount, profit share or the like (including fare income) payable to the Owner and/or the Developer or as the Owner and/or the Developer may direct in consequence of the operation of the Bus Service or any other arrangement whereby the costs to the Owner and/or the Developer of the provision of the Bus Service is reduced

**“Bus Failure”** arises where either:-

- (1) there is a total failure of the Bus Service for twenty-four hours excluding Sundays; or
- (2) for 5 consecutive days or for 5 or more days over any period of twenty-five days (excluding Sundays) there is not provided 25% (or more than 25%) of the Bus Service

And in all cases this does not arise as a result of Force Majeure. For the avoidance of doubt non provision of the Bus Service does not arise where the Bus Service is delayed;

**“Bus Failure Compensation”** means the sum of £5,000 Index Linked (RPIX)x M where M is the number of weeks rounded up to the nearest whole number from the date that is 48 hours after the date of the relevant Bus Failure to the date of restoration of the Bus Service

**“Bus Failure Compensation (Initial)”** means the sum of £10,000 Index Linked (RPIX)

**“Bus Route”** means the route shown on the diagram attached at Appendix 26 being the route from the northern end of the Spine Road through the Site to Bicester Station stopping at stops 1 - 5 and 6<sup>1</sup> if applicable shown on that diagram with a return journey from Bicester Station to the Sites topping at stop 6<sup>1</sup> if applicable and stops 6, 5, 4 and 7 shown on that diagram

**“Bus Route (Initial)”** means the route shown on the diagram attached at Appendix 26 operating from the southern end of the Site to Bicester Station stopping at stops 3-5 and as applicable 6<sup>1</sup> shown on that diagram with a return journey from Bicester Station to the Site stopping at stop 6<sup>1</sup> if applicable and stops 5, 4 and 7 shown on that diagram.

**“Bus Service”** means a community transport service to the standard provided for in paragraphs 2 and 3 of this Part of this Schedule prior to the Full Service Date and thereafter the Bus Service (Full)

**“Bus Service (Full)”** means a bus service as specified in Part 2 of this Schedule

**“Bus Service Agreements”** means all agreements including collateral agreements and other documentation comprising contractual arrangements for the provision of the Bus Service and related financial arrangements between the Owner and/or the Developer and the operator of the Bus Service

**“Bus Service Sum”** means One million pounds (£1,000,000) Index Linked (RPIX) from the date such money is deposited into the Account plus interest which has accrued on the Account

**“End Date”** means the date that the Owner and the Developer reasonably estimate will be when the Bus Expenses equate or exceed the Bus Services Sum and which has been notified to the County Council in accordance with paragraph 5.2 of this Part of the Schedule

**“Force Majeure”** means any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the operator) lightning earthquake war military operations, act of terrorism or riot, where in any case nonetheless the operator takes all reasonable steps available to it to minimise the effects of the Force Majeure event

**“Full Service Date”** means the Occupation Date or where applicable the date specified in the Full Service Notice

**“Full Service Notice”** means not less than six months prior written notice of the Full Service Date that may be served by the County Council on the Owner and the Developer pursuant to paragraph 4.2.2

**“New Rail Service”** means the rail service operating from Oxford to London Marylebone via Bicester Town Railway Station following the reconstruction of the railway between Bicester and Oxford designed to facilitate the operation of direct rail services between London Marylebone Bicester town and Oxford (commonly known as Project Evergreen)

**“Notice”** means a notice further to paragraph 10

**“Occupation Date”** means the date of first Occupation of the 200<sup>th</sup> Dwelling to be Occupied

**“Occupation Notice”** means not less than 12 months prior written notice of the Occupation Date as reasonably estimated by the Owner and the Developer

**“Payment Date”** means the date one month after service of the Termination Notice

**“Termination Date”** means the date specified in the Termination Notice

**“Termination Notice”** means not less than three months prior written notice of the Termination that may be served by the County Council on the Owner and the Developer in accordance with paragraph 6.1

**“Travel Plan Co-ordinator”** has meaning given in the Nineteenth Schedule



## 2. Covenants

The Owner and the Developer covenant with the County Council

2.1. Not to cause or permit the Occupation of the first Dwelling to be Occupied until there has been established an interest bearing account with a major bank and £1,000,000 Index Linked (RPIX) has been deposited in such account. And to deposit £1,000,000 Index Linked (RPIX) in such account prior to the Occupation of the first Dwelling to be Occupied

2.2. Prior to the Occupation of the first Dwelling to be Occupied to submit to the County Council for approval a scheme including timetable for a community transport service (which is a registered bus service) to operate on the Bus Route (Initial) or such other route as may be proposed to commence no later than the date of first Occupation of the first Dwelling to be Occupied. Such scheme shall include consideration of provision of a service to the principal primary school that will accommodate children from the Site prior to the provision of a primary school at the Site. Such scheme shall be prepared with regard to the timetables of the train services then operating to and from Bicester North railway station and Bicester Town railway station and the results of a survey to be undertaken of the proposed Occupiers of Dwellings as to their requirements and preferences for bus services on the Bus Route (Initial) and any other proposed route. Such scheme shall include details of the train timetables and the results of the survey. Such scheme shall include full costings (including anticipated fare income and any income sharing arrangements) and demonstrate value for money and cost efficiency

2.3. Not to cause or permit the Occupation of any Dwelling until the scheme submitted further to paragraph 2.2 has been approved by the County Council

2.4. To procure that a Bus Service in accordance with the scheme approved further to paragraph 2.3( but subject always to adjustment further to the provisions of paragraph 3 of this part of this Schedule) is provided without any cost to the County Council for the period commencing no later than the date of first Occupation of the

first Dwelling until the Full Service Date (but subject always to the provisions of paragraph 4.2.3 and paragraph 6)

3. The Owner and the Developer covenant with the County Council that they shall procure that the Travel Plan Co-ordinator produces periodic written reviews of the Bus Service operating to and from the Site until the Occupation Date or as applicable until notice is given by the County Council further to paragraph 4.2.2: and

- 3.1. A review will be submitted within one month following the first Occupation of the 50<sup>th</sup> Dwelling, the first Occupation of the 100<sup>th</sup> Dwelling and the first Occupation of the 150<sup>th</sup> Dwelling Provided Always that where the interval between reviews is likely to exceed six months then the next review will be brought forward to the intent that the maximum period between two reviews does not exceed six months and when the County Council gives notice further to paragraph 4.2 reviews shall continue to be submitted at 6 monthly intervals.

- 3.2. Each review will contain recommendations for adjustment of the Bus Service operating on the previously approved route to and from the Site and

- 3.2.1. the following information obtained from questionnaires from each Dwelling that is Occupied: the bus services according to timing, frequency, route (including route to the principal primary school accommodating children from the Site prior to the provision of a primary school at the Site) and size of vehicle which would suit the residents at that Dwelling;

- 3.2.2. the following information secured from the operator of the Bus Service: the number of passengers per bus journey (stating separately the number of passengers on each journey, the time of that journey and its route) over a sample period which has previously been approved by the County Council

- 3.2.3. information on the timetables for the trains then operating to and from Bicester North railway station and Bicester Town railway station

3.2.4. full costings (including anticipated fare income and any income sharing arrangements) of the Bus Service adjusted in accordance with the recommendations and such costings are to demonstrate value for money and cost efficiency

3.3. The Travel Plan Co-ordinator shall retain the originals of the completed questionnaires and all of the information supplied by the bus operator for no less than 12 months and representatives of the County Council will be permitted to study such original data at all reasonable times following request and copies will be provided promptly to the County Council if so required:

3.4. Not to cause or permit any recommendation for adjustment to the Bus Service to be implemented unless it has been approved by the County Council and to implement any recommendations that are approved by the County Council as soon as reasonably practicable,

3.5. The County Council may apply the information contained in a review and such additional information as the County Council may present to the Owner and the Developer so as to recommend reasonable alternative adjustments to the Bus Service but not so as to recommend any adjustments in excess of the standard specified in paragraph 2 of Part 2 of this Schedule and where there is reasonable justification for such alternative adjustments the Owner and the Developer shall secure their implementation as soon as reasonably practicable

3.6. The County Council agrees that when the New Rail Service is brought into operation the Bus Route and if applicable the Bus Route (Initial) shall be reviewed to consider whether it should continue to include the stop at Bicester North Railway Station

#### **4. Occupation Date**

4.1. The Owner and the Developer shall serve the Occupation Notice on the County Council not less than 12 months prior to the date which the Owner and the Developer reasonably estimate will be the Occupation Date

4.2. The County Council may at any time within 3 months of receipt of the Occupation Notice notify the Owner and the Developer in writing that the introduction of the Bus Service (Full) shall be postponed and where the County Council gives such notification the Owner and the Developer shall

4.2.1. secure the continued operation of a community transport service (which is a registered bus service) in accordance with the scheme approved further to paragraph 2 and as adjusted in accordance with paragraph 3 and shall continue to submit six monthly reviews and comply with the provisions of paragraph 3.2 – 3.5 mutatis mutandis

4.2.2. upon receipt of a Full Service Notice replace the community transport service by the operation of the Bus Service (Full) in accordance with paragraph 5; and

4.2.3. in the event that the County Council does not give a Full Service Notice and the Owner and the Developer acting reasonably assess that at the expiry of six months the Bus Expenses will equate to or exceed the Bus Service Sum the Developer shall comply with the provisions of paragraph 5.2 and 5.3 and the obligations of the Owner and the Developer to secure the Bus Service shall cease from the End Date but without prejudice to liability for any antecedent breach.

## **5. Full Bus Service**

5.1. The Owner and the Developer covenant with the County Council that subject to the provisions of paragraph 6 of this part of this Schedule the Bus Service as specified in Part 2 of this Schedule operating on the Bus Route shall be provided without any cost to the County Council for the period from the Full Service Date to the End Date

5.2. The Owner and Developer shall give not less than 6 months prior written notice to the County Council of the End Date,

5.3. Within 1 month after the End Date the Owner and/or the Developer shall give the County Council a full account of the Bus Expenses; and if the Bus Expenses to the End Date are less than the Bus Service Sum the Owner and/or the Developer shall pay the difference to the County Council within 14 days

6. **County Council Election**

6.1. The County Council may at any time after receiving the Occupation Notice (or if later the Occupation Date) serve the Termination Notice on the Owner and the Developer; and

6.1.1. the obligations of the Owner and the Developer to provide the Bus Service shall cease on the Termination Date but without prejudice to liability for any antecedent breach; and

6.1.2. The Developer and the Owner shall pay to the County Council on the Payment Date the sum calculated as follows:

the Bus Service Sum less:

(a) the Bus Expenses paid prior to the Payment Date; and

(b) a reasonable estimate of the Bus Expenses for the period from the Payment Date to the Termination Date

6.2. Within 1 month after the Termination Date the Owner and the Developer shall give the County Council a final account of the Bus Expenses to the Termination Date and

6.2.1. If the payment made to the County Council in accordance with paragraph 6.1.2 is less than the Bus Service Sum minus the Bus Expenses to the Termination Date the Owner and the Developer shall pay the difference to the County Council

6.2.2. If the payment made to the County Council in accordance with paragraph 6.1.2 is more than the Bus Service Sum minus the Bus Expenses to the Termination Date the County Council shall refund the balance to the Owner

and the Developer who may use such monies for any purpose in their absolute discretion

**7. Account and Records**

The Owner and the Developer covenant with the County Council

7.1. to notify the details of the Account established further to paragraph 2.1 to the County Council immediately on the setting up of the Account and to provide to the County Council at six monthly intervals a report on the use of monies deposited in the Account

7.2. that all interest accruing to Account and all income, profit share and the like further to any Bus Service Agreement shall be added to the monies deposited in the Account;

7.3. not to cause or permit any monies to be withdrawn from the Account other than for the purposes of making payments strictly in accordance with the Bus Service Agreements for the provision of the Bus Service in compliance with the provisions of paragraphs 2.4 (adjusted in accordance with paragraph 3) and as applicable paragraphs 4.2.1, 4.2.2 and 5.1 of this part of the Schedule (and for payment to the County Council further to paragraph 6)

7.4. to supply to the County Council a complete copy of each Bus Service Agreement within 14 days of that agreement

7.5. to supply to the County Council at 6 monthly intervals calculated from date of first Occupation of the first Dwelling details of Bus Expenses incurred during the preceding 6 month period with full supporting information as to their calculation including copies of all and any relevant documents, books and records (and without limitation financial records, books of account, correspondence, relevant invoices, receipts and computer records held for the purpose of establishing the Bus Expenses)

**8. Bus Failure**

It is agreed that the provisions of the following paragraphs 9 and 10 are without

prejudice to all rights and remedies of the County Council for any breach of the obligations in paragraphs 2.4 and as applicable 4.2.1, 4.2.2 and 5.1 above including enforcement by injunction and payment of damages in respect of all losses sustained by the County Council

9. The Owner and the Developer covenant with the County Council that in the event that there is a Bus Failure;

9.1. The Owner and the Developer shall forthwith pay to the County Council Bus Failure Compensation (Initial)

9.2. The Owner and the Developer shall notify the County Council of its programme for the restoration of the Bus Service and shall provide the County Council with updates daily (or at such longer intervals as the County Council may agree) of the progress in securing this

9.3. That in the event that the Bus Failure is not remedied within forty-eight hours of its commencement (but in calculating this 48 hour period any Sunday shall be disregarded) the Owner and the Developer shall pay to the County Council the Bus Failure Compensation within fourteen days from the restoration of the Bus Service

10. The Owner and the Developer further covenant with the County Council that in the event that there is a Bus Failure and this is not remedied within one month of its commencement then the County Council may but is not obliged to give notice to the Owner and the Developer and if the Owner and the Developer fail to secure restoration of the Bus Service to the relevant standard within one month from service of the Notice it is agreed that the following shall apply:

10.1. All proposals of the Owner and the Developer for restoration of the Bus Service shall be subject to prior written approval of the County Council in its discretion

10.2. The Owner and the Developer shall pay to the County Council at the expiration of one month from the Notice Bus Failure Compensation calculated to the date one month after the date of the Notice

10.3. The Owner and the Developer shall pay to the County Council at the expiration of one month from the Notice the Bus Services Sum less the Bus Expenses incurred to the date of commencement of the Bus Failure whereupon the Owner and the Developer shall be relieved absolutely from the obligations of this Twenty First Schedule but without prejudice to liability for any antecedent breach.

11. The County Council covenants with the Owner and the Developer not to use the Bus Failure Compensation (Initial), the Bus Failure Compensation and/or any payment further to paragraph 5.3, paragraph 6.2 or paragraph 10 for any purpose other than for the provision of public transport from and to the Site to and from Bicester Station (but excluding any bus service insofar as it exceeds the standard specified in Part 2 of this Schedule) and as applicable any costs the County Council incurs in connection with a Bus Failure



## **PART 2**

### **Standard of the Bus Service**

1. In this Part of this Schedule "**Bus**" means a bus which is designed to seat no less than 28 passengers and which is low-floor with easy accessibility and in which automatic vehicle location equipment is installed to enable real – time information to be displayed at bus stops along the route
  
2. The Bus Service shall comprise a bus service on the Bus Route;
  - 2.1 with two Buses departing from the Site for Bicester Station each hour and at approximately equal intervals on Monday to Friday between 07.00 hours to 19.00 hours inclusive and on Saturday between 08.00 hours to 18.00 hours inclusive; and
  
  - 2.2 with two Buses departing from Bicester Station to the Site each hour and at approximately equal intervals on Monday to Friday between 06.00 hours to 20.00 hours inclusive and on Saturday between 08.00 hours to 18.00 hours inclusive;

**TWENTY-SECOND SCHEDULE**  
**SCHOOL SITE**  
**PART 1**

1. **Definitions**

In this Schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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)

**“Abnormals”** means the matters specified in Part 2 of this Schedule

**“Abnormals Costs”** means the reasonable and proper costs of any Abnormals which are required for the provision of a Primary School at the Primary School Site as agreed or determined further to paragraph 2

**“Additional Land”** means all that area of land shown edged purple on the Primary School Plan with an area of no less than 0.9 hectares (being an area of no less 0.88 hectares excluding land restricted by the hedges on the northern and western boundaries)

**“Interventions Drawing”** means the drawing attached at Appendix 28 which identifies the principal works to be undertaken by the Developer and the Owner to the Primary School Site further to paragraph 4.1.1 of this part of the Schedule (including levelling, on site SUDS measures and retaining structures) and which also identifies a scheme for the levels of those parts of the Site which surround the Primary School Site for a distance of 10 metres from the boundaries of the Primary School Site (other than those boundaries which comprise the boundaries of the Site)

**“Offer Date”** means the earlier of

- Ten working days after the Occupation of the 50<sup>th</sup> Dwelling; and

- One year from Implementation of any part of the Development

**“Primary School”** means a primary school with foundation stage provision and where applicable nursery provision together with associated playing fields and play grounds

**“Primary School Offer”** means an irrevocable offer to transfer the Primary School Site to the County Council in accordance with paragraph 4.2

**“Primary School Plan”** means the plan attached at Appendix 27 and marked “School Plan”

**“Primary School Services”** means the services and apparatus identified in Part 5 of this Schedule subject to adjustment further to paragraph 3.6 of this part of this Schedule.

**“Primary School Site”** means all that area of land shown edged red on the Primary School Plan with an area of no less than 1.47 hectares (being no less than 1.34 hectares excluding the land restricted by the hedges on the western and southern boundaries). The eastern boundary of the Primary School Site on the Primary School Plan shall immediately abut the prospective highway

**“Service Media”** means sewers, drains, channels, pipes, watercourses, wire cables and other conducting media and installations and ancillary equipment for the supply of water, electricity, gas and heating and electronic and other communication and disposal of foul and surface water

## 2. **Additional Costs**

- 2.1 The County Council will use reasonable endeavours to advise the Owner and the Developer in writing of its assessment of the Abnormals Costs within [6] months of the provision surveys and information further to paragraphs 3.3 (Surveys / Investigations), or in the event that paragraph 3.4 applies within 6 months of receipt of the relevant surveys and information as commissioned by the County Council ;

And the Owner and the Developer shall be deemed to have agreed the County Council's assessment of the Abnormals Costs unless it advises the County Council otherwise in writing within 28 days of service on the Owner and the Developer of the County Council's assessment. If the Owner or the Developer objects to the County Council's assessment within such 28 day period the County Council and the Owner and the Developer will seek to agree the Abnormals Costs and if such agreement has not been reached within 25 Working Days any party to the dispute may refer the matter for expert determination in accordance with the provisions of clause 19

2.2 The Abnormal Costs shall be Index Linked (Pub Sec) from the date of the County Council's assessment or such later date as may be agreed and the Owner and the Developer covenant to pay the Abnormal Costs Index Linked to the County Council on the transfer of the Primary School Site or if later within 14 days of agreement or as applicable determination of the Abnormal Costs

3. **Primary School Site – Information and Controls**

The Owner and the Developer covenant with the County Council that:-

3.1 **Land/Surface Water Drainage**

3.1.1 The application for approval of the proposed drainage system for the Site to be submitted further to paragraphs 2 and 3 of the Twenty Third Schedule (SUDS) shall include measures for exceedence flows from the Primary School Site (for a flood event with a 1 in 100 plus 30% annual probability in any year)

3.1.2 The application submitted further to paragraphs 2 and 3 of the Twenty Third Schedule shall not provide for any drainage to

be directed towards the Primary School Site or otherwise adversely affect drainage or use of the Primary School Site save that swales for exceedence flows may be located on the boundary of the Primary School Site but only in the following circumstances:

3.1.2.1 where this is expressly identified on the School Site Plan and the swales are confined to the area so indicated on the School Site Plan; and

3.1.2.2 where the design of these swales has previously been approved in writing by the County Council in its capacity as education authority such approval not be unreasonably withheld or delayed if the design accords with the requirements set out below

- the edge of the swale is beyond the run-off area of the playing pitch
- the site shape of the Primary School Site can still accommodate the full range of school facilities
- the gradient of the swale edge does not exceed 1:5
- the width of the swale does not exceed 5 metres
- any fencing to the boundary is set beyond the edge of the swale set at the proposed ground level of adjacent land
- the swale provides sufficient capacity for the outfalls arising from the sustainable drainage

solution serving the Primary School

3.1.3 The Owner and the Developer shall provide a copy of the application submitted further to paragraphs 2 and 3 of the Twenty Third Schedule to the County Council as education authority forthwith on submitting such application

3.2 Surveys/Investigations

Without cost to the County Council the Owner and the Developer shall procure and supply to the County Council within 3 months of the grant of Planning Permission

3.2.1 a full geotechnical ground investigation survey of the Primary School Site in accordance with the specification at Part 3 of this Schedule and;

3.2.2 a topographical survey of the Primary School Site and surrounding areas of the Site for a distance of 10 metres from the boundaries of the Primary School Site in accordance with the specification at Part 3 of this Schedule

Such surveys shall be undertaken by reputable consultants with appropriate expertise. The contracts for such surveys shall accord with those in general use for contracts for such type of surveys and certified copies will be supplied to the County Council with the survey reports

3.3 Without cost to the County Council the Owner and the Developer shall procure and supply to the County Council within one month of the provision of each survey specified in paragraph 3.2 warranties in the

form attached at Appendix 29 subject to such reasonable amendments as the circumstances may reasonably and properly require from the consultants responsible for the production of that survey

3.4.1 In the event that either or both of the surveys as specified in paragraph 3.2 (and in accordance with specifications in Part 3 of this Schedule) have not been supplied to the County Council within 3 months of the grant of the Planning Permission the Owner and the Developer shall at the date which is 3 months after the date of grant of the Planning Permission pay to the County Council £30,000 Index Linked (RPIX) or such lesser sum as the County Council shall in its discretion specify and the Owner and the Developer shall not Implement or further Implement the Development until such payment has been made to the County Council Provided Always that the County Council may in its absolute discretion extend the time period for the provision of the surveys further to paragraph 3.2 in which case all references in paragraph 3.2 and this paragraph 3.4 to 3 months after the date of grant of the Planning Permission shall be replaced by such longer time period

3.4.2 Where payment is made further to paragraph 3.4.1 the obligations of the Owner and the Developer further to paragraphs 3.2 and 3.3 shall cease to apply in respect of those surveys which have not been supplied by the Owner and the Developer (but shall continue to apply in respect of those surveys which have been supplied)

### 3.5

#### On Site SUDS

The County Council shall notify the Developer and the Owner no later than 4 weeks after written notification by the Owner and the Developer of Implementation of the Development whether the specification volume and

location of the on-site SUDS measures identified on the Interventions Drawing are satisfactory for the purposes of the Primary School and

3.5.1 If the County Council fails to notify the Developer and Owner within 4 weeks of such notification of Implementation of the Development the County Council shall be deemed to have approved the on-site SUDS measures identified on the Interventions Drawing

3.5.2 If the County Council notifies the Developer and the Owner in writing prior to the expiry of 4 weeks from such notification of Implementation of the Development of adjustments required to the on-site SUDS measures the Interventions Drawing (and thereby the works to be undertaken further to paragraph 4.1.1) shall be revised accordingly

### 3.6

#### **Services (Adjustment)**

3.6.1 The Owner and the Developer shall use reasonable endeavours to ensure that Southern and Scottish Electricity (or as applicable other supplier selected by the Owner and the Developer to operate the district heating system supplies to the County Council as soon as possible all information requested by the County Council and as applicable undertakes discussions with the County Council so as to enable the County Council to establish prior to the date of letting of the construction contract for the Primary School the heating requirements of the Primary School from the district heating system ("the Heating Requirement") and the cost of provision of the heating energy supply



3.6.2 The Heating Requirement of the Primary School set out in column 1 of Part 5 of this Schedule shall be adjusted in accordance with the requirements specified by the County Council and in the event that the County Council has not notified these requirements within 4 weeks after written notification by the Owner and the Developer of Implementation of the Development the Heating Requirement set out in Part 5 of this Schedule shall be deemed to be approved.

### 3.7 Controls

3.7.1 The Owner and the Developer shall not erect or cause or permit to be erected any mobile phone mast on any part of the Site which is within 200 metres of the boundary of the Primary School Site

3.7.2 The Owner and the Developer shall not carry out any works on (including for the avoidance of doubt alterations by the removal or deposit of materials or otherwise of the levels of any part of the Primary School Site) or install any service conduits in on over or under the Primary School Site save in accordance with the provisions of paragraph 4

3.8 The Owner and the Developer shall not erect or cause or permit to be erected any fencing or other structure on any boundary of the Primary School Site unless it shall have been approved in writing by the County Council as suitable for a school boundary and it is agreed that any such boundary structure shall become the property of the County Council

3.9 The Owner and the Developer shall not cause or permit the area of the Site which surrounds the Primary School Site for a distance of 10 metres from the boundaries of the Primary School Site (excluding those boundaries which are boundaries of the Site) to be altered save in accordance with the Interventions Drawing

### 3.10 Access and Information

3.10.1 Upon reasonable prior written notice the Owner and the Developer shall permit any persons nominated by the County Council to enter free of charge on the Primary School Site and such part of the adjacent land as has been approved by the Owner and the Developer (acting reasonably) for the purpose of undertaking surveys and investigations the County Council making good all damage occasioned thereby as soon as reasonably practicable at its own cost

3.10.2 The Owner and the Developer shall answer in writing as expeditiously as reasonably possible and in as comprehensive and informative manner as reasonably possible and without charge to the County Council all reasonable preliminary enquiries raised by the County Council

## **4 Primary School Site – Works and Transfer**

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

4.1 Prior to making the Primary School Offer to observe and perform the following obligations:

4.1.1 Without cost to the County Council to procure that works identified on the Interventions Drawing and other works and all related investigations, assessments and reports as specified in Part 4 of this Schedule are undertaken

in accordance with the specification and requirements at Part 4 of this schedule and to the reasonable satisfaction of the County Council and this has been certified in writing by the County Council (in accordance with the procedure set out in the annex to Part 4 of this Schedule). No other works shall be undertaken to the Primary School Site save as provided in this paragraph 4 unless expressly approved by the County Council in its discretion. The works shall be undertaken by reputable consultants/contractors with appropriate expertise. The contract(s) for such works shall accord with those in general use for contracts for such type of works and a certified copy will be supplied to the County Council prior to making the Primary School Offer

- 4.1.2 Without cost to the County Council to procure and supply to the County Council warranties in the form attached at Appendix 29 subject to such reasonable amendments as the circumstances may reasonably and properly require from all consultants, contractors and other persons responsible for the design and carrying out of the works to the Primary School Site in accordance with paragraph 4.1.1 (and related assessments and investigations and reports)
- 4.1.3 Without cost to the County Council to comply fully with all requirements of any planning conditions relating to archaeology in so far as they relate to the Primary School Site including carrying out and completing investigations in accordance with the approved written scheme of investigation (if this is required)
- 4.1.4 Without cost to the County Council to complete all works required to achieve the levels of the area of the Site which surrounds the Primary School site for a distance of 10 metres from the boundaries of the Primary School Site in accordance with the Interventions Drawing

- 4.1.5 Following completion of the works further to paragraph 4.1.1 and paragraph 4.1.4 to agree with the County Council the precise boundaries of the Primary School Site (with no less an area than 1.47 hectares) . The Owner and the Developer agree that its representative shall liaise with the County Council including as appropriate carrying out a joint site visit/visits in order to establish such boundaries which are to be pegged and recorded digitally on agreed site survey records
- 4.1.6 Without cost to the County Council to complete that part of the site drainage system (as defined in the Twenty Third Schedule) which is designed to serve inter alia the Primary School Site
- 4.2 On or before the Offer Date to make the Primary School Offer to the County Council to transfer the freehold of the Primary School Site and all other interests (if any) in the Primary School Site to the County Council on the terms as set out in the Twenty Fourth Schedule and the County Council may by notice in writing to the Owner and the Developer accept the Primary School Offer within three months of receiving it; and
- 4.2.1 If the Primary School Offer has not been made on or before the Offer Date not to continue with the Development or cause or permit any further Occupation of the Development until this paragraph 4.2 has been fully complied with;
- 4.2.2 For the avoidance of doubt in the event that the Primary School Site is offered to the County Council prior to compliance with the provisions of paragraph 4.1 then such offer shall not (unless otherwise expressly agreed by the County Council in its discretion) constitute the Primary School Offer in compliance with this paragraph

4.2.3 If the Owner and the Developer have complied with the provisions of paragraph 4.1 and the County Council does not accept the Primary School Offer within the period of three months referred to in paragraph 4.2 above then it is hereby acknowledged and agreed that the Primary School Site and the Additional Land shall be released absolutely from the restrictions in this Twenty Second Schedule

4.3 Upon acceptance by the County Council of the Primary School Offer the following paragraphs 4.4 to 4.10 (inclusive) shall take effect

4.4 The Owner and the Developer shall transfer the freehold of the Primary School Site to the County Council and procure that all other interests (if any) in the Primary School Site are transferred to the County Council) in accordance with the terms specified in the Twenty Fourth Schedule and the form of transfer attached at Appendix 30

~~4.5~~ If such transfer is not executed as a deed by the Owner and the Developer and any other person with an interest in the Primary School Site and delivered unconditionally and irrevocably to the County Council within 28 days of the County Council's acceptance of the Primary School Offer not to continue with the Development (or cause or permit any further Occupation of the Development) beyond such time until such transfer has been duly executed as a deed and delivered unconditionally and irrevocably to the County Council and for the avoidance of doubt it is hereby acknowledged that the obligations and liabilities of the Owner and the Developer in this paragraph 4.5 do not require such executed deed of transfer to be dated by the parties thereto so as to effect legal completion of it

4.6 Prior to the transfer of the Primary School Site to provide an electricity supply a water supply and access to a foul drain for contractors in the positions indicated on the Primary School Plan and a temporary haul road on the route shown on the Phasing Plan including temporary bridging all at suitable

gradient for the use of contractors and the Owner and the Developer shall maintain such temporary haul road and services so that they are available for convenient use until permanent connections and access are operational provided always that this shall not impose any obligation on the Owner and the Developer to pay for the supply consumed through the use of the services

And if any such services and haul road and bridging are not provided prior to the transfer of the Primary School Site not to continue with the Development or cause or permit any further Occupation of the Development until they have been provided in accordance with this paragraph

4.7 The Owner and the Developer shall ensure that all Service Media serving the Development will be of sufficient capacity to serve the Primary School Site for the purposes of a primary school with 14 classrooms and associated playing fields and playgrounds in accordance with the capacity requirements set out in Part 5 of this Schedule (subject to adjustment further to paragraph 3.6) and if insufficient the Owner and the Developer shall commence within 1 month of written request from the County Council to do so and diligently proceed to upgrade the same at its own expense and without prejudice to the generality of the foregoing the Owner and the Developer shall ensure that the foul water drainage scheme for the Site

4.7.1 provides sufficient capacity for the outfalls arising from the drainage solution serving the Development including the Primary School; and

4.7.2 provides a gravity drainage system to serve the Primary School Site which complies with the invert levels identified on the Primary School Plan

4.7.3 shall be connected to the mains drainage system which shall be adopted by the drainage authority

4.8 To provide the Primary School Services so as to be sufficient and readily available to serve the Primary School Site for the purpose of a Primary School and to procure that the Primary School Services are:

4.8.1 constructed to the termination position/connection point/terminal points for the Primary School Services on the boundary of or as applicable within the Primary School Site in the locations set out in Part 5 of this Schedule

4.8.2 fully operational in accordance with the timetable set out in Part 5 of this Schedule provided always that this shall not impose any obligation on the Owner and the Developer to pay for the supply consumed through the use of the services

And if any of the Primary School Services are not so provided so as to be fully operational in accordance with the timetable set out in Part 5 of this Schedule not to continue with the Development or cause or permit any further Occupation of the Development until they have been so provided so as to be fully operational

Fully operational signifies connected to the mains for service supplies by any service supplier or undertaker selected by the County Council so as to deliver a fully operational facility and service (such as by way of example only heating, lighting, water or drainage)

4.9 No less than 3 months prior to the proposed opening date of the Primary School as notified by the County Council to complete the construction of the following:

4.9.1 convenient pedestrian and cycle access ways along such routes to the Primary School Site as the County Council (as highway authority) shall have previously approved from the parts of the Development which at that date have been or are in the course of construction to the pedestrian entrances to the Primary School Site as shown on the

Primary School Plan all such ways to be constructed to County Council adoption standard (with lighting)

4.9.2 permanent vehicular access (constructed to the County Council's adoption standard) to the Primary School Site from the public highway (via such routes as the County Council shall have previously approved) to the vehicular entrance to the Primary School Site as shown on the Primary School Plan (access point 6 metres wide) together with a further permanent vehicular access for inter alia grounds maintenance equipment (including gang mowers) which shall also be designed with appropriate gradients, turning circles, bearing capacities and the like so as to provide access for construction vehicles to enter and leave the Primary School Site from the public highway to the access point designated approximately on the Primary School Plan.

And there will be provided as part of the works under this paragraph 4.9 such traffic calming measures, road markings, barrier rails and pelican crossings as may be agreed by the Owner, the Developer and the County Council for ensuring safe pedestrian access to and from the Primary School Site

4.10 Prior to the Primary School Date to provide on the public highway/prospective public highway in such location as has been approved by the County Council a coach lay-by as approved by the County Council which is capable of accommodating a coach (no less than 12 metres in length plus tapering (20 metres for entry and 15 metres for exit) which affords safe and convenient access to the Primary School Site for children attending the Primary School and which is freely available for use as a coach lay-by by coaches dropping off and picking up children attending the Primary School and the indicative location of such lay by is shown on the Primary School Plan

## **5 Dealings with Primary School Site**



5.1 The Owner and the Developer covenant with the County Council that except as permitted in accordance with the Twenty Fourth Schedule not to create or dispose of any legal or equitable interest (including without limitation any easement, right or covenant) in, over or under nor create any right or licence to occupy or use the Primary School Site or any part of it except in favour of the County Council provided always that this restriction on dealings shall come to an end should the County Council not accept the Primary School Offer within three months of it having been made in compliance with this Schedule

## **6 Safeguarding of Additional Land**

The Owner and the Developer covenant with the County Council

- 6.1 Not to object or to cause or permit anything to be done which might delay or prejudice in any way any application made by or supported by the County Council for the development of the Additional Land as an extension to any primary school located at the Primary School Site but to take all reasonable steps to support any such application
- 6.2 Not to submit any planning application or in any way assist or encourage any planning application to be made in respect of the whole or any part of the Additional Land other than a planning application for its development as an extension to a primary school at the Primary School Site
- 6.3 Not to cause or permit any act or omission which might delay or interfere with or in any way adversely affect (including rendering more expensive) the development and/or subsequent use of the Additional Land as an extension to any primary school located at the Primary School Site

## **7 County Council Commitment (Notification)**

- 7.1 The County Council will notify the Owner and the Developer in writing of: the date on which it is intended to open a Primary School at the Primary School Site and the proposed date for completion of construction of the

Primary School such information to be supplied within 28 days following the letting of the contract for the construction of the Primary School

- 7.2 The County Council covenants that a contract for construction of the Primary School shall not be let until the Primary School Site has been transferred to the County Council (unless otherwise agreed by the Owner and the Developer)

## 8 **Third Party**

The Owner and the Developer agree that the County Council may appoint a third party to undertake the role of the County Council as provided for in paragraphs 2-5 above (and associated provisions in Parts 2-5 of this Schedule) and they further agree for the avoidance of doubt and without prejudice to the generality of the foregoing that if so required the Primary School Site shall be transferred without cost to the County Council to such a nominee who is an approved education provider and the warranties referred to in paragraph 3.4 and 4.1.2 supplied to or assigned to such nominee without cost to the County Council or approved education provider

## PART 2

### **Abnormals**

1. Foundations for the buildings which differ from the standard concrete filled trenches measuring 600 millimetres in width and 1.2 metres in depth under each structural wall
2. Design and construction work relating to both buildings and external hard surface areas because the ground at the Primary School Site is made ground and which would not have been required if that had not been the case
3. The design and construction of ramps/retaining walls within the Primary School Site because of sloping gradients at the Primary School Site
4. The design and construction of retaining walls/balustrading on the boundary of the Primary School Site because of differential levels between the Primary

**School Site and adjoining land**

- 5. The design and construction of sustainable drainage measures such as soakaways, boreholes, attenuation measures and the like at the Primary School Site so as to provide a sustainable drainage system for the Primary School**

### PART 3

**A. Topographical Surveys covering the Primary School Site and surrounding areas of the Site for 10 metres measured from the boundaries of the Primary School Site which shall include**

- Dimensional surveys
- Defined locations of below ground services through CAT scans and reference to statutory authority service enquiries to demonstrate that the Primary School Site is free from encumbrances
- Level surveys using optical levels, digital bar codes staff levels and precise levels with invar staffs including lifting manholes and inspection chambers and taking inverts of drainage
- Area measurement demonstrating compliance with areas defined on the Primary School Plan
- Tree surveys, which comply with British Standard 5837:2005, including reference numbers, trunk positions, height, stem diameter, canopy and branch spreads
- Invasive plant surveys

**B. Geotechnical Ground Investigations covering the Primary School Site and surrounding areas of the Site for 10 metres measured from the boundaries of the Primary School Site**

1. Desk Study – this should scope the rest of the investigation in terms of foundation, design and potential for contamination
2. Site History Check/Enviro Search – to pick up past use of the site and risks for foundations and contamination
3. Trial Pit and/or bore hole and associated site investigations as determined by the desk study in accordance with BS10175
4. Sample testing, atterburg limits, PI tests as determined by the desk study to facilitate foundation design
5. Testing of water infiltration rates to BS7370

6. In situ testing shear vane [etc] as determined by the desk study to facilitate foundation design
7. Standard chemical suite test or WAC test to determine levels of contamination against Contaminated Land Exposure Assessment UK model, or where no CLEA guidelines appear against suitable published data
8. Radon site specific test with the BGS
9. Interpretative report on the findings giving guidance on contamination and mitigation strategy and indicative foundation types with allowable bearing pressures
10. Results of archaeological, ecological and other investigations arising from planning conditions

## **PART 4**

### **Site Works (Developer's Interventions)**

*(To be read in conjunction with the Topographical Surveys and Geotechnical Ground Investigations as applicable*

*References to "site" in part 4 signify Primary School Site in context )*

*X*

In complying with its obligations under paragraph 4.1.1 of Part 1 of this Schedule) the following shall be undertaken:-

#### **Assessment**

1. Appropriate site investigation in accordance with BS10175 accounting for a geotechnical and contaminated land assessment and associated reclamation and remedial strategy with appropriate assessment of risks and design of consequential works in accordance with good industrial standards
2. The contaminated land assessment shall be undertaken in accordance with The Model Procedures for the Management of Land Contamination CLR 11 (2008) technical framework and R&D Publication 66 (2008), which provide a structured decision-making process to assess land contamination. The geotechnical and contaminated land assessment shall include:
  - 2.1 A geotechnical and contaminated land desk study including
    - o Detailed assessment of geological and engineering hazards which may affect development arising due to the topography, geology and previous development within the Primary School Site
    - o Preliminary Conceptual Site Model (PCSM) for the site area in accordance with the guidance within CLR11, to identify the potential pollutant linkages (PPLs). As the site is proposed for school end-use the PCSM shall consider the appropriate CLEA standard land use scenario to be residential with plant uptake end-use
    - o Site investigation strategy which will be designed and specified to characterise the site in terms of geology and contamination in

accordance with recommended guidance including Environment Agency R&D Report Publications 66, CLR 11, CLEA (SR2, 3 & 4), BS10175 and BS5930/BS EN 1997

## 2.2 A geo-environmental site investigation strategy that shall:

- be agreed with the Regulatory Authorities (e.g. Environment Agency (EA)/ Environmental Health Officer (EHO)/the County Council) to ensure that their particular concerns are addressed within the design to facilitate regulatory sign off
- include relevant soil, soil gas, surface and groundwater sampling, and shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. Laboratories shall hold UKAS and MCERTS accreditation for their test methods, where appropriate, standpipes shall be monitored
- summarise the investigation works, sampling, in situ testing, laboratory testing (geotechnical and chemical) and monitoring results in a report.

## The Report

3. The geo-environmental assessment report shall
  - provide an assessment of both contamination issues (including regulatory waste management issues in respect of excavated material) and “development abnormalities”
  - review and refine the PCSM thus verifying the potential pollutant linkages i.e. the source pathway receptor relationships for the site. The CLEA standard land use scenario for residential with plant uptake end-use is considered to be the most appropriate human

health scenario to assess for this site

- Controlled waters shall be assessed against Environmental Quality Standards (EQS) or UK Drinking Water Standards for the controlled waters GQRA, soil gas sampling results shall be used in a soil gas risk assessment in accordance with current NHBC guidance and CIRIA C665
- be accompanied by a risk evaluation, in line with CLR11, which shall define the risk-driving pathways for each remaining contaminant of concern
- if remediation is deemed necessary following the ground investigation work, determine whether a DQRA is required to define site specific remedial targets for human health and controlled waters
- include information relating to physical ground abnormalities, such as made ground, obstructions, services and soft ground; summarise the results of the geotechnical testing (in situ and laboratory); discuss the implications of the results and the engineering abnormalities; provide CBR values; foundations options appraisal; identify suitability of the material for re-use including a discussion of how the material can be managed under current waste legislation

### **Proposals**

4. The Remedial Method Statement ("RMS") shall detail remedial works to be undertaken which shall include a reclamation strategy, implementation plan and programme including verification, monitoring, maintenance, health and safety and environmental protection measures shall be prepared and submitted for approval to the County Council prior to works commencing, should the geo-environmental assessment identify abnormal ground conditions and/or engineering constraints which may impact upon the development. Reclamation criteria shall be agreed and approved in writing by the County Council



5. Remediation criteria shall be agreed and approved in writing by the EA and EHO and any other appropriate regulatory authorities prior to submission to the County Council and shall render harmless the identified contamination/potential pollutant linkages given the proposed end-use of the site and surrounding environment, including any controlled waters
6. The remediation strategy and implementation plan and programme including verification, monitoring, maintenance, health and safety and environmental protection measures shall be agreed and approved in writing by the EA and EHO and any other appropriate regulatory authorities prior to submission for approval to the County Council

### **The Works**

7. No tipping or excavation work shall be carried out to the site without the prior approval of the County Council
8. Remove all protected species (flora and fauna) in accordance with the requirements of Natural England to enable both remediation / reclamation works and construction of the school to be undertaken and take all reasonable steps to ensure that they do not return
9. Where the developer intervention is accepted/required such as
  - Cut and fill of existing ground
  - Creation of swales
  - Removal of structures / obstructions upon the site
  - Removal and decommissioning of existing services
  - Archaeological investigation for the planning conditions
  - Removal of plantsworks shall fully comply with this schedule and the levels defined upon the Interventions Drawing
10. Approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed

methodology. If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and appropriate remediation/reclamation works agreed with and approved by the appropriate regulators

11. Remediation of contaminants to be carried out to meet residential development standards with plant uptake end-use and accord with the guidance for the safe development of housing on land affected by contamination R and D: 66 2008 Volume 1 published jointly by the Environment Agency, NHBC and the Chartered Institute of Environmental Health
12. Works shall include, where necessary, physical barrier to prevent long term exposure to humans and the environment, taking account in particular of the end use of the site as a Primary School with landscape, hard and soft play areas and may include the raising of levels of the Primary School Site if required by the RMS in order to accommodate ground water levels and any flood alleviation measures required by the Environment Agency or the lead Local Flood Authority. In such circumstances specific solutions shall take account of proposed construction to avoid abortive works
13. Works may include the
  - Infilling with materials to be approved by the County Council such approval to include (a) approval of the source of the materials with the provision of satisfactory test results (frequency and type to be agreed) for the materials and (b) approval of the method statement for installation of the materials with the provision of approved testing to appropriate standards
  - raising of levels of the Primary School Site if required by the RMS in order to accommodate ground water levels and any flood alleviation and/or attenuation measures required by the Environment Agency or the lead local flood Authority.
14. Ensure groundwork include treatment / improvement to achieve a net bearing capacity of 100kPa, the maximum total differential settlement of 25mm in any event and with angular distortion limited to length/250

between any 2 points. It is expected that hardstanding areas will be laid to falls to aid drainage (typically 1:80) and any settlement should not compromise the drainage of the site

15. All imported material shall be tested prior to importation
16. Work to be carried out on the basis of the proposed finished levels of the Primary School Site defined upon the Interventions Drawing and where retaining structures or slopes to address difference in levels between the Primary School Site and adjoining land are necessary these are to be constructed and to be located on the adjoining land (with maintenance commitments)
17. 4weeks' notice to be given to the County Council (or its representative) to enable and facilitate attendance at instigation of remedial works and subsequent watching brief by the County Council (or its representatives)
18. Provision of top soil to the Primary School Site to ensure a minimum depth of 250 mm top soil which shall comply with BS3882:2007, provide a ph value of between 5.5 and 7.5 to ISO 10390, contain no foreign objects or fragments and shall not contain substances which may prove hazardous to health or the environment all compacted at maximum 250 mm layers to meet the defined bearing capacities
19. All the works must be undertaken with the full knowledge approval and acceptance of all the regulators/ relevant authorities including as applicable the District Council and the Environment Agency
20. Reclamation to include any making good arising from archaeological investigations and the like

### **Completion report**

21. Upon completion of the reclamation and or remediation works, a completion report shall be submitted to and approved by the EA and EHO and other appropriate Regulatory Authorities as required prior to submission to the County Council. The completion report shall warrant that the remediation has

achieved its objectives as evidenced by a verification report and quality assurance certificates. The completion report shall identify whether long-term monitoring and/or maintenance is required

22. The report shall detail all works undertaken and the chain of warranty provided for work
23. The report shall include provision of updated digital topographical data defining the consequential status of the school site following the execution of intervention work.
24. The County Council shall inspect the works for the issue of a certificate of acceptance in accordance with the annex to this part of the Schedule

#### Annex

Approvals procedure for proposals where applicable and certification that the County Council is satisfied with works (following production of the completion report).

1. The Owner and the Developer shall:
  - 1.1. make a submission to the County Council; or
  - 1.2. as applicable invite the County Council in writing to inspect the Primary School Site with personnel and equipment with a view to issuing a certificate of satisfaction.
2. The County Council shall within 28 days of receipt of a submission further to paragraph 1.1 give its approval in writing or specify in writing its reasons for withholding approval and if it fails to respond within 28 days of receipt of a submission the County Council shall be deemed to have given approval.
3. The County Council shall inspect the Primary School Site within 14 days of receipt of the invitation further to paragraph 1.2 and shall issue a notice to the Owner and the Developer within 14 days of inspection confirming whether or not the works at the Primary School Site have been completed to its reasonable satisfaction and if it fails to issue such a notice within 28 days of receipt of the invitation the County Council shall be deemed to have given a certificate of satisfaction.
4. If the County Council issues a notice further to paragraph 3 which states that the works have not been completed to the County Council's reasonable satisfaction and which outlines the work required to reach that standard, the Owner and the Developer shall complete the works within 28 days and invite the County Council to inspect.
5. The County Council shall within 21 days of receipt of such further invitation carry out a further inspection and issue a notice to the Owner and the Developer specifying as to whether all of the works have been completed to its reasonable satisfaction and if it fails to issue such a notice within 21 days of receipt of such further invitation the County Council shall be deemed to have issued a certificate

of satisfaction.

6. If the County Council issues a notice further to paragraph 5 which states that the works have not been completed to the County Council's reasonable satisfaction then at the discretion of the County Council:
- 6.1. The County Council may require further remedial works to be undertaken within a specified time; or
- 6.2. The County Council may agree that the works shall be deemed to be completed to the reasonable satisfaction of the County Council for the purposes of paragraph 4.1.1 of the Part 1 of this Schedule and the Owner and the Developer shall refund to the County Council within 21 days of demand the costs incurred in carrying out such works.

## PART 5

### Primary School Services

***Contract completion means completion of the contract for construction of the school***

<u>Requirements</u>	<u>When – Fully operational prior to</u>	<u>Where</u>
<p><b>Permanent water supply connection from mains</b></p> <p>25 mm internal diameter water service pipe</p> <p>separate 25 mm internal diameter supply for sprinkler system</p>	4 months prior to contract completion	At entrance to school site as shown on the school plan
<p><b>Electricity</b></p> <p><b>Mains electricity</b></p> <p>Mains supply providing 45kva but with capacity of 63kva</p>	4 months after contract letting date for construction of the school	At entrance to school site as shown on the school plan
<p><b>Mains gas supply with meter</b></p> <p>Meter supply providing 60.51 m<sup>3</sup>/hr but with capacity of 91.32m<sup>3</sup>/hr</p>	6 months prior to contract completion	<p>At entrance to school site as shown on the school plan</p> <p>Meter to be located at school buildings as directed by the County Council</p>

<p><b>Heating <i>provisional and to be adjusted further to paragraph 3.6. 2 of Part 1</i></b></p> <p><b>Heating</b> Supply and heat interface unit / meter capable of providing 74 kWh/m2/annum to meet all heat and hot water requirements. Service to be capable of serving both phase 1 school (1808m2) &amp; phase 2 (887m2)</p>	<p>[4] months prior to contract completion</p>	<p>[At entrance to School Site as shown on the School Plan] Meter to be located at school buildings as directed by the County Council</p>
<p><b>Standard Fire Hydrants</b> Hydrants must be capable of supplying sufficient water at suitable pressures ie a minimum of 1500 litres/min</p>	<p>4 months prior to contract completion</p>	<p>Provisions to accord with the recommendations of the Fire Service but as a minimum one hydrant must be provided on the highway / prospective public highway near to each of the entrances to the school as shown on the school plan</p>

<p><b>Drainage spur connections from mains</b> Foul drainage from school buildings (min 150mm diameter)</p> <p>Surface water drainage facilities (min 150mm diameter if applicable) to accommodate exceedence flows from Sustainable Drainage Systems</p> <p>Note Inverts must accommodate gravity drainage system on and from the school site Spur connection means connection between (a) manhole for mains drains serving development which is located on the highway / prospective highway in close proximity to manhole on school site near the boundary of</p>	<p>6 months prior to contract completion</p>	<p>At entrance to school as shown and at various positions to be identified on the school plan</p>
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## TWENTY THIRD SCHEDULE

### SUDS

#### 1. Definitions

In this schedule the following words and phrases shall have the following meanings unless the context otherwise requires (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):

**“Certificate of Practical Completion”** means a certificate to the effect that the Site Drainage System is practically complete save such minor outstanding works as the County Council may agree

**“County Council Standards”** means the Sustainable Drainage System Design Standards attached at Appendix 31

**“drainage system”** and **“sustainable drainage”** will have the meanings assigned to them in paragraphs 1 and 2 respectively of Schedule 3 to the Flood and Water Management Act 2010

**“Easement Areas”** means the parts of the Site comprising an easement strip for a distance of 3 metres (or such other distance as may be agreed) on either side of any Drainage Infrastructure (Pipes)

**“Excluded Infrastructure”** means any part of a drainage system which is designed only to provide drainage for a single property as interpreted in accordance with regulations and guidance (including draft regulations and guidance) in relation to the Flood and Water Management Act 2010

**“Ponds, Drainage Infrastructure and Site Access Routes”** means the ponds, the drainage infrastructure (excluding ponds and Excluded Infrastructure) and the access



routes from the highway/ prospective highway to the ponds shown indicatively on the SUDS Plan and as established further to paragraphs 3, 4 and 5 and Drainage Infrastructure (Swales) means the Drainage Infrastructure other than the Drainage Infrastructure (Pipes) and Drainage Infrastructure (Pipes) means the Drainage Infrastructure comprising pipes

**“Site Drainage System”** means the drainage system for the Site as approved further to paragraph 3 (and for the avoidance of doubt includes the access routes to the ponds from the highway/prospective highway) and for the purposes of paragraphs 6-15 excludes the Excluded Infrastructure

**“Site Drainage System (Phase) ”** means that part of the Site Drainage System (excluding any Excluded Infrastructure) which drains a Phase as approved further to paragraph 3 of this Schedule

**“SUDS Option”** means the option granted by the Owner and the Developer to the County Council in this Schedule

**“SUDS Option Period”** means the period of twenty-five years from the date of issue of certificate of final completion pursuant to paragraph 5 of this Schedule

**“SUDS Plan”** means the indicative drawings attached at Appendix 32

2. The Owner and the Developer covenant with the County Council not to cause or permit Implementation of the Development until the drainage system for the Development has been submitted to and approved by the County Council
3.
  - 3.1 The application for approval of the drainage system for the Development must contain or be accompanied by the following information:
    1. Five hard copies of a full set of design drawings for the drainage system, which are also to include access routes to the ponds (suitable for vehicles

and maintenance equipment) and ecological and landscaping provisions for the Development;

2. One electronic copy of a full set of design drawings for the Development;
  3. Existing drainage system details for the Site;
  4. Design calculations for the proposed drainage system for the Development;
  5. Geotechnical data for the Site and Development in accordance with requirements to be provided by the County Council or as approved by the County Council
  6. Soakage tests for the Site based on County Council Standards;
  7. Soakaway calculations for the Development which are to include by way of illustration porous paving, soakaways, swales and all wet and dry ponds;
  8. Phasing strategy plan for the proposed drainage system for the Development
  9. The approval of the District Council to any Drainage Infrastructure (Pipes) proposed to be located at the Strategic Open Space or the Incidental Open Space (as those terms are defined in the Seventh Schedule)
- 3.2 The County Council proposes to consult with the Environment Agency, Thames Water, the District Council, the highway authority for the area and the education authority for the area on such application and may consult with any other body who may be affected by the Development
- 3.3 The County Council will approve such application if satisfied that the drainage system for the Development if constructed as approved will comply with County Council Standards (and that any Drainage Infrastructure (Pipes) at the Strategic Open Space or Incidental Open Space are approved by the District Council further to the Seventh Schedule) provided always that the approval may be subject to conditions including conditions:
1. relating to the construction of the drainage system which may involve modification of the proposal for construction

2. relating to inspection of the drainage system during construction
3. relating to licences for drainage system connections to highway drainage

For the avoidance of doubt approval further to this paragraph 3 shall not create any contractual relationship with the County Council and the County Council will not be liable for any loss, damage or injury which the Owner or the Developer may sustain arising from action taken in consequence of such approval

4. Forthwith following the issue of approval further to paragraph 3 the Owner and the Developer shall adjust the SUDS Plan to record the ponds, the drainage infrastructure (excluding any Excluded Infrastructure) and the access routes from the highway/prospective highway to the ponds as so approved and shall submit the SUDS Plan as so adjusted to the County Council for approval
5. The Owner and the Developer covenant with the County Council to complete the construction of each Site Drainage System (Phase) in accordance with the approval issued further to paragraph 3 including the Site Access Routes to the Ponds relating to that Site Drainage System (Phase) all to the satisfaction of the County Council prior to the Occupation of any premises at the relevant Phase and not to cause or permit the first Occupation of any premises at any Phase until the Site Drainage System (Phase) in relation to that Phase (including Site Access Routes to the relevant Ponds) have been completed to the satisfaction of the County Council
6. The Owner and the Developer covenant with the County Council to maintain the Site Drainage System (including the Site Access Routes) for a period of twelve months from the issue of the Certificate of Practical Completion (as well as pending the issue of the Certificate of Practical Completion) and to notify the County Council upon completion of the twelve month maintenance period and if the County Council is satisfied that the Site Drainage System has been properly maintained and repaired and all defects (if any) have been remedied the County Council will issue a certificate of final completion forthwith
7. The Owner and the Developer covenant with the County Council to continue to maintain the Site Drainage System (including the Site Access Routes) in accordance

with County Council Standards until such time as it is transferred to the County Council in the event that the County Council exercises its option further to paragraph 8 but without any obligation on the County Council to exercise that option Provided Always that the County Council shall be responsible for the maintenance of the drainage pipes carrying highway drainage comprised in the Drainage Infrastructure (Pipes) from the completion of the deed of grant and covenants relating to those drainage pipes (as provided in the Eighteenth Schedule)

8. The County Council shall have the right to enter on to the Site Access Routes, the Drainage Infrastructure (Swales), the Easement Areas and the Ponds for the purpose of inspecting the condition of the Site Drainage System (including Site Access Routes) and without prejudice to any other right or remedy of the County Council if the Owner and the Developer fail to undertake maintenance in accordance with its obligations under paragraphs 6 and 7 of this Schedule the County Council shall be entitled (but without any obligation so to do) after giving not less than seven days' notice to the Owner and the Developer informing them of such failure and affording them a reasonable opportunity to rectify it to undertake remedial works (including entering on to the Site Access Routes, Drainage Infrastructure and the Ponds for this purpose) and the County Council may charge the Owner and the Developer the expense of carrying out any such remedial works and such expenses shall be a debt due to the County Council and recoverable by the County Council as such

9. The Owner and the Developer covenant with the County Council to establish prior to the Occupation of any Dwelling an interest bearing account with a major bank and deposit in such account

9.1 Prior to the Occupation of any Dwelling at Phase 1 £191,761 Index Linked (Baxter)

9.2 Prior to the Occupation of any Dwelling at Phase 2 £191,761 Index Linked (Baxter)

9.3 Prior to the Occupation of any Dwelling at Phase 3 £191,761 Index Linked (Baxter)

9.4 Prior to the Occupation of any Dwelling at Phase 4 £191,761 Index Linked (Baxter)

And not to cause or permit the Occupation of the first Dwelling to be Occupied at

Phase 1, Phase 2, Phase 3 or Phase 4 until in each case the sum of £191,761

Index Linked (Baxter) has been deposited in such account.

10. The Owner and the Developer further covenant with the County Council
- 10.1 to notify the details of the account to the County Council immediately on the setting up of the account and to provide to the County Council annually a report on the use of the monies deposited in the account
  - 10.2 that all interest accruing to such account referred to in paragraph 9 above shall be added to the monies deposited in the account; and
  - 10.3 not to cause or permit any monies to be withdrawn from the account other than for the purpose of maintaining the Site Drainage System in accordance with this Schedule

and in the event that the Owner and the Developer transfer the Ponds and/or the Drainage Infrastructure and/or the Site Access Routes they shall arrange that the transferee may have access to this account for the purpose of maintaining the Site Drainage System in accordance with this Schedule and in the event that the County Council exercises the SUDS Option then the monies held in this account may be applied toward the payment of the commuted sum further to paragraph 13 and the balance (if any) may be paid to the person who deposited it further to paragraph 9

11.1 The Owner and the Developer covenant not to build or erect any building or structures whether of a temporary or permanent nature on the Ponds or Drainage Infrastructure (Swales) and not to plant or cause or permit any trees, shrubs or other vegetation to grow in them which may impede maintenance in accordance with the County Council's Standards

11.2 The Owner and the Developer covenants:-

11.2.1 not to build or erect any building or structure whether of a temporary or permanent nature upon the Easement Areas

11.2.2 not to plant any tree, shrub or hedge in/on the Easement Areas

11.2.3 not to carryout mole ploughing or sub soil drainage works at the Easement Areas or otherwise carryout or omit at the Easement Areas anything which may damage or otherwise adversely affect or interfere with the Drainage Infrastructure (Pipes) at the Easement Areas

- 12.1 The Owner and the Developer grant to the County Council an option during the SUDS Option Period to acquire the freehold of the Ponds at the price of £1 together with rights in respect of the Drainage Infrastructure, Easement Areas and Site Access Routes as set out in the form of transfer appended at Appendix 33 and subject as provided in paragraph 12.2 the County Council may exercise the SUDS Option at any time during the SUDS Option Period by serving a notice on the Owner to this effect and if the SUDS Option is exercised in accordance with the terms of this Schedule the Owner and the Developer will transfer the freehold of the Ponds to the County Council together with freehold rights in respect of the Drainage Infrastructure, Easement Areas and Site Access Routes as set out in the form of transfer appended at Appendix 33 for the purchase price of £1 and otherwise on the terms set out in Twenty Fourth Schedule and upon completion of that transfer and the payment of the commuted sum referred to in paragraph 13 of this Schedule the Owner and the Developer shall be released absolutely from the covenants, restrictions and obligations in this Schedule save for any antecedent breach
- 12.2 The County Council agrees that prior to the coming into force of the provisions of Schedule 3 to the Flood and Water Management Act 2010 it shall not exercise the SUDS Option unless the County Council considers that there is a material breach of the provisions of this Schedule
- 13 On completion of the transfer and grant of rights further to the SUDS Option the Owner and the Developer shall pay to the County Council
- a commuted sum as approved by the County Council (acting reasonably) for future maintenance of the Site Drainage System relating to the period from the date of the transfer to the date 30 years after the date of issue of the certificate of final completion further to paragraph 6. Such commuted sum shall not exceed £767,044 Index Linked (Baxter) and shall be calculated so as to reflect the remaining period to the expiration of 30 years from the issue of the certificate of final completion and having regard to the annual expenditure previously incurred on maintenance of the Site Drainage System in accordance with County Council Standards

14 The County Council covenants with the Owner and the Developer not to use the commuted sum received further to paragraph 13 for any purpose other than the maintenance of sustainable drainage infrastructure

15 The Ecological and Landscape Management Plan (as defined in the Seventh Schedule) shall be taken into account when maintaining the Site Drainage System (including the Site Access Routes) whether undertaken by the Developer and the Owner, the County Council or otherwise.

## TWENTY FOURTH SCHEDULE

### Land Transfers

#### Part 1

1. The following terms apply for each transfer made under the terms of this Deed:
  - 1.1 The transfer of the Primary School Site shall be in accordance with (or substantially in accordance with) the form of transfer annexed at Appendix 30 subject only to such amendments as may be proposed or agreed by the County Council;
  - 1.2 The transfer of the Ponds shall be in accordance with (or substantially in accordance with) the form of transfer annexed at Appendix 32 subject only to such amendments as may be proposed or agreed by the County Council.
  - 1.3 The transfer of the Community Hall (as defined in the Eighth Schedule) shall be in accordance with (or substantially in accordance with) the form of transfer annexed at Appendix 34 subject only to such amendments as may be proposed or agreed by the District Council
  - 1.4 The transfer of the Strategic Open Space, Incidental Open Space, Play Areas, Allotments (as are all defined in the Seventh Schedule) shall be in accordance with (or substantially in accordance with) the form of transfer annexed at Appendix 35 subject only to such amendments as may be proposed or agreed by the District Council
  - 1.5 The transfer of the Eco Business Centre Site (as defined in the Ninth Schedule) shall be in accordance with (or substantially in accordance with) the form of transfer annexed at Appendix 35 subject only to such amendments as may be proposed or agreed by the District Council
2. The Standard Conditions of Sale (Fourth Edition) shall apply subject to the following variations and in the event of any inconsistency between the Standard Conditions of Sale and the provisions of this deed the latter should prevail:
  - 2.1 The seller is to bear the cost of complying with any public requirement arising prior to the date of offer and Standard Condition 3.1.4 is adjusted accordingly;
  - 2.2 As regards the Primary School Site the seller will transfer the property in the physical state provided for in paragraph 4.1 of Part 1 of the Twenty Second Schedule and Standard Conditions 3.2.1, 5.1.1 and 5.1.2 are adjusted accordingly;



- 2.3 Completion will take place 20 Working Days from acceptance.
3. The consideration for such transfer shall be one peppercorn if demanded. (*or is it £1?*)
  4. The Owner and the Developer shall bear their own and the County Council's or as applicable the District Council's reasonable legal and professional costs which shall be payable on completion.
  5. The transfer will be with vacant possession upon completion.
  6. Good marketable title shall be deduced in accordance with Standard Condition 4 free from any financial charge and the transfer will be with full title guarantee subject to the covenants, rights, easements, restrictions and other matters (excluding financial charges) referred to in the title to the land to be transferred as deduced to the County Council or as applicable the District Council prior to the date of this agreement (but otherwise free from encumbrances).

## **Part 2**

1. The Owner and the Developer undertakes with the County Council not to dispose of the whole or any part of the Primary School Site at any time prior to its transfer to the County Council unless there has been delivered to the County Council (without cost to the County Council) a deed of covenant under seal from the disponee with the County Council in the form attached to this Deed at Appendix 36.
2. The Owner and the Developer consent to the noting of the conditional agreement to transfer the Primary School Site further to the Twenty Second Schedule on the title to the Primary School Site;
3. The Owner and the Developer further consents to the entry on the title to the Primary School Site (with priority over any dealing) of a restriction in standard form L as follows:  
"no disposition of the registered estate of the Primary School Site by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the County Solicitor of Oxfordshire County Council, County Hall, New Road, Oxford OX1 1ND that the provisions of paragraph 1 of Part 2 of Schedule 24 of an agreement dated [ 9 JULY ] 20[17] between (1) Cherwell District Council (2) Oxfordshire County Council (3) SGR (Bicester 1) Limited (4) SGR Bicester 2) Limited (5) Home Farm Exemplar Limited have been complied with"

4. The Owner and the Developer hereby undertake to provide the County Council with all necessary assistance and/or documentation to arrange noting of the agreement (s) listed at paragraph 2 above and the restrictions set out at paragraph 3 above
5. The County Council will consent to registration under the terms of any such restriction (but not the cancellation of the restriction save as provided for in paragraph 6) whereupon a disposition or dealing it has been demonstrated to the County Council that there is no breach of the terms of paragraphs 3 - 5 of the Twenty Second Schedule and where the undertaking given in accordance with paragraph 1 has been complied with.
6. The County Council will upon request consent to the cancellation of the restriction in respect of the Primary School Site following the expiration of the period of three months from the date of service on it of the Primary School Offer in the event that the County Council has not accepted the Primary School Offer.

### **Part 3**

The Owner and the Developer further agree with the County Council that forthwith following identification and approval of the Ponds the Site Access Routes and the Drainage Infrastructure further to the Twenty Third Schedule the provisions of Part 2 of this Schedule shall apply as if all references to the Primary School Site were references to the Ponds, the Site Access Routes, the Easement Areas and the Drainage Infrastructure subject to the following adjustments:-

1. In paragraph 1 in place of the words "prior to the transfer to the County Council" the following shall apply: "prior to the expiration of the SUDS Option Period save where the SUDS Option has been exercised when this period shall be extended to completion of the transfer and grant of rights in respect of the Ponds, the Site Access Routes, the Easement Areas and the Drainage Infrastructure".
2. Paragraph 2 shall be replaced by the following:  
"the Owner and the Developer consent to the noting of the agreement for access and the option agreement to transfer the Ponds and grant easements in respect of the Site Access Routes the Easement Areas and the Drainage Infrastructure further to paragraphs 8 and 12 of the Twenty Third Schedule on the title to the Ponds the Site Access Routes the Easement Areas and the Drainage Infrastructure

3. In paragraph 6 the words "following the expiration ..... Primary School Offer" shall be replaced by: "at the expiry of the SUDS Option Period unless the SUDS Option has been exercised prior to that date."

## **TWENTY FIFTH SCHEDULE**

### **COUNTY COUNCIL'S COVENANTS**

- 1 The County Council shall provide to the Owner and the Developer such evidence as the Owner and the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Owner and the Developer to the County Council under the terms of the Schedules upon a written request by the Owner or the Developer such request not to be made more than once in any year;
- 2 The following covenants on the part of the County Council also apply
  - 2.1 paragraph 2 of the Thirteenth Schedule
  - 2.2 paragraph 7 of the Nineteenth Schedule
  - 2.3 paragraph 11 of the Twenty First Schedule
  - 2.4 paragraph 7 of the Twenty Second Schedule
  - 2.5 paragraph 14 of the Twenty Third Schedule

## TWENTY SIXTH SCHEDULE

### OVERAGE

#### 1 Definitions

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

1.1 **Council** means the District Council.

1.2 **Acceleration Date** means the twenty-eighth day after due service of written notice invoking the event envisaged by this definition by the Council on the Developer following:

1.2.1 a material breach by the Developer of the terms of this Schedule and which the Developer has failed to rectify within 5 Working Days in respect of the payment of any money under Paragraph 3.1 and within 28 Working Days in respect of any other breach after having received such notification; or

1.2.2 entry by the Developer into liquidation or administration (other than for amalgamation or reconstruction where the Developer is solvent);

1.3 **Accounting Date** means each 31 March during the Overage Period of this Agreement;

1.4 **Act of Circumvention** means any transaction or series of transactions entered into by the Developer with any person or persons the principal purpose of which is to depress or reduce the size of any payment to be made to the Council under this Schedule;

1.5 **Council's Payment** means in respect of the Calculation Period, an amount equal to:

$A \times N$

Where:

A = The Council's Percentage

N = Net Revenue from Sales at the relevant Calculation Date;

1.6 **Council's Percentage** means 25%;

1.7 **Bank** means a clearing bank whose details are to be notified by the Council in writing to the Developer;

1.8 **Build Cost** means the build cost for each Unit agreed between the Council and the Developer pursuant to paragraph 8 of this Schedule or in default of agreement to be determined pursuant to paragraph 4 of this Schedule;

1.9 **Build Cost Inflation Start Date** means the date of this Deed;

- 1.10 **BCIS Inflation Index** means the Building Cost Information Service General Building Cost Price Index as published from time to time by the BCIS or such other replacement index as the parties may agree incorporating the similar assumptions as this Index incorporates as at the date of this Agreement;
- 1.11 **Build Cost Inflation** means an amount which will be calculated on the practical completion of each Unit during the Overage Period with effect from the Build Cost Inflation Start Date to the date of practical completion of that Unit which is the aggregate of the amounts calculated in accordance with the following formula:
- A = B
- Where:
- A = The Build Cost Inflation expressed in GBP at the Calculation Date.
- B = The aggregate of the sums produced by the following formula in respect of each Unit that is notified by the Developer to the Council as both having been built to practical completion and constructed to a standard of Code Level 5 or above during the Overage Period.
- C x D
- C = The Build Cost of the relevant Unit
- D = The percentage (if any) by which the BCIS Inflation Index figures increased (as at the date the relevant Unit practically completed and constructed to a standard at Code Level 5) above the level of that index last published before the Build Cost Inflation Start Date;
- 1.12 **Calculation Date** means the last day of the Overage Period or if sooner the Trigger Date.
- 1.13 **Calculation Period** means the period commencing at the date of this Deed and ending on the Calculation Date;
- 1.14 **CML Disclosure of Incentives Form** means the Disclosure of Incentives Form prepared by the Developer in relation to the sale of a Unit in the form available from the CML website <http://www.cml.org.uk/handbook>;
- 1.15 **Code Level** means HM Government's Code for Sustainable Homes (published in December 2006);
- 1.16 **Connected Company** means a company individual or other entity who would be a person connected with the Developer for the purposes of Section 839 of the Income and Corporation Taxes 1988;
- 1.17 **Deemed Revenue from Sales** means:
- 1.17.1 If and to the extent that Disposals of Units have been completed within the Overage Period other than by arms length transactions then in respect of

such Disposals of those Units there shall be substituted the Market Value for each such Unit on the assumption that each such Unit has been built substantially in accordance with the relevant Planning Permission;

- 1.17.2 If any Disposal has been agreed prior to the end of the Overage Period but will not be completed during the Overage Period the Disposal shall, for the purpose of calculating Revenue from Sales during the Overage Period be deemed to have completed within the Overage Period; and
- 1.17.3 Where the consideration received for a sale consists of or includes property other than money ("Trade-in Property") the Council may treat the receipt as the Market Value of that Trade-in Property at the date it is contracted to be transferred to the Developer or any person acting on the Developer's behalf
- 1.17.4 Except in the case of a Ground Rent Disposal the sums calculated as representing the market value of the reversionary interest of any lease of a Unit disposed of without payment of a premium and the market value (if any) of the reversionary interest in any building disposed of by the Developer in which a lease of a Unit has been granted by the Developer.
- 1.17.5 If and to the extent on any disposal there is any Retained Equity or any payment due in respect of the Unit after the Disposal Date it will be deemed to have been disposed of on the Calculation Date for the deferred consideration (or where none has been agreed at Market Value) or at the same value pro-rata as the Retained Equity disposed of for the purpose of calculating Revenues from Sale
- 1.17.6 If and to the extent on the Calculation Date there is any part of the Property undeveloped or partially developed and/or any Unit begun but not completed the relevant interest will be deemed to have been disposed of on the Calculation Date at Market Value for the purpose of calculating Revenues from Sale
- 1.18 **Developer** means the Owner and the Developer
- 1.19 **Development Costs** means development costs as defined in Part 3 of this Schedule
- 1.20 **Disposal** means any transaction within the meaning assigned under section 205(1) Law of Property Act 1925 other than an Exempt Disposition and "Disposition", "Disposed" and "Disposal" shall be interpreted accordingly;

- 1.21 **Disposal Date** means the date on which the Disposal of a Unit is completed but includes the date of any agreement to dispose of a Unit entered into during the Overage Period but completed subsequently ;
- 1.22 **End User** means the ultimate buyer of a Unit being a person who is not a party to this Deed or a Connected Party;
- 1.23 **Exempt Disposition** means any of the following transactions
- 1.23.1 to a local authority or other statutory body pursuant to a planning obligation within the meaning of Section 106 of the Town and Country Planning Act 1990 or any disposition or dealing effected pursuant to a Planning Agreement;
  - 1.23.2 to a statutory body or service supply company of all electricity sub station gas governor pumping station water pumping station holding ponds or other statutory services which have been or are to be constructed or installed in or on the Property;
  - 1.23.3 to a highway authority for the purpose of adoption of the roads and footpaths and cycle ways to be constructed on the Property;
  - 1.23.4 to a local authority or management company specifically for the provision of public space or amenity land;
  - 1.23.5 to a Connected Company with the prior approval of the Council where the Connected Company enters into a direct covenant with the Council in respect of the Council's payments in this Deed;
- 1.24 **Extras** means any items additions and/or alterations supplied to a purchaser or lessee of any Unit by the Developer which do not form part of the Developer's standard specification but are paid for by a purchaser;
- 1.25 **Ground Rent Disposal** means the disposal of the freehold or a long leasehold reversion of a building of which any Units form part where such Units have been Disposed of (or where such Units remain to be Disposed of) and where no Council Payments arise or where they do arise the Receipt is credited as part of the Revenue from Sales
- 1.26 **Interest Rate** means 4% per annum over the base rate from time to time of Barclays Bank plc;
- 1.27 **Market Value** means the amount for which the Unit should exchange at the relevant Disposal Date between a willing buyer and a willing seller in an arms length transaction after proper marketing and assuming:



1.27.1 that both parties to the transaction had acted knowledgeably prudently and without compulsion;

1.27.2 that no account is to be taken of any additional bids by a buyer with a special interest;

1.27.3 that all covenants affecting the Unit have been performed or observed;

1.27.4 that the Unit is valued together with any rights easements provisions covenants and other matters benefiting it but subject to any encumbrances restrictions stipulations or covenants which may affect it and which still subsist and are capable of taking effect;

1.27.5 in respect of any Unit that it is free of any restriction or obligation to use it as social and/or affordable housing;

1.27.6 that the sale would have been completed unconditionally for a cash consideration by private treaty at the Disposal Date;

and taking into account by reducing such value to reflect the extent of any discounts or incentives that a prudent publicly listed housebuilder might give to meet targets and sales figures at key accounting dates and any Extras and revenue attributable to the Extras up to but not exceeding the Permitted Discount.

1.28 **Net Revenue from Sales** means an amount calculated on the Calculation Date which is determined on the basis of the following formula:

Net Revenue from Sales = A – (B + D)

Where:

A = the cumulative Revenue from Sales since the date of this Agreement to the Calculation Date

B = the Threshold Figure at the Calculation Date

D = an amount equal to the Build Cost Inflation from the Build Cost Inflation Start Date to the relevant date of practical completion in respect of each Unit

provided that if the amount produced by this formula is less than zero, then the Net Revenue from Sales shall be deemed to be zero.

1.29 **Overage Period** means the period commencing on the date of this Deed and ending on the 15th anniversary of the date of this Deed;

1.30 **Payment Date** means either (i) the later of (a) the date 20 Working Days after the Calculation Date or (b) 6 Working Days after the determination of any dispute pursuant to Paragraph 4; and/or (ii) (at the election of the Council) any Acceleration Date;

1.31 **Permitted Discount**

- 1.31.1 any discounts or incentives offered to the End User (including but not limited to the payment of the Contract Deposit, SDLT and the Purchaser's legal fees, carpets, white goods, landscaping and furniture) that an approved and publically listed house builder might give to meet targets and sales figures at key accounting dates
- 1.31.2 the revenue attributable to the Extras
- 1.31.3 But so that the aggregate of the matters in paragraphs 1.31.1 and 1.31.2 do not exceed 5% of the Market Value of the Unit in question (including such discounts incentives or extras)
- 1.32 **Planning Agreement** means any agreement obligation or undertaking to be made pursuant to the following or similar legislation Section 106 Town and Country Planning Act 1990 Sections 38 and/or 278 of the Highways Act 1980, Section 104 of the Water Industry Act 1991, Section 111 Local Government Act 1972, Electricity Act 1989, Gas Act 1980, Water Act 1989 or any provision of similar intent with any appropriate authority as to the water supply to or drainage of surface water and effluent from the Properties or any part or any agreement with any competent authority or body relating to any other services or access;
- 1.33 **Properties** means the freehold properties within the Site;
- 1.34 **Retained Equity** means any interest in law or in equity retained by the Developer on a Disposal
- 1.35 **Revenue from Sales** means the amount in money or monies worth (VAT exclusive) in respect of any Unit constructed on and Disposed of from any part of the Property:
- 1.35.1 received from any freehold sale;
- 1.35.2 received from any premium paid for the grant of a lease of any interest;
- 1.35.3 received from any Ground Rent Disposal;
- 1.35.4 received for the transfer of equity or any right in or in respect of the Units and/or the Property;
- 1.35.5 deemed to be received as Deemed Revenue from Sales
- Provided that the total Revenue from Sales received by the Developer from any disposition of any Unit shall not include such sums that may be attributable to incentives offered to the purchaser (including but not limited to payment of a contract deposit, SDLT, the purchasers legal fees, carpets, white goods, landscaping and furniture and the cost of all Extras) (being in aggregate not more than 5% of the inclusive price for any Unit including such incentives and Extras)

- 1.36 **Sale Report** means a report by the Developer's solicitors (which may include an in-house solicitor employed by the Developer) substantially in the form set out in Part 2 of this Schedule together (where the End User acquired the Unit using mortgage funding) with a completed CML Disclosure of Incentives Form;
- 1.37 **Social or Affordable Housing** means housing subject to restrictions pursuant to this Agreement in respect of occupiers or tenure (including key worker) or required to be transferred to or managed by a local authority registered social landlord or similar body;
- 1.38 **Threshold Figure** means the sum to be agreed between the Council and the Developer as representing the aggregate of the Development Costs and the Development Margin reasonably anticipated as attributable to the development of the Units or in default of agreement to be determined pursuant to paragraph 4.
- 1.39 **Trigger Date** means the date on which of the following is first to occur:
- 1.39.1 All Units are disposed (other than five Units); or
- 1.39.2 the date 12 months after the Date of Practical Completion of all but five Units;  
or
- 1.39.3 the date upon which all Receipts are received from the disposal of all but five of the Units.
- 1.40 **Unit** means any dwelling and/or building to be erected on the Properties other than: (a) any Social or Affordable Housing (whether or not provided pursuant to an obligation under this Agreement) (b) any commercial or non residential property and (c) the Energy Centre and (d) the nursery and (e) the community centre and (f) the public house and (g) the primary school and (h) the business centre and office accommodation.
- 1.41 **Working Day** means any day except Saturday Sunday or any public holiday in England.

## 2 Interpretation

- 2.1 References to the completion of a lease or other disposal mean the execution delivery and dating of the necessary documents, not their subsequent registration.
- 2.2 The Developer includes the successors in title of the Owner and the Developer to the Properties or any part other than an End User, a donee under an Exempt Disposition or a donee of property under the Building Agreements.

## 3 Payment Covenants

- 3.1 Subject to Paragraph 3.2 the Owner and the Developer covenant with the Council to pay to the Council:

- 3.1.1 on the Payment Date, the Council's Payment;
  - 3.1.2 on any Acceleration Date, the Council's Payment (save to the extent of such payment has already been made);
  - 3.1.3 on demand, any other sum becoming due under the provisions of this Schedule; and
  - 3.1.4 interest at the Interest Rate on all money due under this Schedule from the date when such sums become due until payment.
- 3.2 The parties shall endeavour to agree the Council's Payment as soon as practicable prior to the Calculation Date and if they cannot the provisions of paragraphs 4 and 5 will apply.

#### **4 Disputes**

If any calculation or valuation falling to be ascertained under this Schedule has not been agreed between the Developer and the Council within 10 Working Days from service of written notice by one party on the other requesting agreement of such matter either the Developer or the Council may refer the matter to the decision of an expert valuer to be agreed between the Developer or the Council within seven days of service of written notice by one party on the other nominating a valuer or failing such agreement appointed on the application of either the Developer or the Council by the President of the Royal Institution of Chartered Surveyors and such valuer shall ascertain the relevant matter on the assumption (if not a fact) that the Developer has discharged all its obligations under this Schedule.

#### **5 Other disputes**

- 5.1 Any dispute as to whether the Disposal of any Unit was at arm's length shall be determined in like manner to the ascertainment of any matter under Paragraph 4.
- 5.2 Any other dispute arising under this Schedule shall be referred in accordance with the provisions of the Arbitration Act 1996 to the determination of a single arbitrator to be appointed (in default of agreement between the parties as to such appointment) by the President for the time being of the Law Society.

#### **6 Owner and Developer's other covenants**

- 6.1 The Owner and Developer covenant with the Council:
  - 6.1.1 that the Developer will on each Accounting Date during the Overage Period provide to the Council a detailed statement and report providing details of the Revenue from Sales, the Net Revenue from Sales and a Sale Report in respect of each Unit Disposed of within the preceding year, the date each Unit was practically completed and constructed to a standard of Code Level 4

(or above) and the number of Units constructed and in the course of construction to enable the calculation of the Council's Payment;

6.1.2 to permit the Council to inspect and take copies of any appropriate documentation on which the Sale Report and the statements in paragraphs 6.1.1 are based,

6.1.3 the Developer undertakes that during the Overage Period it shall not enter into any Disposal of a Unit which is not at arm's length on open market terms;

6.1.4 not during the Overage Period on each of the Properties to change the use of the Properties or to enter into any disposition that would (1) prevent the Developer from complying with its obligations under the building Agreement or (2) which would result in the construction of less than the number of consented Units in each case without the Council's consent (such consent not to be unreasonably withheld or delayed).

6.2 Nothing herein shall prohibit the Developer from arranging block sales provided that the same is at arm's length of more than one Unit and accepting a discounted price for such block sale commensurate with discounts then generally accepted in the market place.

6.3 The Developer covenants with the Council not to enter into any Act of Circumvention and not to assist cause or permit any other parties to enter into such Act of Circumvention.

7. On or prior to the Calculation Date the Developer shall provide to the Council its calculation of the Build Cost for each completed Unit and the Threshold Figure and such supporting documents or material as may be necessary to demonstrate that the calculation has been made in accordance with Part 3 of this Schedule.

8. The Owner and the Developer covenant not to Occupy or cause or permit to be Occupied any of the last five Units until the Build Cost for each completed Unit and the Threshold Figure has been agreed in writing by the District Council or determined pursuant to paragraph 4 of this Schedule.

**Part 2**  
**Sales Report**

**Estate**

**Plot or Unit:**

**Postal Address:**

**Full Name(s) of Purchaser:**

**Developer:**

**Date of practical completion and construction to Code level 5 or above;**

**As solicitors for and on behalf of the Developer we certify that a disposal of the above plot or unit in the agreed form without amendment was granted on [●] 201[□] to the Purchaser.**

**[We attach a completed copy of the CML Disclosure of Incentives Form prepared by the Developer in respect of the above Plot] [We confirm that there was no borrowing by the Purchaser and therefore a CML Disclosure of Incentives Form was not required]**

**We confirm as follows:**

	Disposal Value	£ [●]
LESS	CML disclosure of Incentives	(£ [●])
	Revenue from Sales TOTAL	£ [●]

**[We also certify that the price paid by the [Purchaser] for the plot /Property was the approved selling price of £ [●].**

**The date the Unit was practically completed and constructed to Code Level 5 or above was as stated above**

**Signed**

.....  
..... Developer's Solicitors

**Date**

.....  
.....

### Part 3

#### Development Costs and Receipts

1 In this Schedule the following expressions shall have the following meanings:

**Development Costs** as set out in paragraph 2 of this Part in so far only as they relate to the Units .

**Development Expenditure** means as set out in paragraph 3 of this Part in so far only as it relates to the Units .

**Development Margin** shall be 23.5% of the Development Expenditure referred to in paragraph 3.1.6 .

**Receipts** means as set out in paragraph 4 of this Part

2 **Development Costs**

The Development Costs are the aggregate of the items of Development Expenditure in relation to the Development of The Units incurred by the Developer or for which the Developer is or shall be liable and whether incurred before or after the date of this Deed less the Receipts . In this Schedule, any reference to the Developer shall be deemed to include reference to a Connected Company.

3 **Development Expenditure**

3.1 **Items of Development Expenditure are:**

3.1.1 The consideration paid by the Developer for the Property and for any further estate and interest in the Property

3.1.2 The costs incurred in the acquisition of the Property and any further estate and interest in the Property (including any legal professional and consultants' fees, disbursements, and stamp duty land tax).

3.1.3 The cost of extinguishment or variation of any interest or rights in over or against the Property held by a person who by the lawful exercise of these powers could prevent or impede the carrying out or progress of the Development or its use and enjoyment.

3.1.4 The costs of obtaining any planning permissions and reserved matters approvals (including the costs of any appeals and planning proceedings and fees payable to the local planning authority)

- 3.1.5 The costs of entering into and complying with any Planning Agreement (and all obligations therein) including any planning gain tax or similar payment.
- 3.1.6 The cost actually incurred by the Developer in carrying out the Development including demolition stripping out and site clearance works and works of construction refurbishment or improvement and payments to its building contractors and consultants.
- 3.1.7 The costs of obtaining all approvals, consents, licences, permissions and approvals required from any competent authority and required for carrying out and completing the Development and so as to permit lawful occupation and use of the Development;
- 3.1.8 Professional fees and disbursements of professional advisers engaged by the Developer in connection with the design or supervision and the carrying out of the Development.
- 3.1.9 The Developer's costs of Disposals, Exempt Dispositions and all other dispositions of the Property, Plots and Units or part or parts of it including marketing and legal costs, and payments or allowances to tenants or purchasers.
- 3.1.10 Interest paid on loans or other monies (including on any working capital of the Developer) to finance or fund the Development Costs or notional interest at a rate not exceeding 2% above the 12 month LIBOR rate from time to time.
- 3.1.11 Guarantee fees, commitment fees, procurement fees, introduction and arrangement fees, finance charges and breakage fees in respect of loans or other monies paid by the Developer to finance or fund the Development Costs provided and to the extent that all such fees have been incurred by the Developer on an arm's length basis and reflect reasonable terms in the open market where such costs either relate entirely to the Development or, in the event that such costs relate to part of the Development, they are apportioned by the Developer in a fair and reasonable manner.
- 3.1.12 Legal and consultants and surveyors' fees, disbursements, agency commission, advertising, promotional expenses and other costs in connection with the matters referred to in this paragraph 2.
- 3.1.13 Fees and disbursements paid to a project manager and person providing management services excluding those persons who are employees of the Developer.
- 3.1.14 Rental deficit payments actually paid by the Developer to a person under a forward sale or other funding arrangement provided and to the extent that such terms have been agreed on an arm's length basis and reflect a



reasonable commercial deal based on normal market terms current and normal at the time when legally agreed.

- 3.1.15 Service charge and insurance payments paid by the Developer in relation to the Property or the management of the common parts including those parts occupied by the Developer for its own purpose.
  - 3.1.16 Annual recurring and capital outgoings whether parliamentary, parochial or otherwise which may from time to time be assessed or imposed upon the Property and the Development and which are payable by the Developer but excluding any taxes payable by the Developer on any dealing with its interest in the Property (including taxes on any capital or revenue receipts payable by the Developer on any dealing with its interest in the Property).
  - 3.1.17 The cost of all insurances effected in connection with the Property and the Development.
  - 3.1.18 The cost (excluding the internal costs expenses and overheads (including staff costs) of the Developer ) of repair, decoration, maintenance, upkeep, facilities management and management of the Property and the Development, the development and subsequent letting, sales and marketing of the Units, and the provision of any services excluding those referred to in paragraph 3.2.11 of this Part.
  - 3.1.19 Legal fees and disbursements incurred by the Developer of and in relation to the negotiation of and entry into this Agreement.
  - 3.1.20 VAT on supplies of goods and services relating to the Property and the Development to the extent that this is not recoverable by credit against output tax or repayment by HM Revenue & Customs or any other person (the Developer having used reasonable endeavours obtain such repayment or credit);
  - 3.1.21 All grant funding relating to the Property and the Development that is repaid to the grant funder or recycled or required to be repaid or recycled by the grant funder under the Grant Recovery provisions of the Council or the TSA or their respective successors;
  - 3.1.22 All other items of expenditure reasonably and properly incurred in relation to the Development and the Property and not specifically mentioned in the foregoing items.
- 3.2 Provided that in calculating the Development Costs:
- 3.2.1 if any item shall fall under more than one of the paragraphs in this definition it shall not be counted more than once;

- 3.2.2 notional interest is to be accrued at the rate equal to the base lending rate from time to time of the Bank of England on credit balances from time to time from items of receipt but only to the extent that actual interest is not accruing on the balance at the time;
- 3.2.3 the Development Costs shall not include any costs or expenses other than those incurred by the Developer or for which the Developer is or shall be liable;
- 3.2.4 the Development Costs shall not include any costs or expenses incurred in relation to the acquisition development and disposal of any land or premises other than the Property;
- 3.2.5 the Development Costs shall not include any interest due from the Developer to the Council in respect of the late payment of any monies due from the Developer to the Council under this Agreement;
- 3.2.6 Development Costs are allowable only to the extent that they are reasonably and properly incurred;
- 3.2.7 any expenditure or receipt which accrues over or relates to a period are, if apportionment is necessary, to be treated as accruing from day to day throughout the period to which they relate and are apportionable in respect of the time accordingly;
- 3.2.8 any item of receipt or any sum payable or receivable which is due or incurred in a relevant period, even if not then ascertained or quantified, is, if paid or received outside that relevant period, to be treated as if it were paid or received during that relevant period;
- 3.2.9 "Developer" for the purposes of this Schedule includes the Developer and any Connected Party; and
- 3.2.10 Excluded from Development Costs will be (save as included within paragraph 2.1.18 internal costs and overheads of the Developer including project management fees where these are provided directly by the Developer.
- 3.2.11 Excluded from Development Costs will be the internal costs of the Developer for project management of construction of the Development where this is provided directly by the Developer

#### 4 Receipts

- 4.1 Receipts are the aggregate of the items of receipt set out in paragraph 3.2 below in relation to the Development and the Property received by the Developer.

4.2 Items of Receipt are:

- 4.2.1 All rents licence fees car parking fees service charges management charges and other income and receipts of any description including any rent service charges and insurance contributions received from any tenants of Units and those parts occupied by the Developer for its own purpose.;
- 4.2.2 all contributions received from any third party towards any common expenses facilities or other costs;
- 4.2.3 all insurance proceeds received by the Developer from any policy or policies taken out in respect of the Property or the Development to the extent they are not intended or required for reinstatement of damage to the Property or the Development or are intended or required to be paid out in satisfaction of any claim against the Developer in respect of the Property and the Development;
- 4.2.4 any reimbursement of any items already treated as Development Costs (including the refunding of any overpayment of incorrect payment of taxes);
- 4.2.5 any amount received whether by way of damages or otherwise in respect of late completion or non-completion of any Unit on the Development to the extent that the Developer does not itself incur cost by reason of such late completion or non-completion.

(Execution of Agreement)

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

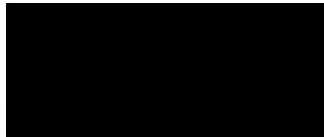


Authorised Signatory:



CDL 18387

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

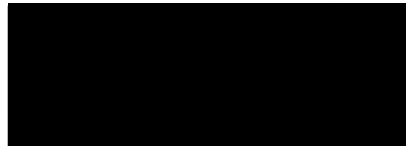


County Solicitor / Designated Officer

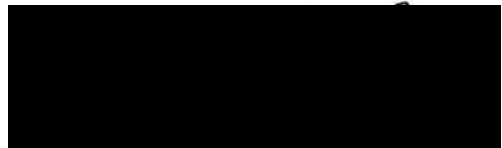


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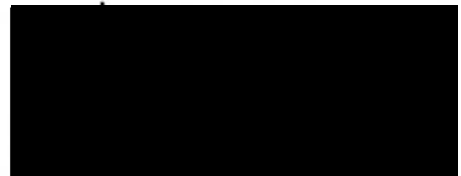
*Executed as a deed by*  
~~THE COMMON SEAL~~ of SGR (BICESTER 1)  
LIMITED *acting by two directors*  
was hereunto affixed in the presence of-



Director:



Director/~~Secretary~~:

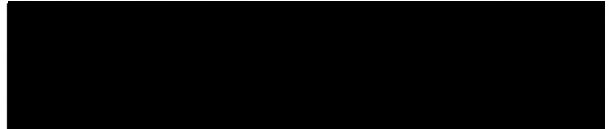


Executed as a deed by  
~~THE COMMON SEAL~~ of SGR (BICESTER 2)  
LIMITED acting by two directors  
was hereunto affixed in the presence of

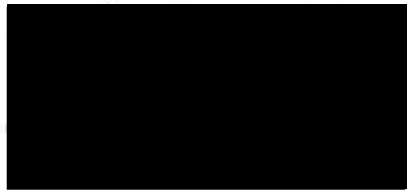


)

Director:



Director/Secretary:



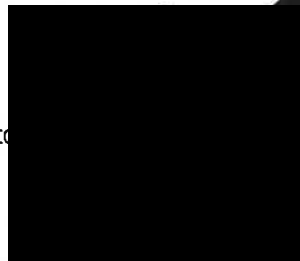
THE COMMON SEAL of HOME FARM  
EXEMPLAR LIMITED  
was hereunto affixed in the presence of

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Director:



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Director/Secretary:

