

DATED 23 NOVEMBER **2023**

BDW TRADING LIMITED
TO
CHERWELL DISTRICT COUNCIL

UNILATERAL UNDERTAKING

**Pursuant to section 106 Town and Country Planning Act
1990 relating to land at White Post Road, Banbury
LPA Ref: 15/01326/OUT**

THIS DEED is made the
BETWEEN

23

day of

NOVEMBER

2023

(1) **BDW TRADING LIMITED** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1 UF (the **Owner**);

TO

(2) **CHERWELL DISTRICT COUNCIL** of Bodicote House White Post Road Bodicote Banbury in Oxfordshire OX15 4AA (the **Council**).

INTRODUCTION:

1. The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated.
2. The Owner is the freehold owner of the Land being the land registered at HM Land Registry under title number ON353292 free from encumbrances.
3. On 20 November 2017 the Outline Planning Permission was granted on appeal.
4. On 31 July 2020 the Reserved Matters Approval was granted.
5. In connection with the Development the Owner now wishes to enter into this Deed.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby prescribed to them:

The Act

the Town and Country Planning Act 1990 as amended;

Additional Works

means any works the Council may reasonably require to be carried out following inspection of the Development (or any part thereof) following their Substantial Completion to enable the release of the Substantial Completion Certificate;

The Development

the development comprising a residential development of up to 280 dwellings in accordance with the Planning Permission;

Dwelling

a residential unit to be constructed on the Land pursuant to the Planning Permission;

Land

the area of land edged red on Plan 1;

Monitoring Contribution

the sum of £8,000 (eight thousand pounds) to be paid to the Council for the purpose of monitoring the compliance with the obligations in Schedule One;

Outline Planning Permission

the outline planning permission granted pursuant to planning application reference 15/01326/OUT on appeal for non-determination under appeal reference APP/C3105/W/17/3172731

Plan 1

the plan marked Plan 1 attached hereto;

Planning Permission

means collectively the Outline Planning Permission and the Reserved Matters Approval;

Play Area

the two local areas of play (LAP) one combined local area of play (LAP) and local equipped area of play (LEAP) and the multi-use play area (MUGA)

Reserved Matters Approval

the approval granted pursuant to application reference 19/00895/REM;

Section 106 Agreement

the unilateral undertaking dated 20 November 2017 granted pursuant to Section 106 of the 1990 Act by (1) the Trustees of Adderbury Feoffee Charity and (2) the Oxford Diocesan Board of Finance in favour of (3) the Council and (4) the County Council with the consent of (5) Gladman Developments Limited as varied by: -

- ii) a Deed of Variation dated 30 April 2021 made pursuant to Sections 106 and 106A of the 1990 Act between the Owner and Oxfordshire County Council;
- iii) a Deed of Variation dated [] made pursuant to Sections 106 and 106A of the 1990 Act between the Owner, the Council and Oxfordshire County Council

Substantial Completion

means completed in accordance with plans schemes and specifications approved by the Council pursuant to the Planning Permission including but not limited to:

- a) construction of the car park
- b) laying out of the open space and bridleway
- c) provision and/or completion of the Play Area
- d) laying out of allotments
- e) laying out of the on-site outdoor sports facilities which comprise an adult football pitch, a junior football pitch and a sports pavilion/changing room *BUT FOR THE AVOIDANCE OF DOUBT THIS SHALL EXCLUDE MORTARING UP OF THE PITCHES AND INSERTION OF POSTS WHICH CAN BE COMPLETED ONCE THE PITCHES ARE IN GOOD CONDITION*
- f) laying out of SUDS
- g) construction of the affordable housing units

*Rudo Mudiwadi kwana
23/10/23*

and Substantially Completed shall be construed accordingly;

Substantial Completion Certificate

means the certificate of issued by the Council (acting reasonably) when the Developer has completed the Development or part thereof to its satisfaction;

Wider Land

the area of land edged blue on Plan 1 but not including the Land;

Working Days

any day that is not a Saturday or Sunday or a bank holiday in England;

2. INTERPRETATION

Unless the context otherwise requires:

- 2.1 Words incorporating the singular include the plural and vice versa and words importing any gender include every gender
- 2.2 References to natural persons are to include corporations and vice versa

- 2.3 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.4 References in this Deed to statutes shall include any statute amending re-enacting or made pursuant to the same as current and enforced from time to time.
- 2.5 If any provisions of this Deed shall be held to be invalid illegal or unenforceable, the validity legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected impaired or called into question
- 2.6 The clause and paragraph headings and the recitals are purely to aid interpretation, are for reference purposes only, and have no binding legal effect.
- 2.7 Where in this deed a party includes more than one person any obligations of that party shall be joint and several.
- 2.8 The expressions "the Owner" and "the Council" shall include their respective successors in title and assigns.

3. STATUTORY AUTHORITY AND LEGAL EFFECT

- 3.1 This Deed is made pursuant to section 106 of the Act and all other powers enabling which may be relevant for the purpose of giving validity to this Deed.
- 3.2 The obligations of the Owner in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council as the local planning authority.
- 3.3 Subject to clause 3.4, the Owner covenants with the Council to the intent that this Deed shall be enforceable without limits of time (other than as expressly provided in this Deed) against the Owner in respect of the Land and any person deriving title through or under the Owner to the Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 3.4 No person shall be bound by any obligations rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed after they shall have parted with all interest in the Land or that part in respect of which that obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 3.5 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed and nor shall any person be liable to make any payment to this Deed in respect of any development authorised by such further planning permission.
- 3.6 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act or any statutory instrument, order or bye-law in the exercise of its functions as a local authority.
- 3.7 No obligation shall be construed as binding any individual purchaser or his mortgagee (including but not limited to any registered provider of social housing) or lessee or tenant of any Dwelling to be constructed on the Land pursuant to the Planning Permission or against statutory undertakers in relation to any part or parts of the Land acquired by them for their purposes or for electricity sub-stations, gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of an easement or covenant.

4. CONDITION PRECEDENT

- 4.1 The obligations contained in this Deed shall take effect on the date of this Deed.

5. OBLIGATIONS

- 5.1 The Owner covenants, agrees and declares in respect of the Land as set out in Schedule One.

6. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

6.1 For the purposes of the Contract (Rights of Third Parties) Act 1999 nothing in this Deed shall confer on any third party any right to enforce any benefit or any terms of this Deed

7. **LOCAL LAND CHARGES**

7.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and may be registered as such against the Land

7.2 If all the obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect and the Council shall cancel the registration.

8. **JURISDICTION**

8.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

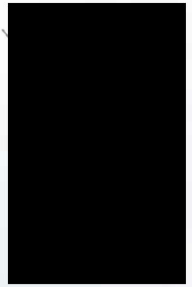
9. **VAT**

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

Schedule One
Obligations of the Owner

1. The Owner covenants to the Council as follows:
 - 1.1 from the date of this Deed not to undertake any development on the Land which would be inconsistent with the Development permitted pursuant to the Planning Permission unless and until:
 - a. the Development on the Wider Land has been Substantially Completed in accordance with the Planning Permission;
 - b. all planning obligations contained in the Section 106 Agreement that are capable of being discharged in respect of the Wider Land only have been discharged;
 - c. the Council has been notified in writing within 5 Working Days of the date of the intended Substantial Completion of the Development permitted pursuant to the Planning Permission on the Wider Land;
 - d. within 15 Working Days following receipt of written notice being served in accordance with paragraph 1.1(c) above the Council shall:
 - i. inspect the Development to which the Planning Permission relates; and
 - ii. provide the Developer (where necessary and acting reasonably) with a definitive written list of any Additional Works required to be carried out in order to achieve Substantial Completion of the Development and the Developer shall carry out these Additional Works without delay and at its own cost and within 5 Working Days of their completion shall notify the Council in writing and the process in paragraph 1.1(d)(i) shall be repeated and PROVIDED THAT the process in paragraph 1.1(d)(i) and this paragraph 1.1(d)(ii) shall be repeated until such time as the Development is Substantially Complete to the reasonable satisfaction of the Council;
 - iii. following a satisfactory inspection carried out pursuant to paragraph 1.1(d)(i) and/or paragraph 1.1(d)(ii) the Council shall within 15 Working Days issue the Substantial Completion Certificate to the Developer confirming that it is reasonably satisfied that the Development permitted pursuant to the Planning Permission on the Wider Land has been Substantially Completed; and
 - e. the Council has provided written confirmation to the Owner within 20 Working Days of issue the Substantial Completion Certificate that it is satisfied that the planning obligations referred to in paragraph 1.1(b) above in relation to the Wider Land only have been discharged; and
2. to pay the Monitoring Contribution to the Council on completion of this Deed.

PLAN 1




DAVID WILSON HOMES
 SMARTER. QUALITY. VALUE.

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

Drawing Title: **PLAN 1**
 Scale: **1:1000 @ A0**
 Date: **22.02.23**
 Drawn By: **DG**

7942-UJ-1

IN WITNESS whereof the Owner, has executed this Deed the day and year first before written

EXECUTED as a DEED
by **BDW TRADING LIMITED**
acting by:



.....
Director

.....
Witness

Witness Name: **CHETAN SOLANKI**
Address:

**Barratt/David Wilson Mercia
Remus 2
2 Cranbrook Way
Sollhull Business Park
Sollhull
West Mids.
B90 4GT**