

DATED 21 July 2017

(1) RICHARD WARREN JONES and ANN MICHELINE SOUTHWELL and  
ASHLEY WILLIAM MOLLOY

and

(2) BLOOMBRIDGE LLP

To

CHERWELL DISTRICT COUNCIL

**Planning Obligation by Unilateral Undertaking**

**under Section 106 Town & Country Planning Act 1990 and Section 111 of the Local  
Government Act 1992 and Section 1 of the Localism Act 2011**

**relating to land at Oxford Road, Bicester Oxfordshire (planning application no.  
16/02586/OUT)**

**Hotel Site**

**The Planning Law Practice**

**Wood End, 20 Oaklands Park, Bishops Stortford, Hertfordshire CM23 2BY**

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**e-mail : [peter@planninglawpractice.co.uk](mailto:peter@planninglawpractice.co.uk)**

**THIS UNILATERAL UNDERTAKING** is given this  
2017

21<sup>st</sup> day of July

BY

- 1) **RICHARD WARREN JONES** of Bridge House Care Home, Thame View, Abingdon, Oxfordshire OX14 3UJ and **ANN MICHELINE SOUTHWELL** of 1 Abbots Grange, Marcham, Abingdon, Oxfordshire OX13 6PF7 and **ASHLEY WILLIAM MOLLOY** of 37 Woodberry Drive, Walmley, Sutton Coldfield, West Midlands B76 2RH ( 'the Owners')
- (2) **BLOOMBRIDGE LLP** (a limited liability partnership with registered number OC349331) whose registered address is care of Thorne Lancaster Parker, Venture House, 27-29 Glasshouse Street, London W1B 5DF ('the Developer')

to

**CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA ('the Council').

## **RECITALS**

1. The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated.
2. The Owners are the owners of freehold of the Hotel Site registered at the Land Registry with absolute title under title numbers ON301223 and ON184128 subject in each case to an option dated 6<sup>th</sup> August 2014 in favour of the Developer but otherwise free from incumbrances.
3. The Developer has submitted the Planning Application to the Council and the Council has resolved to approve the Planning Application subject to the Owners and the Developer entering into this Deed for the purposes of securing the payment to the

Council of a contribution towards the costs of mitigating the net biodiversity impact of the Development.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

In this Deed the following terms and expressions have the following meanings:-

<b>1990 Act</b>	the Town and Country Planning Act 1990 (as amended)
<b>Additional Biodiversity Contribution</b>	the sum of £5,000.00 (Five Thousand Pounds) to be paid to the Council and used for instructing an appropriate consultant to prepare and finalise the Biodiversity Scheme
<b>Biodiversity Contribution</b>	the full cost of implementing the Biodiversity Scheme such cost capped at a maximum of £30,000.00 (Thirty Thousand Pounds) to be paid to the Council and used towards the implementation of the agreed Biodiversity Scheme
<b>Biodiversity Scheme</b>	a scheme for mitigating the net biodiversity impact of the Development including (i) details of the likely net impact on biodiversity as a result of habitat loss/gain caused by the Development, (ii) proposals for any necessary off-site compensation of the habitat to be lost as a result of the Development, (iii) the identification of any receptor site(s), (iv) arrangements to secure the delivery of the agreed off-site mitigation/compensation measures including a timetable for their delivery, (v) details of any management and monitoring of any mitigation/compensation habitat for a period of 10 years from the date on which the Biodiversity Scheme is first implemented and (vi) the calculation of and a timetable for

	payment of the Biodiversity Contribution
<b>Commencement of Development</b>	the date on which the Development commences on the Hotel Site beginning with the date on which any material operation as defined by section 56(4) of the 1990 Act is begun at the Hotel Site excluding (for the purpose of this Deed and for no other purpose) any operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary of enclosure, the temporary display of site notices or advertisements) and "Commence the Development" shall be construed accordingly
<b>Development</b>	phase 1 of a new business park comprising up to 14,972 sq metres (gross external area) of B1 employment based buildings and a hotel (of up to 149 bedrooms) with associated infrastructure, car parking and marketing boards on the Site
<b>Hotel Site</b>	the land at land at Oxford Road, Bicester Oxfordshire shown edged red and labelled Phase 1A on the Phasing Plan annexed hereto
<b>Index</b>	BCIS All-in TPI Index published by the Department for Business, Innovation and Skills)
<b>Interest</b>	interest at 4% above the base lending rate of Lloyds Bank plc from time to time
<b>Maintenance Period</b>	the period of 10 years from the date on which the Biodiversity Scheme is first implemented

<b>Occupation</b>	Occupation of the Hotel Site for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupy' and 'Occupied' shall be construed accordingly
<b>Office Site</b>	the land at Oxford Road, Bicester, Oxfordshire shown edged <sup>green</sup> <del>red</del> and labelled Phase 1B on the Phasing Plan annexed hereto
<b>Phasing Plan</b>	plan no 16084 P106 Rev P0 attached to this Deed or such amendments to this Phasing Plan or additional Phasing Plan or Plans as shall be agreed in writing between the parties
<b>Planning Application</b>	planning application no 16/02586/OUT submitted to the Council seeking planning permission for the Development
<b>Planning Permission</b>	planning permission for the Development granted by the Council pursuant to the Planning Application
<b>Site</b>	the land at Oxford Road, Bicester, Oxfordshire shown edged <sup>red</sup> <del>blue</del> on plan no 16084 P101 Rev P1 annexed hereto

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- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

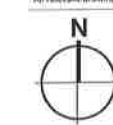
- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.8 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions and any duly appointed employee or agent of the Council or such successor.

#### **4. LEGAL BASIS**

- 4.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other such enabling powers.
- 4.2 The undertakings by the Owners and the Developer under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are intended to be enforceable by the Council as the local planning authority against the Owners and the Developer.
- 4.3 This Deed is capable of and may be registered as a local land charge by the Council.



• Dimensions are in millimetres, unless stated otherwise  
 • Scaling of this drawing is not recommended  
 • It is the recipient's responsibility to print this document to the correct scale  
 • All relevant drawings and specifications should be read in conjunction with this drawing



**SCHEDULE OF ACCOMMODATION**

PHASE IA	- 2.58 Acres (1.043 Ha)
PHASE IA Land to be Retained for Future Phase II Road Widening	- 0.02 Acres (0.01 Ha)
<b>Total Area PHASE IA</b>	<b>- 2.58 Acres (1.044 Ha)</b>

PHASE IB	- 6.58 Acres (2.65 Ha)
PHASE IB Land to be Retained for Future Phase II Road Widening	- .25 Acres (0.10 Ha)
<b>Total Area PHASE IB</b>	<b>- 6.81 Acres (2.75 Ha)</b>

<b>TOTAL AREA</b>	<b>- 9.39 Acres (3.794 Ha)</b>
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<b>AREA PHASE II</b>	<b>- 37.6 Acres (15.22 Ha)</b>
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- PHASE IA
- PHASE IB
- LAND TO BE RETAINED FOR PHASE II ROAD WIDENING
- Land Retained For the Future Phase II Road Widening - 1.84Acres
- Not Part of Phase I Planning Application

rev	amendments	by	chk	date
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Bicester Gateway, Bicester  
 Phasing Plan - Phase 1&2

**Bloombridge**  
 Development Partners

**umc**  
**architects**

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Drawing Status:	Planning
Drawn / Checked:	GW / GMC
Date:	12.12.2016
Scale:	1:1250 @ A1
Drawing no:	Revision
16084 P106	P0





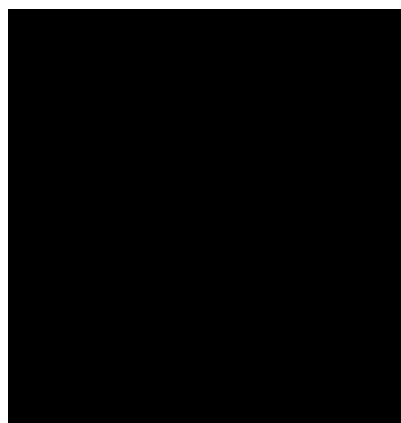
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**SITE AREA** - 9.39 Acres (3.79 Ha)

 **APPLICATION SITE**

 **EXTENT OF HIGHWAY LAND**



**Bicester Gateway, Bicester**  
 Red Line Plan - Phase 1

**Bloombridge**  
 Development Partners

**umc**  
 architects

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Date:	12.12.2016
Scale:	1:1250 @ A1
Drawing no:	Revision
16084 P101	P1

25m SCALE 1:1250



## **5. CONDITIONALITY**

This Deed is conditional upon:

- (i) grant of the Planning Permission; and
- (ii) Commencement of Development

save for the provisions of clause 7.1, 7.13, 7.16 and 7.17 (costs, change of ownership, jurisdiction and delivery) which shall come into effect immediately upon completion of this Deed.

## **6. OBLIGATIONS OF THE PARTIES**

This Owners and Developer undertake to the Council to comply with the obligations set out in the Schedule to this Deed.

## **7. MISCELLANEOUS**

7.1 The Owners and Developer undertake to the Council to :

- (i) pay to the Council its reasonable legal costs in connection with the drafting and approval of this Deed;
- (ii) reimburse the Council in respect of all legal and administrative costs reasonably and properly incurred in connection with the enforcement of any of the provisions hereof should the need for enforcement arise in the reasonable opinion of the Council; and
- (iii) pay to the Council upon completion of this Deed, the Council's reasonable costs associated with the monitoring and administration of this Deed.

7.2 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Deed unless otherwise specified or by operation of law.

7.3 The undertakings in this Deed shall cease to have effect if :

- (i) the Planning Permission is quashed, revoked, superseded or otherwise withdrawn at any time; or
- (ii) the Planning Permission expires prior to the Commencement of Development; or
- (iii) the Planning Permission is modified or varied by any statutory procedure without the consent of the Owners

7.4 This Deed may be registered as a local land charge by the Council.

7.5 No person or party shall be liable for a breach of the restrictions, covenants and obligations contained in this Deed after that person or party has irrevocably parted with all of his interest in the Site or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting.

7.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission or any Qualifying Permission granted (whether or not on appeal) after the date of this Deed.

- 7.9 The Biodiversity Contribution shall be increased in accordance with any increase in the Index from the date of this Deed until the date on which the said payment becomes due.
- 7.10 Any payment not correctly made on the date it is due shall have added to that payment Interest from the date it is due until the date it is actually paid.
- 7.11 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 7.12 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their respective functions in any capacity.
- 7.13 The Owners and the Developer undertake to the Council:
- (i) to give the Council immediate written notice of any change in ownership of any of their respective interests in the Hotel Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan; and
  - (ii) to notify the Council in writing of the date of Commencement of Development within fourteen days of its occurrence and to specify in the notification the date on which it occurred.
- 7.14 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

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

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

7.17 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

CAC 7.18 The Deed dated <sup>12</sup>~~17~~ July 2017 and made by the parties hereto shall be automatically discharged upon this deed coming into effect pursuant to clause 5 hereof.

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



**THE SCHEDULE**  
**UNDERTAKING WITH THE COUNCIL**

The Owners undertake with the consent of the Developer so as to bind the Hotel Site into whosoever hands the same may fall:

- (i) to submit the Biodiversity Scheme to the Council prior to the Commencement of Development and not to permit or allow the Commencement of Development until the Biodiversity Scheme has been submitted to the Council PROVIDED THAT in the event that the Biodiversity Scheme has been submitted in compliance with the obligations in the Unilateral Undertaking of even date in relation to the Office Site this paragraph shall cease to have effect
- (ii) not to Occupy any part of the Development on the Hotel Site or allow or permit the Occupation of any part of the Development on the Hotel Site until either:
  - a. the Council has approved in writing the Biodiversity Scheme and the Biodiversity Contribution has been paid in full to the Council; or
  - b. (in the event that the Council has not approved in writing the Biodiversity Scheme) the Biodiversity Contribution and the Additional Biodiversity Contribution have been paid in full to the Council.

PROVIDED THAT in the event that contribution(s) in the paragraph have been paid in compliance with the obligations in the Unilateral Undertaking of even date in relation to the Office Site this paragraph shall cease to have effect

SIGNED as a Deed by )  
ANN MICHELINE SOUTHWELL as )  
Attorney for RICHARD WARREN JONES )  
in the presence of : )

Signed ... [REDACTED] .....

Name of Witness .. DONNA M. MITCHELL .. [REDACTED]

Address of Witness ..... Knights Professional Services Ltd  
Midland House  
West Way  
Botley  
Oxford  
OX2 0PH

SIGNED as a Deed by )  
ANN MICHELINE SOUTHWELL )  
in the presence of : )

Signed ..... [REDACTED] .....

Name of Witness .. DONNA M. MITCHELL .. [REDACTED]

Address of Witness ..... Knights Professional Services Ltd  
Midland House  
West Way  
Botley  
Oxford  
OX2 0PH

SIGNED AS A DEED by LUCINDA HEATHER JONES )  
as Deputy on behalf of RICHARD WARREN JONES )  
in the presence of )

Sig [REDACTED]

Name of Witness .. DONNA M. MITCHELL .. [REDACTED]

Address of Witness ..... Knights Professional Services Ltd  
Midland House  
West Way  
Botley  
Oxford  
OX2 0PH

SIGNED as a Deed by **ASHLEY WILLIAM MOLLOY** )  
in the presence of :

Signed ...

Name of Witness .....

Marc Cocheron

Address of Witness .....

9 Storeton crescent

Balsall Common

CU7 7QG

EXECUTED as a Deed by **BLOOMBRIDGE LLP**  
acting by 1 member

DANWA ALUTTEY

Knights Professional Services Ltd  
Midland House  
West Way  
Botley  
Oxford  
OX2 0PH