

**Knights**

DATED

10 March

2019

(1) OXFORDSHIRE COUNTY COUNCIL

and

(2) BICESTER <sup>MOTION</sup> HERITAGE LIMITED

Knights

SCW

and

(3) THE SECRETARY OF STATE FOR DEFENCE

## DEED OF AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to Land at Bicester Heritage Buckingham Road Bicester OX26 5HA

Planning Application number 18/01253/F  
(HOTEL)

Knights plc  
Midland House  
West Way  
Botley  
Oxford  
OX2 0PH

## CONTENTS

### CLAUSE

1.	DEFINITIONS AND INTERPRETATION.....	2
2.	RECITALS .....	4
3.	STATUTORY PROVISIONS .....	5
4.	COVENANTS .....	5
5.	INTEREST .....	5
6.	GENERAL PROVISIONS .....	5
7.	PARTIES TO ACT REASONABLY.....	7
8.	COSTS .....	7
9.	MORTGAGEE .....	7
10.	THIRD PARTY RIGHTS .....	7
11.	DATA PROTECTION.....	7
12.	VALUE ADDED TAX .....	8
13.	JURISDICTION.....	8
14.	GENERAL.....	8
15.	DELIVERY .....	8
Schedule 1	COUNTY CONTRIBUTION(S).....	9
1.	Definitions .....	9
2.	covenants .....	10
Schedule 2	HIGHWAY WORKS .....	12
1.	Definitions .....	12
2.	Covenants .....	12
3.	ANNEX .....	13
(1)	Principal Works .....	13
(2)	Preparatory and Ancillary Works .....	14
(3)	Amenity and Accommodation Works .....	15
Schedule 3	COUNCIL OBLIGATIONS.....	16
1.	County Council Obligations .....	16

DATED 10 March 2019

PARTIES

- (1) OXFORDSHIRE COUNTY COUNCIL (County Council)
- (2) BICESTER HERITAGE LIMITED (Owner)
- (3) THE SECRETARY OF STATE FOR DEFENCE (Mortgagee)

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words and phrases shall have the following meanings respectively:

1980 Act: Highways Act 1980.

1990 Act: Town and Country Planning Act 1990 (as amended).

Commencement of Development: the carrying out on the Site of any material operation pursuant to the Planning Permission or (where clause 6.9 applies) a Section 73 Permission and "material operation" shall have the meaning given to it in Section 56(4) of the 1990 Act save that a material operation shall not include operations in connection with any archaeological investigations works of excavation demolition site clearance diversion of services installation of services for construction purposes only site or soil investigations remedial action in respect of any contamination landscaping works provision of construction access noise attenuation works or the erection of hoardings and fences and "Commence Development" and "Commenced" shall be construed accordingly.

County Council: the Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions and any duly appointed employee or agent of the County Council or such successor.

Development: construction of hotel and conference facility with associated access parking and landscaping as referred to in the Planning Application.

Interest: interest at 4% per annum above the base rate from time to time of Lloyds Bank PLC.

Mortgagee: the said The Secretary of State for Defence of Property Legal Team Ministry of Defence Defence Infrastructure Organisation Mailpoint 2216 Poplar 2

	Abbey Wood Bristol BS34 8JH and his successors in title and assigns.
<b>Occupation:</b>	occupation for the purposes permitted by the Planning Permission or (where clause 6.9 applies) a Section 73 Permission 'Occupy' and 'Occupied' shall be construed accordingly.
<b>Owner:</b>	the said Bicester <sup>Heritage</sup> <del>Heritage</del> Limited (Company Registration No 8273333) of Bicester Heritage, Buckingham Road, Bicester, Oxfordshire OX27 8AL and their successors in title and assigns.
<b>Planning Application:</b>	the application for planning permission for the Development under reference 18/01253/F.
<b>Planning Permission:</b>	any planning permission granted for the Development pursuant to the Planning Application as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the 1990 Act.
<b>Section 73 Permission:</b>	a planning permission which may be granted by way of approval of an application under Section 73 of the 1990 Act permitting the Development subject to conditions which differ from the conditions of the Planning Permission.
<b>Site:</b>	land at Bicester Heritage Buckingham Road Bicester OX26 5HA shown for identification purposes edged red on the Site Plan.
<b>Site Plan:</b>	the plan annexed hereto marked "Location Plan".
<b>Working Day:</b>	any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

1.2 In this Agreement where the context so requires:-

- (a) the singular includes the plural and vice versa;
- (b) the masculine includes the feminine and vice versa;
- (c) persons includes bodies corporate associations and partnerships and vice versa;
- (d) "including" means without limitation or prejudice to the generality of any preceding description, word, term or phrase or otherwise and 'include' shall be construed accordingly.

1.3 Reference to a clause, schedule or appendix unless the context otherwise requires, is a reference to a clause, schedule or appendix to this Agreement.

NOTES

Application Site Boundary

SEAL  
NO 3496

[illegible]

Location Plan Scale 1:1250@A1 / 1:2500@A3

- 1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 1.5 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force.
- 1.6 Covenants made hereunder:
- (a) If made by more than one person are made jointly and severally; and;
  - (b) are made to the intent that the same shall bind successors in title to any party and to any person deriving title through or under that party; and
  - (c) are made to the intent that the same shall operate as a charge on the land and shall be registered in the Register of Local Land Charges; and
  - (d) are made to the intent that each of the same shall be a planning obligation for the purposes of Section 106 of the 1990 Act.
- 1.7 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons.
- 1.8 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.

## **2. RECITALS**

- 2.1 The Owner is the registered proprietor of the freehold of the Site under title number ON 307011 subject to a charge in favour of a Mortgagee but otherwise free from encumbrances.
- 2.2 For the purposes of the 1990 Act the County Council is the county planning authority for the area which includes the Site.
- 2.3 For the purposes of the 1980 Act the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the County Council is the highway authority and the traffic authority for certain highways in the area which includes the Site.
- 2.4 The Owner by the Planning Application has applied to Cherwell District Council for planning permission for the Development.
- 2.5 The Owner has agreed to enter into the covenants contained in this Agreement pursuant to the provisions of the 1990 Act upon the terms and conditions hereinafter appearing with the intent that it should be binding not only upon the Owner but also upon any person deriving title from the Owner as provided by Section 106 of the 1990 Act and any persons claiming through under or in trust from them.

### **3. STATUTORY PROVISIONS**

- 3.1 This Agreement (which the County Council is satisfied will be of benefit to the public) is made pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and Section 278 of the 1980 Act and all other enabling powers so as to create planning obligations for the purposes of Section 106 of the 1990 Act and is entered into by the Owner with the intent that such planning obligations be binding upon their interests in the Site and enforceable as planning obligations by the County Council against their successors in title.

### **4. COVENANTS**

- 4.1 The Owner covenants with the County Council to observe and perform the obligations set out in Schedules 1 and 2.
- 4.2 The Owner shall notify the County Council as follows:
- (a) of any disposal of their interest in the Site and of the name and address of the new owner and the date of the disposal within 10 Working Days of such disposal;
  - (b) of the date of the Commencement of Development within 10 Working Days of its occurrence;
  - (c) of the date the first building comprised in the Development is Occupied within 10 Working Days of its occurrence.
- 4.3 The County Council covenants with the Owner to observe and perform the obligations set out in Schedule 3.
- 4.4 If there is failure to give notice in accordance with clause 4.2 the County Council may investigate the Occupation of buildings comprised in the Development for the purpose ascertaining whether or not any of the obligations or restrictions in this Agreement has become operative and the Owner will pay to the County Council the sum of £500 in respect of the costs of each such investigation.

### **5. INTEREST**

Without prejudice to any other right or remedy of the County Council if any payment which becomes due the County Council under this Agreement is not paid within 10 Working Days of the due date Interest shall be due and payable to the County Council (as applicable) on the relevant amount for the period from the due date until the date of payment.

### **6. GENERAL PROVISIONS**

- 6.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights powers and duties of the County Council in the exercise of their functions as Local Planning Authority and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the County Council were not a party to this Agreement.

- 6.2 No waiver (whether express or implied) by a party of any breach or default in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent a party from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof.
- 6.3 No person shall be liable for any breach of the obligations or other provisions contained in this Agreement committed after they have parted with all of their interest in the Site but without prejudice to any claim that the County Council may have for any antecedent breach of covenant.
- 6.4 Insofar as any clause or clauses of this Agreement 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 Agreement 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.
- 6.5 If the Planning Permission and all Section 73 Permissions shall expire within the meaning of sections 91, 92 or 93 of the 1990 Act or shall at any time be revoked or modified by any statutory procedure without the agreement of the Owner this Agreement shall forthwith determine and cease to have further effect (insofar as it has not already been complied with) PROVIDED ALWAYS that the Development has not Commenced.
- 6.6 Nothing in this Agreement shall prevent the Owner from developing the Site in accordance with a planning permission other than the Planning Permission or a Section 73 Permission.
- 6.7 The Owner and their successors in title and assigns to the Site shall not be deemed to have any interest in the Site where they retain the benefit of any exception and reservation and/or covenant.
- 6.8 This Agreement (except for clauses 4.2(a), 6, 7, 8.1. and 8.2 which will take immediate effect and paragraphs 2.1 of Schedule 1 and 2.1(a) of Schedule 2 which shall come into effect upon the grant of the Planning Permission) shall come into effect upon Commencement of Development.
- 6.9 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and a Section 73 Permission is granted this Agreement shall (unless the County Council determines that revised planning obligations are required as a result of such amendment) apply to development pursuant to the Section 73 Permission as well as to development pursuant to the Planning Permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.
- 6.10 Any notice or notification to be given under this Agreement to:
- (a) the County Council shall be sent to the Director for [Planning & Place/Environment & Economy of the County Council] (Ref 18/01333/F) County Hall Oxford OX1 1ND or to such other person at such other address as the County Council shall direct from time to time;



- (b) any other party shall be sent to that party at the aforementioned address or to such other person at such address as they shall notify in writing to the County Council from time to time.

#### **7. PARTIES TO ACT REASONABLY**

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

#### **8. COSTS**

- 8.1 The Owner shall on completion of this Agreement pay the County Council's legal expenses and costs reasonably and properly incurred associated with the preparation of this Agreement.
- 8.2 The Owner shall pay to the County Council on completion of this Agreement the sum of one thousand five hundred pounds (£1,500.00) towards the costs relating to the administration and monitoring of the contributions under this Agreement.
- 8.3 The Owner will reimburse the County Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Agreement including correspondence monitoring and site visits by or on behalf of the County Council where the County Council reasonably considers that there has been a default on the part of the Owner.

#### **9. MORTGAGEE**

The Mortgagee acknowledges that this Agreement has been entered into by the Owner with their consent and that the Site is bound by the obligations contained in it and that the security of the Mortgagee over the Site shall take effect subject to it PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless they take possession or exercise their powers of appointing a receiver/foreclosure in which case they too will be bound by the obligations as if they were a person deriving title from the Owner.

#### **10. THIRD PARTY RIGHTS**

This Agreement gives no rights under the Contract (Rights of Third Parties) Act 1999, but this does not affect any rights which are available apart from that Act and it may be enforced by any successors in title of the parties and by any successor to the District Council's or the County Council's statutory functions.

#### **11. DATA PROTECTION**

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

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

- (b) any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000.

**12. VALUE ADDED TAX**

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

**13. JURISDICTION**

This Agreement is governed by and interpreted in accordance with the laws of England.

**14. GENERAL**

This Agreement is a Local Land Charge and the County Council shall apply to Cherwell District Council to register it as such.

**15. DELIVERY**

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

## SCHEDULE 1 COUNTY CONTRIBUTION(S)

### 1. DEFINITIONS

- 1.1 In this Schedule in addition to the definitions provided in clause 1 of this Agreement the following words have the following meanings and where a word is defined in clause 1 of this Agreement and also in this paragraph the meaning given in this paragraph shall be applied for the purposes of this Schedule:

**Baxter Index:** means a composite index comprised of the following indices of the 1990 series Civil Engineering Formulae Indices published monthly in the Prices Adjustment Formulae Indices (PAFI) Online issued on behalf of the Department for Business Innovation and Skills (BIS) weighted in the proportions set out below against each such index

Index 1 – Labour and Supervision 25%

Index 2 – Plant and Road Vehicles 25%

Index 3 – Aggregates 30%

Index 9 – Coated Macadam and Bituminous Products 20%

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

**the County Contributions:** together the Public Transport Infrastructure Contribution, the Strategic Transport Contribution the TRO Contribution (A) the TRO Contribution (B) and the Travel Plan Monitoring Fee and "County Contribution" shall be construed accordingly.

**Index Linked:** in relation to the Strategic Transport Contribution and the Public Transport Infrastructure Contribution adjusted according to any increase occurring between October 2018 and the date when the relevant payment is made in the Baxter Index; and  
in relation to the Traffic Regulation Order Contribution and the Travel Plan Monitoring Fee adjusted according to any variation in the Index of Retail Prices Information excluding mortgage interest rate (RPIX Index) published by the Office of National Statistics between the RPIX figure for September 2018 and the

monthly RPIX figure for the month immediately preceding the date the payment is due

**the Public Transport Infrastructure**

**Contribution:** the sum of two thousand one hundred and eighty pounds (£2,180.00) Index-Linked towards two bus stop flag and case units.

**the Strategic Transport**

**Contribution:** the sum of two hundred and seventeen thousand five hundred and thirty eight pounds and sixty six pence (£217,538.66) Index-Linked towards strategic transport infrastructure improvements outlined under policy BIC1 of the Local Transport Plan 4- dualling of Eastern Perimeter Route, Skimmingdish lane section ~~(or scheme of similar benefit).~~

**T R O Contribution (A):** the sum of two thousand six hundred pounds (£2,600.00) Index-Linked towards the cost of a Traffic Regulation Order to implement a 40mph speed limit on Skimmingdish Lane/Buckingham Road/A4421/A4095 roundabout junction and 'Stratton Audley turn' (Bicester Road) junction;

**T R O Contribution (B):** the sum of two thousand six hundred pounds (£2,600.00) Index-Linked towards the cost of a Traffic Regulation Order to prohibit right-turn egress from the Site access junction onto Buckingham Road

**Travel Plan Monitoring Fee:** the sum of two thousand and forty pounds (£2,040.00) Index-Linked towards the cost of monitoring the travel plan for the Development for a period of 5 years following occupation.

**2. COVENANTS**

**2.1 The Owner covenants with the County Council:**

- (a) not to cause or permit the Commencement of Development until it has paid the Public Transport Infrastructure Contribution the TRO Contribution (A) and the TRO Contribution (B) to the County Council and to pay the Public Transport Infrastructure Contribution the TRO Contribution (A) and the TRO Contribution (B) to the County Council prior to the Commencement of Development PROVIDED THAT if TRO Contribution (A) has already been paid to the County Council in accordance with obligations contained in a planning obligation relating to planning application

18/01333/F the Owner shall not be obliged to pay TRO Contribution (A) under the terms of this Deed ;

- (b) not to cause or permit any building forming part of the Development to be first Occupied until it has paid the Travel Plan Monitoring Fee to the County Council and to pay the Travel Plan Monitoring Fee to the County Council prior to the first Occupation of any building forming part of the Development;
- (c) to pay the Strategic Transport Contribution to the County Council within 12 months of the first Occupation of any building forming part of the Development.

## SCHEDULE 2 HIGHWAY WORKS

### 1. DEFINITIONS

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

<b>Highway Works</b>	the works set out in the annex to this Schedule.
<b>Section 278 Agreement</b>	an agreement made pursuant to inter alia Section 278 of the Highways Act 1980 substantially in accordance with the template form annexed to this Agreement as appendix 1 which provides for the execution of the relevant elements of the Highway Works by the Owner at its own expense.

### 2. COVENANTS

- 2.1 The Owner covenants with the County Council

- (a) not to cause or permit Commencement of Development until:
- (i) there has been submitted to the County Council and approved by it in writing in principle drawings for the Highway Works together with associated drawings and technical information as set out in the County Council's Section 278 application form as adjusted from time to time;
  - (ii) there have been submitted to the County Council and approved by it in writing plans detailing the land to be dedicated following completion of the Highway Works and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated;
  - (iii) the anticipated duration of construction of the Highway Works has been agreed with the County Council together with the longstop date for completion of the Highway Works and commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Highway Works, has been agreed;
  - (iv) a Section 278 Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 2.1(a) (i) to (iii) above has been entered into by the Owner in respect of the Highway Works together with all parties with an interest in any land to be dedicated further to the Section 278 Agreement and any mortgagee of such land has released it fully and effectively from its charge.
- (b) not to cause or permit the first Occupation of any building forming part of the Development until the Highway Works have been completed to adoption standards in accordance with the provisions of the Section 278 Agreement or a Section 278 Agreement entered into by the Owner in connection with application Ref 18/01333/F.

### 3. ANNEX

#### (1) PRINCIPAL WORKS

The provision and construction of the following works ("the Principal Works"):

- (a) Site access junction as indicated in Drawing No: J32-3569-PS-100 Rev: E including:
  - Widening of A4421 south of the access junction to accommodate right-turn ghost island and taper. Width taken from verge on east side of A4421.
  - Priority access junction, allowing all access movements into the site and left-out only egress.
  - Splitter island at access junction (on minor access arm) to prevent right-turning from the site.
  - 3m wide shared use footway / cycleway on east side of A4421 from site access to link in with new toucan crossing (Item (b) below) c.230m south of access junction (c. 30m south of the Buckingham Road / Skimmingdish Lane (W) junction) and onwards to the Bicester Heritage Technical Site access junction.
  - Informal tactile pedestrian / cycle crossing just south of the site access junction within the taper for right-turn ghost island to include a 2m wide pedestrian refuge island.
  - Hardstanding for a pair of bus stops adjacent to the south side of the site access. To be included on existing highway land on the western side of Buckingham Road and located within the new 3m wide proposed shared footway / cycleway to be provided on the eastern side of Buckingham Road – exact locations to be determined during detail design
  - All road markings, signage and lighting/streetlighting associated with the works outlined above.
- (b) Toucan crossing on Buckingham Road c.230m south of Site access junction (c. 30m south of the Buckingham Road / Skimmingdish Lane (W) junction) to link new shared use footway / cycleway on east side of Buckingham Road with the existing shared use footway / cycleway on the west side of Buckingham Road. Including all associated infrastructure, road markings and signage and streetlighting as indicated in Drawing No: J32-3569-PS-100 Rev: E
- (c) Junction capacity enhancement scheme at the A4421 Buckingham Road / A4095 roundabout junction as indicated in Drawing No: J32-3569-PS-110 Rev F, including:
  - Widening of A4095 Southwold Lane approach arm to increase flare length to c.30m, entry width increased to 9.3m and half width to 3.8m, additional width requirements taken from both the nearside kerb/highway boundary verge and offside splitter island. Realignment of 3m wide shared use footway / cycleway to accommodate widening of carriageway. Realignment of tactile paving and signals over the eastbound approaches to accommodate carriageway widening.
  - Widening of Buckingham Road (S) approach arm to increase flare length to 33m, entry width to 8.2m and half-width to 3.2m. additional width requirements taken from the offside splitter island on the eastern side of the carriageway.

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Extent of Adopted Highway  
 2.4m x 163m Visibility  
 Splay (DMRB - 53mph)

Chief Legal Officer/Designated Officer

Proposed Toucan crossing c. 230m  
 south-west of proposed access to be  
 delivered by either hotel application or  
 new technical site application - whichever  
 is delivered first

3m footway/cycleway to tie in  
 with existing provision on  
 A4421

New tactile crossing linking  
 to existing provision on  
 west side of A4421



REV	date	remarks
14-06-19		Amended
05-06-19		Amended
17-04-19		Amended
08-03-18		Amended based on OCC comments
12-07-18		Issued

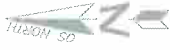


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transport planning



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Extent of Adopted Highway

Chief Legal Officer/Designated Officer

client

Bicester Heritage Limited

Bicester Heritage -  
Hotel Application

job title

Buckingham Road Roundabout  
Proposed Preliminary Mitigation Scheme

drawing title

J32-3569-PS-110

drawing no.

drawn

jvm

checked

atf

created

July '18

scale

1:250@A1

mode transport planning

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Birmingham

B3 3JF

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Extent of Adopted Highway

CH

Wyndham Hall

Chief Legal Officer/Designated Officer

01-05-19  
23-10-18  
13-10-18  
05-10-18  
25-07-18

SEAL  
No. 31696

Amended  
Amended  
Amended  
Amended  
Amended

Bicester Heritage Limited

Bicester Airfield Development

Lunton Road Roundabout  
Preliminary Mitigation Scheme

32-3569-PS-112

checked  
scale

scale  
1:250@A1

mode

transport planning

El Sub Sta

- Widening of A4421 Buckingham Road (N) approach arm to increase entry flare length to c.22m, entry width increased to 9.5m and half-width to 3.5m. Additional width requirements taken from the offside splitter island on the eastern side of the carriageway. New informal tactile crossing over splitter island to link with new footway on eastern side of Buckingham Road running south from the New Technical Site access (as detailed below).
  - Widening of A4421 Skimmingdish Lane approach arm to increase entry flare length to c.33m, entry width to 9.8m and half-width to 3.6m. Three-lane approach at entry to junction. Additional width requirements taken from both the nearside kerb/verge and offside splitter island. Realignment of 3m wide shared use footway / cycleway to accommodate carriageway widening. New informal tactile crossing over splitter island to link with new section of footway between north of the Skimmingdish Lane splitter island to the site access (as detailed below).
  - 2-3m wide footpath / footway connection between the southern side of the Bicester Heritage Technical Site access junction and the splitter island on the Skimmingdish Lane (E) arm of the A4421 / A4095 / Buckingham Road roundabout junction and informal tactile crossings over the splitter islands on the Buckingham Road (N) arm and the Skimmingdish Lane (E) arm of the A4421 / A4095 / Buckingham Road roundabout junction.
  - Road markings and signage associated with the works outlined above.
- (d) Junction capacity enhancement scheme at the A4421 Skimmingdish Lane / Launton Road / Care Home Access roundabout junction as indicated in Drawing No: J32-3569-PS-112 Rev E, including:
- Widening of A4421 Skimmingdish Lane (N) approach to roundabout to increase flare length to c.24m, entry width to 8.5m and half-width to 3.5m. Additional width requirements taken from the highway boundary nearside verge on the eastern side of the carriageway.
  - Realignment of 3m wide shared use footway / cycleway on eastern side of Skimmingdish Lane (northern arm) approach to junction to accommodate carriageway widening.
  - Road markings and signage associated with the works outlined above.

## **(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:

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

### SCHEDULE 3

### COUNCIL OBLIGATIONS

#### 1. COUNTY COUNCIL OBLIGATIONS

1.1 The County Council shall not apply any County Contribution, as defined under paragraph 1 of Schedule 1, for any purpose other than that identified in the definition of the relevant Contribution.

1.2 The County Council covenants with the Owner that it will following written request from the person who paid any Contribution repay to that person such amount of any Contribution made by them to the County Council under this Agreement 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 due date for payment of the Contribution or the final instalment of the Contribution as the case may be or if later prior to the expiration of ten years from the date of payment of the Contribution or the final instalment of the Contribution as the case may be. Any Contribution or part of a Contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date.

APPENDIX 1

Section S278 Agreement

DATED \_\_\_\_\_ 201 1

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

-----  
Agreement relating to highway works at [ ] to be undertaken  
by Developer (with optional provision for contribution)  
*<sup>1</sup>only applies if contribution*  
-----

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

Two Thousand and [      ]

BETWEEN:-

- (1) THE OXFORDSHIRE COUNTY COUNCIL ("the Council")
- (2) ("the Owner")
- (3) (company registration
- number) ("the Developer")
- (4)

## 1. Interpretation

In this Deed:-

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

**Commented [OCC1]:** 2013 edition condition 32

**Commented [OCC2]:** 2013 edition condition 29



appointed employee or agent of the Council or such  
successor

1.7 "the Dedication Plan" means the plan marked 'B' annexed to  
this Deed or such other plan as the Owner [the Developer  
and the Mortgagee] and the Council agree should be  
substituted for it

1.8 ["the Developer" means                      of/ whose registered  
office is at    and its  
successors in title and assigns]

1.9 "the Development" means [    ]

1.10 "Implementation" means the carrying out of a material  
operation as defined in section 56(4) of the 1990 Act and  
"implement" and "implemented" shall be construed  
accordingly

1.11 "including" means including without limitation and 'include'  
shall be construed accordingly

1.12 "Index-Linked" means adjusted according to any increase  
occurring between    and the date of payment to  
the Council in a composite index comprised of the following  
indices of the BCIS Price Adjustment Formulae (Civil  
Engineering) 1990 Series as made available through the  
Building Cost Information Services (BCIS) of the Royal  
Institution of Chartered Surveyors weighted in the  
proportions below set out against each such index namely:-

Index 1	Labour & Supervision	25%
Index 2	Plant & Road Vehicles	25%
Index 3	Aggregates	30%
Index 9	Coated Macadam & Bitumous Products	20%

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

1.13 "the Infrastructure" means the provision of [                      ] including their design and expense

1.14 "the Maintenance Costs" means the sum of (                      ) Index Linked as calculated in respect of the cost of future maintenance of the Works

1.15 ["the Mortgagee" means the said    of/whose registered off is at    and its successors in title and assigns]

1.16 "the Off-Site Works" means such part of the Works (if any) as is to be executed outside the Site

1.17 "the Owner" means the said    of/ whose registered office is at    and its successors in title and assigns

1.18 "the Planning Application" means the application for planning permission for the Development numbered

ALTERNATIVE

"the Planning Permission" means planning permission  
reference number [                      ] for the Development of the  
Site

1.19 "the Site" means the land                      Oxfordshire shown  
edged black on the Site Plan

1.20 "the Site Plan" means the plan marked "Plan A" annexed to  
this Deed

1.21 "the Standard Conditions" means the Council's Standard  
Conditions for the Control of Highway Works in Conjunction  
with Development (2016 Edition) a copy of which is annexed  
to this Deed

Commented [OCC3]: 2013 Edition

1.22 "the Works" means the works specified in the Schedule

1.23 "the Works Plan" means the drawing(s) numbered [                      ]  
annexed to this Deed

1.24 Any reference to an enactment includes any amendments to  
or modifications of it and the version of it for the time being  
in force shall apply

1.25 Headings in this Deed are for convenience only and shall  
not be taken into account in its construction and  
interpretation

1.26 References to clauses sub-clauses and schedules are  
references to clauses sub-clauses and schedules in this  
Deed

1.27 Where the context so requires:-

1.27.1 the singular includes the plural and vice versa

1.27.2 the masculine includes the feminine and vice versa

1.27.3 persons includes bodies corporate associations and  
partnerships and vice versa

1.28 Where a party comprises more than one person the  
obligations and liabilities of that party shall be joint and  
several obligations and liabilities of those persons

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

1.30 Words denoting an obligation on a party to do any act  
matter or thing include an obligation to procure that it is  
done and words placing a party under a restriction include  
an obligation not to cause permit or allow infringement of  
this restriction

## 2. **Preliminary**

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

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

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

- 2.4 [The (Owner/Developer) [has] submitted the Planning Application for the Development to the district planning authority

Alternative 1

- 2.5 The district planning authority is minded to grant planning permission for the Development subject inter alia to the completion of this Deed]

Alternative 2

It is a condition of the Planning Permission that the Development shall not be [ ] before certain works (which the Council is authorised to execute) are executed for the provision of safe and convenient access to the Site from the highways in the vicinity.

Alternative 3

The Owner has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990 dated [ ] and made between [ ] that the Development shall not be implemented [as therein defined] prior to the completion of this Deed and shall not be occupied prior to the completion of the Works in accordance with the Deed

- 2.6 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.7 It has been agreed between the Owner and the Council that in lieu of the Owner paying the cost of the Off-Site Works

the Off-Site Works should be executed by the Owner in conjunction with the carrying out of the Development

2.8 This Deed (which the Council are satisfied will be of benefit to the public) is made under Sections 38 72 and 278 of the 1980 Act [Section 106 of the 1990 Act], Section 111 of the Local Government Act 1972 and all other enabling powers [and is a planning obligation for the purposes of Section 106 of the 1990 Act entered into by the Owner the Developer and the Mortgagee in respect of the Site and enforceable by the Council

2.9 [The covenants in this Deed (except that in clause 8 which shall take immediate effect) shall be conditional upon the granting of planning permission for the Development]

### 3. **Covenants**

The Owner and the Developer covenant:-

- 3.1 not to cause or permit [any planning permission obtained for the Development the Planning Permission to be implemented (save insofar as is necessary for the execution of the Works)]building forming part of the Development [to be occupied] [to open for business] before the Works have been completed]
- 3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council

- 3.3 in executing the Works to observe and perform all the obligations which fall on "the Developer" under the Standard Conditions and
- 3.4 to complete the Works not later than                      and in any event within                      from the date on which the Works started
- 3.5 not to commence the Works until the Maintenance Costs have been paid to the Council and to pay Maintenance Costs to the Council prior to commencing the Works.
- 3.6 to give the Council written notice of any disposal of an interest in the Site and of the name and address of the new owner and the date of the disposal within 14 days of such disposal
- 3.7 to pay the Contribution to the Council prior to [                      ] and not to cause or permit any planning permission obtained for the Development to be implemented **OR** any building forming part of the Development to be occupied **OR** to open for business until it has paid the Contribution to the Council
- 3.8 if any payment to be made to the Council is not paid on or before the due date for payment to pay interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc from such due date to the date of payment<sup>1</sup>

4. **Adoption as Highway**

4.1 On the issue of a Certificate of Completion for the Works the whole of the land shown [hatched black] on the Dedication Plan (subject to modification as provided in clause 4.2) shall be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of the Standard Conditions be a highway maintainable at public expense

Commented [OCC4]: 2013 edition condition 33

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

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

## 5. **Application of Monies Received**

The Council shall not apply the Contribution for any purpose other than the Infrastructure (or any alternative which achieves similar benefits) in such form and at such time as the Council shall in their discretion decide]<sup>1</sup>

## 5/6 **Act Reasonably**

Where a matter falls within a party's discretion that party shall exercise such discretion in a reasonable and expeditious manner and shall give any requisite notice of that decision and any other



notice provided for by this Deed (including the Standard Conditions) without undue delay

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

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

7/8 **Costs**

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

8 **Third Party Rights**

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

9 **Notice**

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

10 **No Waiver**

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

11 **No Fetter**

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

12 **VAT**

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

13 **Jurisdiction**

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

14 **Delivery**

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

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

## **SCHEDULE**

### **The Works**

(1) **Principal Works**

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

(2) **Preparatory and Ancillary Works**

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

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas

- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and safety barriers
- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

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

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

[STANDARD CONDITIONS]



THE COMMON SEAL of )  
was affixed to this Deed in the )  
presence of:- )

Director

Secretary

THE COMMON SEAL of )  
was affixed to this Deed in the )  
presence of:- )

Director

Secretary



SIGNED AS A DEED by the said )

)

THE COMMON SEAL of THE )

OXFORDSHIRE COUNTY COUNCIL )

was affixed to this Deed )

in the presence of:- )

Director of Law &  
Governance/  
Designated Officer

# OXFORDSHIRE COUNTY COUNCIL

## STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

### CONTENTS

#### **General**

1. Interpretation
2. Relationship with Agreement
3. Communications with the Council
4. Approvals and Certificates etc
5. Council to act in Default or Emergency
6. Indemnity
7. Health and Safety
8. Payments

#### **Preliminaries**

9. Submissions to the Council
10. Undertakers' Apparatus
11. Authorisations
12. Bond
13. Monitoring and Other Costs
14. Insurance
15. Approval of Contractors
16. Pre-Conditions to Letting Works Contract

#### **Implementation of Works**

17. Commencement of Works
18. Pre-Conditions to Commencement of Works
19. General Conduct of Works
20. Inspection of Site and Materials
21. Errors and Defects
22. Suspension of Work
23. Variations and Additions
24. Prevention of Noise, Disturbance etc
25. Protection of Highway

#### **Completion and Consequential Matters**

26. Safeguarding of Completed Work
27. Completion of Works
28. Pre Completion – Clearance of Site and Stage 3 Road Safety Audit
29. Health and Safety File
30. Completion Certificate
31. Dedication as Highway
32. Easements
33. Noise Insulation
34. Remedying of Defects and Outstanding Works
35. Stage 4 Road Safety Audit
36. Release of Bond

Nick Graham  
Director of Law & Governance and Monitoring  
Officer  
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New Road  
Oxford OX1 1ND

Director of Planning & Place  
County Hall  
New Road  
Oxford OX1 1ND

2016 Edition

## OXFORDSHIRE COUNTY COUNCIL

### STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

#### GENERAL

#### 1 INTERPRETATION

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 29.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.
- 1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.

1.14 References to the Construction (Design and Management) Regulations are to the Construction (Design and Management) Regulations 2015 as varied or replaced from time to time.

1.15 Any reference to any enactment includes any amendments to or modification of it and the version of it for the time being in force shall apply.

## **2 RELATIONSHIP WITH AGREEMENT**

These Conditions shall be construed together with and subject to the Agreement and in the event of any inconsistency between the Conditions and the Agreement the latter shall prevail.

## **3 COMMUNICATIONS WITH THE COUNCIL**

Any notice or other communication required by these Conditions to be given by the Developer to the Council shall be given in writing to the Council's Director for Environment & Economy at his main office at County Hall, New Road, Oxford OX1 1ND or to such other person and/or at such other place as he may identify in writing to the Developer.

## **4 APPROVALS AND CERTIFICATES**

4.1 No approval consent authorisation or payment as specified in Condition 4.3 shall create any contractual relationship between the Developer and the Council beyond that contained in the Agreement or operate in any way as a warranty or otherwise imply that the subject matter of such approval consent authorisation or payment is fit for its intended purpose nor shall it relieve the Developer or any professional adviser or contractor engaged in connection with the Works from their respective obligations to use all proper skill and care in respect of the Works.

4.2 The Council will not be liable for any loss damage or injury which the Developer may sustain arising from action taken in consequence of such approval consent authorisation or payment.

4.3 The matters referred to in Condition 4.1 are:

4.3.1 any approval or consent given by the Council in respect of the discharge by the Developer of its obligations under these Conditions; or any technical approval or consent issued by the Council in respect of the Works.

4.3.2 any authorisation given or implied by or under these Conditions in respect of anything done or to be done by the Developer on or in relation to any highway; or any payment made by the Developer to the Council under these Conditions.

## **5 COUNCIL TO ACT IN DEFAULT OR EMERGENCY**

5.1 In the event that either of the following circumstances occur:-

- 5.1.1 if the Developer shall be materially in default in respect of any of the provisions of the Agreement including these Conditions requiring work to be done or not done, or to be done in a particular manner or by a particular time and if such default continues after the Council have given to the Developer not less than 21 days' written notice of the steps they require to be taken to remedy such default; or
- 5.1.2 if it shall appear to the Council at any time during the course of execution of the Works that danger to persons or prejudice to the structure or stability of the public highway or of adjoining land exists or is imminent, and that it is not reasonably practicable to cause the Developer to take the necessary remedial steps forthwith;

the Council may take such steps themselves to the exclusion of the Developer and charge the expenses incurred (including their reasonable administrative costs) against the Developer.

- 5.2 Such expenses will be a debt due to the Council and recoverable by them by action or otherwise and for the avoidance of doubt the Council may recover such expenses under the Bond where the Council has taken such steps because the Developer is in default as provided in Condition 5.1.1 or where the Council has taken such steps in an emergency further to Condition 5.1.2 and in the latter case the Developer has failed to discharge the Council's expenses.

## **6 INDEMNITY**

The Developer shall indemnify the Council and keep them indemnified against;

- 6.1 all actions, liabilities, claims, costs and proceedings which may arise from the execution and completion of the Works (except insofar as may arise from the negligence or default of the Council) and from anything done or not done by the Developer or by its employees or contractors in connection with the Works;
- 6.2 all actions, liabilities, claims, costs and proceedings arising in connection with or incidental to or in consequence of the lawful use of the highway following upon the carrying out or completion of the Works under the Land Compensation Act 1973 or under regulations made pursuant to Section 20 of the Land Compensation Act 1973 (insulation against noise) and any grants made by the Council under such regulations in accordance with its established policy. The Council may by advertisement invite claims under the Land Compensation Act 1973 and under regulations made pursuant to Section 20 of that Act.

7 **HEALTH AND SAFETY**

The Developer shall act as the only client in respect of the Works for the purposes of The Construction (Design and Management) Regulations.

8 **PAYMENTS**

Where the Council seeks any payment further to these Conditions then save where there is express provision as to timing for payment such payment shall be due within 28 days of written request from the Council and if payment is not made within such 28 day period (or where applicable such other period as expressly provided) then interest at 4% per annum above the base rate from time to time of Lloyds Bank PLC shall be payable from the expiration of the 28 day period until the date of payment.

**PRELIMINARIES**

9 **SUBMISSIONS TO THE COUNCIL**

The Developer shall submit to the Council the information and other matters specified in column 1 below in accordance with the timetable set out in column 2 below and the notes set out in column 3 below: -

**Highway Matters**

9.1

Information	Timetable	Notes
<b>Detailed plans</b> (which shall include a layout plan to a scale of 1:1250 or 1:2500 according to whichever is the Ordnance Survey base scale for the area), drawings and specifications of the Works (including the drainage of them) and the materials to be used to comply with the relevant standards and specifications of the Council for the time being in force, together with such structural and drainage calculations as the Council may consider necessary having regard to the nature of the Works;	No later than <b>3 months before any tender is invited</b> for the execution of the Works	There shall be paid to the Council on the submission a sum equal to 0.4% of the estimated gross cost of the Works as identified in Condition 12

## 9.2

<b>A detailed programme</b> designed to ensure the orderly and timely execution and completion of the Work with the minimum of disturbance and disruption to use of the highway and occupiers of property and to facilitate the implementation of any such measures in respect of undertaker's apparatus as may be identified pursuant to Condition 10.	No later than <b>2 weeks after the acceptance of any tender</b> for the execution of the Works	Significant programme changes to be identified not less than 2 weeks prior to the change
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## 9.3

<b>(a) Measures for the control of vehicles and plant</b> to be used in the course of execution of the Works (including vehicles engaged on the transport of materials and equipment to and from the Works) and measures for traffic regulation in order to minimise and/or alleviate damage to the highway disturbance to occupiers of property and disturbance and disruption to use of the highway (including traffic congestion) ;and (b) traffic safety measures and measures including lights, guards, fencing and warning signs in order to protect the Works and/or for the safety and convenience of the public	No later than 2 weeks before the Works are expected to commence	
---	---	--

## 9.4

<b>Safety Audit Stage 2 Report</b>	No later than <b>3 months before any tender is invited for the execution of the Works</b>	
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## 9.5

Details in accordance with Condition 15 of the <b>persons proposed to be invited to tender.</b>	No later than <b>1 month before any tender is invited</b> for the execution of the Works.	
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## Other Matters

9.6

Details of <b>the bondsman</b> proposed to be given pursuant to Condition 12, together with any bills of quantities or tenders which the Developer wishes the Council to take into account under that Condition.	No later than <b>1 month before the Works are expected to commence.</b>	
--	---	--

9.7

Details of the <b>insurances</b> required by Condition 14.	No later than <b>1 month before the Works are expected to commence.</b>	
--	---	--



## 9.8

<p>Part 1</p> <p><b>Noise survey and assessment and modelling</b> sufficient to establish whether any properties will be eligible for noise insulation according to regulation 3 or regulation 4 (as applied by the Council) of the Noise Insulation Regulations 1975 applying the requirements of the Design Manual of Roads and Bridges Volume 11 – Environmental Assessment and the Calculation of Road Traffic Noise 1988 to be undertaken by a noise expert approved by the Council.</p> <p>Part 2</p> <p>If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council:</p> <ul style="list-style-type: none"> <li>(a) a map and list of all eligible properties. <sup>1</sup></li> <li>(b) a list of all occupiers and landlords</li> <li>(c) a survey and assessment for each eligible property of the work to be carried out to comply with requirements of the Noise Insulation Regulations 1975 and the specification for that work</li> </ul>	<p>No later than <b>1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</b></p> <p>As above</p>	<p>Precise timing of survey to be agreed with the Council.</p> <p>Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p>
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## 9.9

<p><b>Condition survey</b> (comprising photographs) of land and highway adjoining and neighbouring the site of the Works together with such further areas as the Council may require.</p>	<p>No later than <b>1 month before the Works are expected to commence.</b></p>	
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## 9.10

<p>Notification of the <b>identity of the contractor</b> who has submitted a successful tender.</p>	<p>No later than <b>2 weeks after the acceptance of any tender</b> for the</p>	
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<sup>1</sup> Dwellings and other buildings used for residential purposes which will be not more than 300 metres from the edge of the carriageway of the highway after completion of the work.

In any particular case any information or matter may be submitted to the Council at such later time as the Council may consider expedient subject to the Council identifying such later time in writing.

## 10 UNDERTAKERS' APPARATUS

10.1 The Developer shall in preparing the Scheme of Works consult every undertaker within the meaning of the New Roads and Street Works Act 1991 whose apparatus or services lie in, on, under or over the site of the Works or may otherwise be affected by the Works (whether or not it is intended to connect into such services in connection with the Works), with a view to the identification and implementation of any measures considered necessary by the undertakers for the protection of, or otherwise in relation to, their apparatus or services, and shall be responsible for all dealings with such undertakers in respect of the implementation of such measures and for all costs payable to the undertakers in that behalf.

10.2 For the avoidance of doubt the Developer shall comply with statutory requirements relating to street works (as defined in the 1991 Act).

## 11 AUTHORISATIONS

11.1 Authorisations signifies all rights, approvals and consents and any other requisite action to enable the Works to be properly and lawfully executed and completed (in accordance with the Agreement including these Conditions) and the subsequent implementation and functioning of the Works including (but not so as to provide an exhaustive list of examples)<sup>2</sup>:-

11.1.1 planning permission for the Works;

11.1.2 authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and / or be implemented and function;

11.1.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function<sup>3</sup>;

11.1.4 street works licence further to the New Roads and Street Works Act 1991;

11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in

<sup>2</sup> Examples may also include noise consent from district council

<sup>3</sup> This relates to for example Section 127HA.

the Council's opinion to enable the Works to proceed and/or to be implemented and function<sup>4</sup>; and

- 11.1.6 any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.
- 11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.
- 11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.
- 11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.
- 11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.
- 11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

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<sup>4</sup> This is directed at securing any requisite TROs which are integral to the Works e.g. bus lanes and also there may be various works such as traffic calming and signals where consultation is mandatory.

## 12 BOND

12.1 The Developer and a bondsman satisfactory to the Council shall enter into a Bond in such form as shall have been approved by the Council guaranteeing the execution and completion of the Works in accordance with the Agreement including these Conditions.

12.2 The amount of the Bond shall be

12.2.1. the gross cost of the Works (including any costs payable to undertakers pursuant to Condition 10) as then (being one month before the Works are proposed to be commenced) estimated by the Council and such estimate may take into account any bills of quantities prepared or tenders received by the Developer in respect of the Works and submitted by it to the Council; and

12.2.2. adjusted to take account of inflation for the duration of the Works (and subsequently) as reasonably estimated by the Council; and

12.2.3. adjusted to reflect the full costs that may be incurred by the Council as provided in Condition 5.1 (Council to act in default or emergency).

## 13 MONITORING AND OTHER COSTS

13.1 The Developer shall pay to the Council in respect of the costs to be incurred by the Council in monitoring the execution and completion of the Works (and administration of the Agreement) a sum equal to 9% of the amount of the Bond, subject to a minimum payment of £1,500

Note: The provisions of Condition 27.2 also apply

13.2 The Developer shall pay to the Council legal costs reasonably incurred in connection with the drafting and completion of the Bond.

## 14 INSURANCE

The Developer shall take out and maintain, until two years after the date on which the Council issues the Certificate of Completion (or if later the date on which all defects and outstanding works have been made good and completed as mentioned in Condition 33), such insurances satisfactory to the Council in the sum of £10million (or such higher sum as the Council may require) as may be appropriate to cover the liability of the Developer and of its employees and contractors in respect of any injury or damage to persons or property which may arise from or in connection with the execution and completion of the Works.

## **15 CONTRACTORS**

15.1 The Developer shall not employ any contractor or agent for the execution of the Works except such contractor or agent as shall be recognised by the Council as being of proven competence and good standing in the field of civil and electrical engineering and experienced in the type and scale of the work which is to be the subject of the contract, and for that purpose the Developer shall not invite tenders for the execution of the Works except from persons proposed to and approved in writing by the Council before any such tender is invited; The employment of a contractor or agent shall not remove or abate any obligation on the part of the Developer arising from the Agreement including these Conditions.

15.2 The Developer shall appoint a contractor to undertake the Works in compliance with the following:-

15.2.1 advertising/publication of the proposed contract for carrying out the Works sufficient to open up the market to competition and for the transparency and impartiality of the procurement procedure to be reviewed such advertising/publication to include the essential details of the contract to be awarded and of the award methodology;

15.2.2 awarding the contract for the Works further to competition applying such transparent and impartial procurement procedures and award methodology.

15.2.3 the Developer shall without cost to the Council supply such information as the Council may reasonably require to demonstrate compliance with this Condition.

## **16 PRECONDITIONS TO LETTING CONTRACT**

The Developer shall not let any contract for the execution of Works unless and until:-

16.1 The Scheme of Works has been approved by the Council; and

16.2 Safety Audit Stage 2 Report has been approved by the Council.

## **IMPLEMENTATION OF THE WORKS**

### **17 COMMENCEMENT OF WORKS**

The Developer shall agree a commencement date with the contractor appointed to execute the Works which is no less than one month from such agreement and forthwith on agreeing the commencement date the Developer shall notify the Council in writing of the agreed date to the intent that the Council is given no less than one month's notice of the commencement date provided always for the avoidance of doubt this notice is for the purpose of the Agreement only and does not constitute notice for any other function of the Council.

18 **NO WORK PENDING APPROVALS ETC**

18.1 The Works shall not be commenced before the following have occurred:

18.1.1 the Council has issued written approval of the Scheme of Works;

18.1.2 Safety Audit Stage 2 Report has been approved;

18.1.3 evidence of all Authorisations have been supplied to the Council;

18.1.4 the Bond duly executed as a deed by the Developer and the approved guarantor has been delivered to the Council;

18.1.5 the costs referred to in Condition 13 have been paid to the Council;

18.1.6 the Council has given its written approval to the insurances referred to in Condition 14;

18.1.7 the noise survey assessment and modelling in accordance with Condition 9.8 has been supplied to the Council and if appropriate the information referred to in the second part of that Condition has been supplied to the Council

18.1.8 the surveys referred to in Condition 9.9 (condition survey) has been supplied to the Council.

18.2 The Developer must have readily available at the site of the Works a copy of the insurances and approved Scheme of Works and shall retain them at the site for the duration of the Works and produce them to any representative of the Council on request.

19 **GENERAL CONDUCT**

19.1 The Developer shall execute and complete the Works in compliance with the approved Scheme of Works, in a sound and workmanlike manner with proper materials and in accordance with good engineering practice and in compliance with all statutory requirements and the provisions of the Agreement including these Conditions.

19.2 Without prejudice to the generality of Condition 6.2 and Condition 19.1 the Developer shall provide the Council with such assistance, information and documentation as the Council shall require to comply with any obligations under the Noise Insulation Regulations 1975 including assistance in responding to any claims made under Regulation 13 of those Regulations.



**20 MONITORING OF SITE AND MATERIALS**

20.1 The Developer shall at all reasonable times give to the Council free access to every part of the Works and shall permit them to monitor them and inspect all materials used or intended for use in the Works.

20.2 Where the Council require any such materials to be tested the Developer shall reimburse the Council the reasonable cost of such testing.

**21 ERRORS AND DEFECTS**

If in the course of execution of the Works it shall appear to the Council:

21.1 that any error has arisen in the position, levels, dimensions or alignment of the Works; or

21.2 that any work carried out or materials used for the purpose of the Works are defective to such extent as to prejudice in any respect the structure, stability, durability or subsequent functioning of the Works; or

21.3 that any damage has occurred in respect of the Works; or

21.4 that in any other respect the Works are not in accordance with the Scheme of Works;

and the Council notify the Developer in writing of this then the Developer shall, at its own expense and to the satisfaction of the Council, forthwith take such remedial steps as the Council shall specify in the notice. For the avoidance of doubt this Condition is without prejudice to Condition 19.

**22 SUSPENSION OF WORK**

If in the opinion of the Council some part of the Works ought not properly to be commenced or continued by reason either of:-

22.1 the dependence of that part on the completion of remedial steps specified in a notice given under Condition 21; or

22.2 adverse weather conditions such as to prejudice the structure or stability of that part if executed under those conditions;

the Developer shall on the written order of the Council suspend the progress of that part of the Works for such time or times and in such manner as the Council may consider necessary, and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Council.

## 23 VARIATIONS AND ADDITIONS

In the event that any of the following circumstances arising in the course of execution of the Works,:-

- 23.1 if discovery is made of adverse ground conditions or artificial obstruction or any other unforeseen factor which in the opinion of the Council necessitate a modification of the Works to avoid or compensate for such conditions, obstruction or other factor in the interests of the satisfactory completion and subsequent functioning of the Works; or
- 23.2 if it shall appear to the Council requisite, in accordance with good engineering practice and to ensure satisfactory completion and subsequent functioning of the Works that any work or materials should be added, or that any such work or materials proposed by the Developer to be done or used should be omitted or changed; or
- 23.3 if it shall appear to the Council expedient that any obligation arising from the approved Scheme of Works should be deferred by reason of delay incurred by the Developer arising from some cause not within the Developer's control; or
- 23.4 otherwise if in a particular case the Developer and the Council so agree;

the Scheme of Works shall be varied and/or augmented in manner notified in writing by the Council to the Developer, and in the application of these Conditions any reference to the Scheme of Works shall be construed as a reference to the Scheme of Works as so varied and/or augmented.

## 24 PREVENTION OF NOISE, DISTURBANCE ETC

- 24.1 All work shall be carried out without unreasonable noise and disturbance and in such manner as not to interfere unnecessarily or unreasonably with the use and enjoyment of property adjoining or near the Works by their owners and occupiers.
- 24.2 Without prejudice to the generality of Condition 24.1, no work shall be carried on between the hours of 8.00pm and 7.00am the following day or on any Sunday or public holiday except insofar as:-
  - 24.2.1 any operations are necessary to avoid disruption to or for the control of traffic on any highway; or
  - 24.2.2 any work is unavoidable or absolutely necessary for the safety of life or property or the safety of the Works; or
  - 24.2.3 the Council have in writing otherwise agreed.



## **25 PROTECTION OF HIGHWAY**

- 25.1 Insofar as the Works affect in any respect the existing highway such part shall be executed with the minimum of disturbance to that highway and traffic using that highway consistent with the work in hand.
- 25.2 In the event of it appearing to the Council at any time that such disturbance has occurred or is likely to occur to such extent as to prejudice the structure of the highway or the safety of users the Developer shall forthwith take such remedial steps as the Council may require.
- 25.3 Prior to the commencement of the Works the Developer will provide suitable vehicle and wheel cleaning apparatus and ensure that such apparatus is maintained in good and useable condition and used by all vehicles immediately before leaving the site of the Works to prevent mud or other materials being deposited on the adjoining existing highway.
- 25.4 In the event of Developer receiving any complaint it will promptly notify the Council.

## **26 SAFEGUARDING OF COMPLETED WORK**

The Developer shall until the Council have issued the Certificate of Completion take all steps necessary to protect and maintain those parts of the Works which have been executed, so that upon substantial completion of the whole of the Works every part of the Works is in a sound and workmanlike condition and free from any damage and any material wear and tear.

## **COMPLETION AND CONSEQUENTIAL MATTERS**

### **27 COMPLETION OF WORKS**

- 27.1 The Works shall be executed and completed within such period as the Agreement may define (whether by duration or by reference to a specified date or both), provided that in the event of delay to the work arising from some cause not within the Developer's control the Developer shall be entitled to a reasonable extension of such period.
- 27.2 Without prejudice to any right or remedy of the Council, the Council may at any time by notice to the Owner permit an extension of time as the Council shall in its discretion determine and the Developer shall pay within 14 days of demand such additional monitoring fees (in addition to that provided for in Condition 13 ) as is necessary to reimburse to the Council the additional cost incurred in monitoring the Works by reason of the grant of such extension of time

**28 PRE COMPLETION - CLEARANCE OF SITE AND STAGE 3 SAFETY AUDIT**

28.1 On substantial completion of the Works the Developer shall clear away and remove from the site of the Works all plant, surplus material, rubbish and temporary works and items of every kind, and shall leave the whole of the site of the Works clean and in a workmanlike condition to the satisfaction of the Council.

28.2 On substantial completion of the Works (and clearance of the site of the Works) the Developer shall lodge a stage 3 Safety Audit report together with the 'Designer's response' with the Council and the Developer shall execute and complete all works as advised by the Council arising from the Safety Audit recommendations.

**29. HEALTH AND SAFETY**

29.1 The Developer shall furnish to the Council the Health and Safety File prepared in accordance with Interim Advice Note 105/08 - Implementation of Construction (Design and Management) 2007 issued by the Highways Agency (now Highways England) as revised and/or replaced from time to time. The Health and Safety File shall include detailed plans and drawings showing the Works as the same have actually been executed and completed and the Developer shall at his own cost ensure that the Council shall not be prevented by copyright or otherwise from reproducing such plans and drawings or part of them as the Council may require for purposes relating only to the Works and the highway and the Developer shall furnish satisfactory evidence to the Council that this has been done. The plans and drawings furnished under this Condition shall be no less detailed than the plans and drawings submitted under Condition 9.1 unless the Council shall in writing otherwise agree.

**30. COMPLETION CERTIFICATE**

Subject always to prior compliance with the pre completion requirements (Condition 28) and with Condition 29 the Council shall issue the Certificate of Completion forthwith if the Council is satisfied that the Works (save for such minor outstanding works as the Council shall agree) have been completed in accordance with the Agreement including these Conditions

**31. DEDICATION AS HIGHWAY**

Upon the issue of the Certificate of Completion unless the Agreement provides otherwise the whole of the land comprised in the Works (so far as not already forming part of the public highway and excluding such part as the Developer and the Council may in writing agree) shall be deemed to have been dedicated as public highway and shall thereafter subject always to compliance with Conditions 34 & 35 be a highway maintainable at public expense.

### **32. EASEMENTS**

32.1 The Developer shall forthwith following the issue of the Certificate of Completion:-

32.1.1 transfer to the Council all those rights and easements (so far as the same do not at that time already subsist in favour of the Council) referred to in Condition 11.1.6; and

32.1.2 grant to the Council any easement which in the Council's opinion is necessary to ensure the permanent and satisfactory drainage or lighting of the Works in respect of any land which is retained by the Developer and such easement shall be in a form previously approved by the Council and the Developer will procure that any person with an interest in the relevant land joins in the deed of easement for the purpose of consenting to and confirming such easement.

32.2 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising from any such transfer or grant of easement.

### **33. NOISE INSULATION**

The Developer shall within 1 month after the opening of the Works to public traffic supply to the Council an update of the information required pursuant to part 2 of Condition 9.8 (noise survey assessment and modelling- map lists and works) which relates to all eligible properties at the date of the opening of the Works to public traffic.

### **34. REMEDYING OF DEFECTS AND OUTSTANDING WORKS**

34.1 If at any time during the period of two years following the date on which the Council issue the Certificate of Completion:-

34.1.1 any defect in the Works becomes manifest (not being a defect arising solely from normal use by the public as a highway or from accidental or wilful damage by any third party); or

34.1.2 the Developer shall fail to complete any of the outstanding works mentioned in Condition 30 (minor outstanding Works on issue of Certificate of Completion) and the Council notify the Developer in writing of this

then the Developer shall at his own expense cause such defect to be made good or outstanding works to be completed (as the case may be) to the satisfaction of the Council.

34.2 Forthwith on receipt of any notification from the Council further to Condition 34.1 the Developer will agree with the Council the timing of the carrying out of such remedial or outstanding works and unless otherwise agreed shall secure their completion within one

month of receipt of such notification (except in the event of delay arising from some cause not within the Developer's control when the Developer shall be entitled to a reasonable extension of time).

### **35. STAGE 4 ROAD SAFETY AUDIT**

35.1 The Council may require the Developer to carry out a Safety Audit Stage 4 at any time within 36 months from the opening of the Works and to lodge the report with the Council together with the "Designer's response" within 2 months and the Council shall notify the Developer of all works required to be undertaken arising from the Safety Audit recommendations

35.2 In the event that notification of works is given by the Council further to Condition 35.1 prior to the full release of the Bond the Developer shall execute and complete all the works as advised by the Council. The Developer will agree with the Council the time that he will be carrying out such works and unless otherwise agreed shall secure their completion within 1 month of receipt of such notification (except in the event of delay arising for some cause not within the Developers control, when the Developer shall be entitled to a reasonable extension of time).

35.3 In the event that notification of works is given by the Council further to Condition 35.1 subsequent to the full release of the Bond the Developer shall pay to the Council within 28 days of written request from the Council the costs incurred or to be incurred by the Council in carrying out such works.

### **36. RELEASE OF BOND**

36.1 Upon the issue of the Certificate of Completion the Bond shall be deemed to be released by eighty per cent (80%) of its original value;

36.2 The Bond shall be deemed to be fully discharged at the latest of the following:

36.2.1 the date two years after the date on which the Council issue the Certificate of Completion; and

36.2.2 the date on which all defects and outstanding works have been made good and completed as referred to in Condition 34; and

36.2.3 the date on which all works have been completed as referred to in Condition 35.2

36.2.4 the Council have recovered their full expenses in all cases where Condition 5 applies (Council may act in default or emergency);

36.2.5 the date on which the Council have received the transfers or grants further to Condition 32;

36.3 Conditions 36.1 and 36.2 are without prejudice to the Council's absolute discretion from time to time upon application of the

Developer to release the Bond to an extent commensurate with the proportion of the Works that have been executed and completed at such time.

IN WITNESS whereof the parties hereto have executed this instrument as a DEED the day and year first before written

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

County Solicitor/Designated Officer



1961/19

EXECUTED AS A DEED by  
*Motion*  
BICESTER HERITAGE LIMITED  
in the presence of:

Director:

*Bicester Heritage  
Bungay Rd  
Bicester  
Oxon  
OX6 5HJ*

The CORPORATE SEAL of THE  
SECRETARY OF STATE FOR DEFENCE  
hereunto affixed is authenticated by:

Authorised by the Secretary of State

*AK Sikander B2*



DEFENCE INFRASTRUCTURE ORGANISATION  
KINGSTON ROAD  
SUTTON COLDFIELD  
WEST MIDLANDS  
B75 7AL

