

DATED.....*25th September*.....2019

CHERWELL DISTRICT COUNCIL

-and-

OXFORDSHIRE COUNTY COUNCIL

-and-

KEVIN JOHN BISHOP & EMILY BISHOP

-and-

LAND & PARTNERS LIMITED

PLANNING OBLIGATION BY DEED OF AGREEMENT
under Section 106 of the Town and Country Planning Act 1990
relating to land west of Hook Norton Road, Sibford Ferris, Banbury

18/01894/OUT

APP/C3105/W/19/3229631

IKEN:013442

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THIS AGREEMENT is dated

Twenty-fifth day of September 2019

PARTIES

1. **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA ("District Council")
2. **OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall, New Road, Oxford OX1 1ND ("County Council")
3. **KEVIN JOHN BISHOP & EMILY BISHOP** of College House, Hempton, Banbury, OX15 0QS ("the Owner ")
4. **LAND & PARTNERS LIMITED** registered in England and Wales with company number 06468597 whose registered office is at 8 High Bois Lane, Amersham, Buckinghamshire HP6 6DG ("the Promoter")

INTRODUCTION

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the county planning authority for the area in which the Site is situated.
- (C) For the purposes of the 1980 Act and the Road Traffic Regulation Act 1984 and 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
- (D) The Owner is the freehold owner of the part of the Site that is registered at the Land Registry under title number ON196300 free from encumbrances.
- (E) The Application was submitted to the District Council by the Promoter with the full knowledge and consent of the Owner and was subsequently refused by the District Council on 30th April 2019.
- (F) The Owner has appealed against the District Council's refusal of the Application and the Appeal has been validated by the Planning Inspectorate and given a starting date of 23rd July 2019.
- (G) The Owner has entered into this Deed in order to secure the planning obligations contained herein in the event that the Appeal is allowed and the Planning Permission is granted by the Secretary of State.

NOW THIS DEED WITNESSES as follows:

OPERATIVE PART

1. DEFINITIONS

1.1 For the purposes of this Deed the following expressions shall have the following meanings:

Expression	Meaning
“Act”	the Town and Country Planning Act 1990 (as amended);
“Appeal”	the appeal lodged pursuant to Section 78(1) of the Act in respect of the refusal by the District Council of the Application and given the Planning Inspectorate reference APP/C3105/W/19/3229631;
“Application”	the application for outline planning permission submitted to the District Council and validated on 11 th December 2018 for the Development and allocated reference number 18/01894/OUT
“Commencement of the Development”	<p>occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none">• site clearance ;• demolition work;• archaeological investigations;• investigations for the purpose of assessing ground conditions;• remedial work in respect of any contamination or other adverse ground conditions;• erection of any temporary means of enclosure;• the temporary display of site notices or advertisements; <p>and “Commence” “Commenced” and “Commencing” or any other derivation of this term shall be construed accordingly;</p>
“Construction”	the construction of any building forming part of the Development including footings or foundations and “Construct” and “Constructed” shall be construed accordingly;
“Development”	the development of the Site with the erection of up to 25 dwellings comprising 1, 2, 3 and 4 bedroomed dwellings together with access, garaging and landscaping as set out in the Application;
“Due Date”	the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs

Expression	Meaning
“Dwelling”	a building (including a house flat or maisonette) Constructed or proposed to be Constructed on the Site as part of the Development or part of such building designed for residential Occupation by a single household pursuant to the Planning Permission and including Affordable Housing (as defined in the Second Schedule);
“Interest”	interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time and compounded annually;
“Market Dwelling”	means a Dwelling forming part of the Development which is general market housing for sale or rent on the open market and which is not Affordable Housing and “Market Dwellings” shall be construed accordingly;
“Occupation”	occupation 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 “Occupied” and “Occupy” shall be construed accordingly;
“Plan”	the plan attached to this Deed at the Eleventh Schedule;
“Planning Permission”	the outline planning permission subject to conditions if granted pursuant to the Application
“Qualifying Application”	an application for approval of Reserved Matters or any separate application(s) for full planning permission for the Development or any part of the Development or any application under Section 73 of the Act relating to the Planning Permission or any application for approval of Reserved Matters relating to such permission further to an application under Section 73 of the Act or an application for non-material amendments pursuant to Section 96A of the 1990 Act.;
“Qualifying Permissions”	approval of Reserved Matters or full planning permission as the case may be issued to a Qualifying Application;
“Reserved Matters”	details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval;
“Site”	the land against which this Deed may be enforced as shown edged red on the Plan; and
“Working Days”	means Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27 th and 31 st December in any Calendar Year.

2. CONSTRUCTION OF THIS DEED

- 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 interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 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 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions and duly appointed employee or agent of the District Council or County Council or such successor.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section, 111 of the Local Government Act 1972, Section 278 of the Highways Act 1980, Section 1 of the Localism Act 2011 and all other enabling powers.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council, and County Council in the case of covenants made with them, as local planning authorities against the Owner.

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of the Development, save for the provisions of Clauses 8.1.1 and 8.1.2, 11, 15 and 16 (legal costs, monitoring and administering, notifications, jurisdiction and delivery) and paragraphs 2.1 and 3.1 of the Third Schedule which shall take immediate effect and paragraph 2 of the Fifth Schedule and paragraph 3 of Sixth Schedule which shall take effect upon the grant of the Planning Permission.

- 4.2 For the avoidance of doubt this Deed is entered into on the understanding that in the event of the Planning Permission being quashed as a result of any legal proceedings or pursuant to Section 97 of the Act or expires before the Commencement of the Development or for any other reason then this Deed shall absolutely determine and shall become null and void save that the Owner will be required to fulfil any obligation(s) in respect of any Construction which has taken place pursuant to the Development (or part thereof) carried out to the date the Planning Permission is quashed unless all such Construction is required to be undone.

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the District Council as set out in the Second Schedule the Third Schedule and the Fourth Schedule.
- 5.2 The Owner covenants with the County Council as set out in the Fifth Schedule, and the Sixth Schedule.

6. THE DISTRICT COUNCIL'S COVENANTS

- 6.1 The District Council covenants with the Owner as set out in the Seventh Schedule

7. THE COUNTY COUNCIL'S COVENANTS

- 7.1 The County Council covenants with the Owner as set out in the Eighth Schedule.

8. MISCELLANEOUS

8.1 The Owner shall

8.1.1 pay to the District Council on completion of this Deed the legal costs reasonably and properly incurred of the District Council incurred in the negotiation, preparation and execution of this Deed

8.1.2 pay to the County Council on completion of this Deed the legal costs reasonably and properly incurred of the County Council incurred in the negotiation, preparation and execution of this Deed

8.1.3 reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council

8.1.4 pay to the County Council on the date of granting of Planning Permission the sum of Two hundred and fifty pounds (£250) to the County Council towards the costs relating to the administration of this Deed

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

8.3 This Deed shall be registrable as a local land charge by the District Council.

8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and in the case of the District Council or the County Council, any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:

8.4.1 the District Council by the Assistant Director: Planning and Economy; and

8.4.2 the County Council by the Director for Planning and Place,

8.5 Following the Owner notifying the District Council and the County Council and the District Council and the County Council being satisfied of the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

8.6 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 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development.

8.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with

8.7.1 In the case of financial obligations its entire interest in the Site, or

8.7.2 in the case of other obligations the part of the Site to which that obligation relates

but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.8 This Deed shall not be enforceable against:

8.8.1 owner-occupiers, lessees or tenants of any Dwelling including their mortgagees, chargees or any administrator, receiver, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 or any person appointed under any security documentation by such mortgagee or chargee (or any person deriving title through such persons) and any successors in title to such persons PROVIDED however that it is intended that the restrictions on Occupation related to such payments shall be enforceable against such persons; or

8.8.2 any Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking or any person or body with the benefit only of an easement;

8.9 Nothing contained or implied 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 and/or a Qualifying Permission granted (whether or not on appeal) after the date of this Deed.

9. WAIVER

9.1 No waiver (whether expressed or implied) by the District Council or the County 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 District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. NO FETTER

10.1 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

11. NOTIFICATIONS

11.1 The Owner agrees with the District Council and the County Council:

11.1.1 to give the District Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Site occurring before all of 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 PROVIDED ALWAYS THAT this clause 11.1.1 shall not apply in the event of the transfer of an individual Dwelling;

11.1.2 to notify the District Council and the County Council in writing

(a) no later than 5 Working Days prior to Commencement of the Development of the anticipated date of Commencement of the Development and not to Commence until 5 Working Days have passed since service thereof; and

(b) within 10 Working Days of the date of the Commencement of the Development the date on which such Commencement of Development occurred; and

11.1.3 to notify the District Council and the County Council in writing no later than within 10 Working Days prior to the anticipated date of the following events and after the event to specify in a further notification the date on which it occurred:

(a) first Occupation of the Development;

(b) Occupation of 30% (30 per cent) of the Dwellings; and

(c) Occupation of 50% (50 per cent) of the Dwellings and not to Occupy or cause or permit Occupation of such Dwellings until written notification has been sent to the District Council and the County Council.

12. INTEREST

- 12.1 If any payment due under this Deed is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.
- 12.2 Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the Due Date

13. VAT

- 13.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the Owner shall pay to the District Council and separately to the County Council any value added tax properly payable on any sums paid to the District Council and/or the County Council or works undertaken under this Deed upon presentation of any appropriate value added tax invoice addressed to the Owner.

14. NOTICES

- 14.1 Any notice or notification to be given to the District Council under this Deed shall be sent to the Assistant Director for Planning and Development of the District Council at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall direct from time to time.
- 14.2 Any notice or notification to be given to the County Council under this Deed shall be sent to the Director for Planning and Place of the County Council (Reference 18/01894/OUT) of the County Council at Speedwell Housing, Speedwell Street, Oxford, OX1 1NE or to such other person at such other address as the County Council shall direct from time to time.
- 14.3 Any notice to be given to
- 14.3.1 the Owner shall be sent to the Owner at the address of the Owner at the head of this Deed;
- 14.3.2 the Promoter shall be sent to the Promoter at the address of the Promoter at the head of this Deed
- or to such other person at such address as the relevant party shall notify to the District Council and separately to the County Council from time to time.
- 14.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 14.4.1 if delivered by hand, at the time of delivery;

14.4.2 if sent by post, on the second Working Day after posting; or

14.4.3 if sent by recorded delivery, at the time delivery was signed for.

14.5 If a notice, demand or any other communication is served after 16:00 on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

14.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

14.7 Any notice or notification to be given pursuant to this Deed shall be in writing and shall, unless otherwise agreed, be delivered by hand or sent by post.

15. JURISDICTION

15.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales

16. DELIVERY

16.1 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.

17. DATA PROTECTION

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

17.1 Between the District Council and the County Council so that each may revise its records including public records accordingly and/or monitor and audit compliance with the obligations in this Deed

17.2 to 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;

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

18. PROMOTER CONSENT

18.1 The Promoter consents to enter into this Deed Provided That the obligations contained within this Deed shall not be binding or enforceable against the Promoter until such time as it acquires a legal interest in the Site

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



FIRST SCHEDULE

DETAILS OF THE OWNER'S TITLE AND DESCRIPTION OF THE SITE

All that freehold land on the west side of Hook Norton Road, Sibford Ferris, Banbury which is part of the land registered at the Land Registry under title number ON196300.

SECOND SCHEDULE AFFORDABLE HOUSING

1. DEFINITIONS

1.1 In this Schedule the following additional definitions shall apply (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):-

Expression	Meaning
"Affordable Housing"	Social Rented, Affordable Rented and Intermediate Housing, provided to eligible households whose needs are not met by the market and should meet the needs of eligible households including at a cost low enough for them to afford determined with regard to local incomes and local house prices and include provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative Affordable Housing provision by the District Council and which meets the criteria contained in Annex 2 of the National Planning Policy Framework dated February 2019, or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede it
"Affordable Housing Dwellings"	Affordable Housing units comprised in the Development and provided in accordance with the agreed Affordable Housing Tenure Mix that shall together comprise 35% (thirty five per cent) of the total number of Dwellings on the Development (such 35% shall be rounded up to the nearest whole Dwelling)
"Affordable Housing Scheme"	a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out: <ul style="list-style-type: none">• details of the numbers locations and external appearance of the Affordable Housing Dwellings; including the timing of construction of the Affordable Housing Dwellings;

Expression

Meaning

- details of the types and size of the Affordable Housing Dwellings provided that the Affordable Housing Dwellings shall be in a range of unit types and sizes having regard to the mix of the Market Dwellings;
- confirmation of tenures of the Affordable Housing Dwellings to which the scheme relates which shall reflect the Affordable Housing Tenure Mix unless otherwise agreed in writing with the District Council;
- confirmation of the Affordable Housing Standards arrangements for the Affordable Housing Dwellings to which the scheme relates
- occupancy criteria for determining the identity of occupiers of the Affordable Housing Dwellings and the means by which such occupancy shall be enforced;
- proposals to secure transfer of the Affordable Housing Dwellings to a Registered Provider at a price agreed between the Owner and the Registered Provider. The transfer shall contain a declaration that the Affordable Housing Dwellings are transferred subject to and with the benefit of this Deed; and
- the identity of any prospective Registered Provider (if known)

"Affordable Housing Land"

that part or parts of the Site or any building or any buildings on the Site upon or within which there will be provided Affordable Housing Dwellings together with full rights of access to each part of the Affordable Housing Land from the Site and the provision of all necessary Infrastructure and connections thereto and the necessary installations thereof for the Affordable Housing Dwellings to be Constructed on the Affordable Housing Land

Expression

Meaning

"Affordable Housing Standards"

the design criteria with which the Affordable Housing Dwellings shall comply namely:

- shall be designed to the nationally described space standards, housing technical standards;
- in relation to the Affordable Rented Housing at least 50% to comply with Building Regulations 2010 Part M4(2) Category 2: Accessible and Adaptable Dwellings and;
- shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Dwelling
- in relationship to the Shared Ownership Housing only shall be built to a standard equivalent to the Market Dwellings to be agreed with the District Council

"Affordable Housing Tenure Mix"

the mix of tenure types of the Affordable Housing Dwellings whereby no less than 70% (seventy per cent) shall be Affordable Rented Housing and the remaining 30% (thirty per cent) shall be Intermediate Housing or such alternative mix of tenure as at any time may be submitted to the District Council for approval in writing and which shall be provided as follows based on 25 Dwellings (unless otherwise agreed in writing with the District Council):

Affordable Rent:

- 3 x 2 bed 4 person house
- 2 x 1 bed 2 person house
- 1 x 3 bed 5 person house

Shared Ownership:

- 1 x 3 bed 5 person house
- 2 x 2 bed 4 person house

Expression	Meaning
"Affordable Rented Housing"	rented housing provided by the Registered Provider to Qualifying Persons which shall be in line with the Regulator's Rent Standard Guidance for Affordable Rent as described in Annex 2 of the National Planning Policy Framework dated February 2019;
"Allocate"	any procedure whereby there are conferred or transferred rights of residential occupation in respect of an Affordable Housing Dwelling which could for the avoidance of doubt include the first occasion on which an Affordable Housing Dwelling is occupied and any subsequent changes in the occupier and 'allocating' 'allocated' and 'allocations' should be construed accordingly
"Allocations Scheme"	the District Council's allocation policy from time to time which determines the District Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 166A of the Housing Act 1996 (and any amendment, re-enactment or successor provision)
"Chargee"	any mortgagee or chargee of the Registered Provider of the Affordable Housing Land or any part of it or a chargee or mortgagee of an individual Affordable Housing Dwelling as the case may be and includes any receiver or manager or administrator appointed pursuant to the Law of Property Act 1925 or any administrator appointed by such mortgagee or chargee including a Housing Administrator under the provisions of the Housing and Planning Act 2016 or any person appointed under any security documentation to enable such mortgagee or charge to realise its security
"Completed"	constructed and fitted out ready for Occupation in accordance with the standards approved in the Affordable Housing Scheme;

Expression	Meaning
"the Regulator"	Homes and Communities Agency constituted pursuant to the Housing and Regeneration Act 2008 and any successor or successors for the time being and any similar future authority carrying on substantially the same grant and regulatory making functions
"Help to Buy Agent"	that organisation which is appointed by the Regulator to assess eligibility for shared ownership and market low cost home ownership products
"Infrastructure"	<p data-bbox="667 696 1382 741">in relation to each part of the Affordable Housing Land:</p> <ul data-bbox="667 748 1485 1576" style="list-style-type: none"> <li data-bbox="667 748 1477 792">• roads and footpaths to serve the Affordable Housing Land; <li data-bbox="667 831 1485 913">• temporary services for contractors and a haul road for the use of contractors; <li data-bbox="667 965 1477 1099">• adequate inverts for the foul and surface water drains sufficient to serve the drainage requirements of the Affordable Housing Land; <li data-bbox="667 1151 1477 1234">• pipes sewers and channels sufficient to serve the Affordable Housing Land; <li data-bbox="667 1285 1477 1576">• spur connections to agreed inverts (to be available at a time or times to be agreed with the Registered Provider) from the Owner's foul and surface water drain run serving the Development up to the boundaries of the Affordable Housing Land such spur connections to be to a specification agreed with the Registered Provider; <p data-bbox="639 1608 983 1653">and the following services:</p> <ul data-bbox="639 1659 1461 1973" style="list-style-type: none"> <li data-bbox="639 1659 1461 1794">• a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider; <li data-bbox="639 1845 1461 1973">• a water supply connection from the mains (size and termination position to be agreed with the Registered Provider);

Expression

Meaning

- an electricity supply (size and termination position to be agreed with the Registered Provider);
- a gas supply (size and termination position to be agreed with the Registered Provider) (should it be required for the Affordable Housing Dwellings);
- a telephone spur (terminating in a junction box at a location agreed with the Registered Provider);
- if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a spur to the Affordable Housing Land (final locations to be agreed with the Registered Provider);

PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable Housing Land nor to the Affordable Housing Dwellings

"Intermediate Housing"

Affordable Housing Dwellings to be provided at a cost above social rent but below their value as Market Dwellings for sale or for rent which meet the criteria set out in Annex 2 to the National Planning Policy Framework published in February 2019 (or as may be amended from time to time) comprising Shared Ownership Housing or subject to the approval of the District Council other approved affordable home ownership products as defined by the NPPF and may be agreed between the District Council, the Owner and any Registered Provider

"Mortgage Land"

the Affordable Housing Land or any part of it or any individual Affordable Housing Dwelling which is mortgaged or charged to the Chargee

Expression	Meaning
"Nominations Agreement"	an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Housing Dwellings on the Site and that outlines the nomination policy and Local Connection Criteria to be used in nominating people to the Affordable Housing Dwellings
"Qualifying Persons"	those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to an Affordable Housing Dwelling in accordance with this Allocations Scheme and the Nominations Agreement
"Registered Provider"	a private provider of Affordable Housing which is designated in the register maintained by Regulator for Social Housing pursuant to section 111 of the Housing and Regeneration Act 2008 ("HRA 2008") as a non-profit organisation under sub-sections 115(1)(a) or 278(2) of the HRA 2008 or which is designated in that register as a profit-making organisation under section 115(1)(b) of the HRA 2008 or an alternative body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) or an alternative affordable housing provider (including but not limited to a housing trust or company, a community land trust or an almshouses society) which has been approved by the District Council in writing (such approval not to be unreasonably withheld or delayed)
"Shared Ownership Housing"	housing offered via the Registered Provider under the terms of a lease which accords with the HCA Shared Ownership Model Lease by which a lessee may acquire an initial share or shares of between 25% - 75% of the equity in an Affordable Housing Dwelling from the Registered Provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity with an option for the lessee to increase their percentage of ownership through a process of stair-casing up to 100% ownership

Expression	Meaning
"Social Rented Units"	rented housing owned and managed by Registered Providers for which guideline target rents are determined through a national rent regime as described in Annex 2 of the National Planning Policy Framework dated February 2019
"Staircasing"	the exercise by the owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the entire interest in the dwelling after which the rent payable on any equity share retained by the RPSH shall be reduced proportionally and 'Staircases' or any other derivative thereof shall be construed accordingly

2. PROVISION

The Owner covenants with the District Council:

- 2.1 not to Commence or cause or permit the Commencement of the Development until the Affordable Housing Scheme has been submitted to and approved by the District Council in writing

PROVIDED THAT the Owner shall be permitted to seek to amend any approved Affordable Housing Scheme at any time following the initial approval of the relevant Scheme SAVE THAT in seeking to do so the Owner shall submit such amendments to the District Council in writing for approval by the District Council in writing and if approved the Development shall be carried out in accordance with it

- 2.2 not to Occupy or cause or permit the Occupation of more than thirty per cent (30%) of the Market Dwellings until

- 2.2.1 each area comprising the Affordable Housing Land has been offered to a Registered Provider together with all rights for Affordable Housing Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession on completion and capable of being fully serviced and properly connected to the

public highway and a Registered Provider has exchanged a binding contract for the purchase of the Affordable Housing Land; and

- 2.2.2 there has been provided to the District Council's reasonable satisfaction the Affordable Housing Infrastructure to serve each parcel of the Affordable Housing Land and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Land);
- 2.3 construct the Affordable Housing Dwellings and make the same ready for Occupation in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing Tenure Mix (or such other dwelling or tenure mix as may be agreed in writing between the Owner and the District Council from time to time (both parties acting reasonably) to the reasonable satisfaction of the District Council as part of the Development upon the Site prior to use or Occupation of more than fifty per cent (50%) of the Market Dwellings;
- 2.4 will not cause or permit more than seventy five per cent (75%) of the Market Dwellings to be used or Occupied unless and until the Affordable Housing Dwellings have been Completed and made ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme and the Affordable Housing Land has been offered to and transferred to a Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed thereon and with a good and marketable freehold or long leasehold title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway.
- 2.5 not to use or cause or permit the use of the Affordable Housing Land or any part thereof or the Affordable Housing Dwellings erected thereon for any purpose other than for the provision of Affordable Housing in accordance with this Agreement;
- 2.6 Subject to paragraph 3 below, will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Land or any part thereof or the Affordable Housing Dwellings erected thereon except to a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold or

leasehold interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings within either the Affordable Rented Housing or the Shared Ownership Housing

3. EXEMPTIONS FOR CHARGEES IN POSSESSION ETC.

3.1 For the avoidance of doubt paragraph 2.6 above is not binding on either a Chargee or a bona fide purchaser for value from a Chargee exercising its power of sale (other than a purchaser which is a Registered Provider) or the successors in title to such purchaser or persons deriving title therefrom provided that the provisions of paragraph 3.2 below have been complied with.

3.2 It is hereby agreed and declared that the proviso contained in paragraph 3.1 above will only apply where the Chargee exercising its power of sale:-

3.2.1 has first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, its mortgage, charge or other security; and

3.2.2 has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 3.2.1 above to Dispose of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed of Agreement to a Registered Provider or the District Council PROVIDED THAT nothing herein shall require the Chargee to Dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained in this Schedule or all the sums due under the terms of the Chargees mortgage or charge together with costs and expenses of the sale of the Mortgage Land and interest due under the mortgage AND FURTHER PROVIDED THAT in any event if upon the expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 3.1 above and provided the steps in this paragraph have been completed and no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed within the said period of 3 months then upon expiry of the said 3 months the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraphs 2 above and 4 below with the effect that they shall cease to bind those with an interest in the Mortgage Land.

3.3 The provisions of paragraph 2 above and 4 below will not be binding on:

- 3.3.1 any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any successor in title thereto; or
- 3.3.2 any purchase in respect of any Dwelling constituting Shared Ownership Housing or similar equity purchase arrangement once the leaseholder Staircases to acquire 100% equity share in the Dwelling; or
- 3.3.3 any statutory undertaker acquiring any part of the Site or the Affordable Housing Land and holding that land for the purposes of its undertaking

4. ALLOCATION

The Owner and Developer will not Allocate or cause or permit to be Allocated any of the Affordable Housing Dwellings other than in accordance with the followings:

- 4.1 the Affordable Rented Housing shall only be Allocated to Qualifying Persons in accordance with the Allocations Scheme and in accordance with the terms of the Nominations Agreement;
- 4.2 the Intermediate Housing shall be marketed through the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the Help to Buy Agent's criteria shall be considered for the Intermediate Housing; or
- 4.3 as agreed in writing by the District Council.

5. TRANSFER TO ANOTHER REGISTERED PROPRIETOR

- 5.1 For the avoidance of doubt, if the Affordable Housing Dwellings are Disposed of to another Registered Provider pursuant to a proposal made by the Regulator pursuant to Sections 143A-169 of the Housing and Regeneration Act 2008 (or any statutory provision amending or replacing the same) then the provisions of this Deed of Agreement shall continue to bind such other Registered Provider.

THIRD SCHEDULE
PUBLIC OPEN SPACE INCLUDING SUDS AND LAP

1. DEFINITIONS

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

Expression	Meaning
"Balancing Ponds"	any balancing ponds or attenuation basin to be provided on the Development as determined by Qualifying Permissions
"Existing Hedgerows"	any existing hedgerows to be maintained on the Site
"Existing Hedgerows Commuted Sum"	a payment for the future maintenance and management of the Existing Hedgerows calculated at Twenty Pounds and forty nine Pence per square metre (£20.49/ m ²) of Existing Hedgerows Index Linked
"Final Completion Certificate"	a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space in accordance with the relevant scheme or specification approved pursuant to this Deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction
"Guide"	the District Council's supplementary planning document on planning obligations dated February 2018
"Index Linked"	increased according to the fluctuations between the date of this Deed and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in one Tender Index

Expression	Meaning
"LAP"	an onsite Local Play Area comprising a 100 m ² activity zone within a total area of 400 square metres including a buffer zone
"LAP Commuted Sum"	a payment for the future maintenance of the equipped LAP of £30,458.26 Index Linked
"Maintenance Period"	a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate
"Mature Trees"	any mature trees to be retained on the Site
"Mature Trees Commuted Sum"	a payment for the future maintenance and management of the Mature Trees calculated at one hundred and ninety eight pounds and eighty two pence per tree (£198.82/per tree) Index Linked
"Open Space"	the areas within the Site comprising a minimum area of 1.3 hectares (to include a continuous pedestrian route across the Site to connect the public rights of way 347/2 to the west and 347/4 to the east) to be provided for recreation and amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include the Mature Trees, Existing Hedgerows and Proposed Hedgerows and any of them;
"Open Space Commuted Sums"	the Mature Trees Commuted Sum, Existing Hedgerows Commuted Sum and LAP Commuted Sum and any of them
"Open Space Scheme"	<p>a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the Open Space in accordance with the Guide submitted to the District Council for approval in accordance with paragraph 1.1 below which shall include:</p> <ol style="list-style-type: none"> (1) details of the locations of any Open Space to which the respective scheme relates; and (2) a timetable for carrying out the works and the planting comprised in the laying out landscaping of the Open Space to which the respective scheme relates

Expression	Meaning
"Practical Completion Certificate"	a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Deed
"SUDS"	any Balancing Ponds, Ditches/Watercourses/Swales, Attenuation Basin to be provided to form the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme
"SUDS Commuted Sum"	a payment for the future maintenance and management of the SUDS calculated at fifty pounds and ninety eight pence per square metre (£50.98) Index Linked of the Balancing Ponds and Attenuation Basin
"SUDS Scheme"	a sustainable urban drainage system scheme for the Development which is to be submitted and approved in writing by the District Council prior to Commencement of Development and which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development and the timescales for when the said works and features are to be carried out
"the Surveyor"	the District Council's Street Scene and Landscape Services Manager or such other person or persons as shall be notified in writing by the District Council to the Owner

2. OPEN SPACE

The Owner covenants with the District Council that they will:

- 2.1 not Commence the Development until there has been submitted in writing to and approved in writing with the District Council the Open Space Scheme and it is agreed and declared that the District Council shall be entitled to reject any such submitted scheme that does not comply with the definition of 'Open Space' in paragraph 1 of this Schedule;

- 2.2 implement the Development in accordance with the Open Space Scheme;
- 2.3 carry out the construction, laying out and landscaping of the Open Space in accordance with the Open Space Scheme
- 2.4 not at any time use the Open Space or cause or permit the Open Space to be used for any purpose other than as public open space land (and the words "any other purpose" shall include using the subsoil of the Open Space for the laying of services unless so agreed by the District Council or by conditions pursuant to the Planning Permission or a Qualifying Permission or otherwise and using the Open Space or the sites thereof for the storage of materials, the parking of cars and/or any other vehicles or as a site compound or for any other purpose detrimental to the structure of the soil or existing vegetation);
- 2.5 on completion of the Open Space or each discrete area of the Open Space, secure the approval of the District Council as follows:
 - 2.5.3 the Owner shall invite the District Council in writing to inspect the Open Space with a view to issuing a Practical Completion Certificate
 - 2.5.4 the District Council shall inspect the Open Space within 10 Working Days of receipt of the invitation in paragraph 2.5.1 above and shall within 10 Working Days of such inspection EITHER issue a Practical Completion Certificate OR issue a notice ('Defects Notice') which states the Open Space has not been provided to the District Council's reasonable satisfaction and set out details of the work required to reach that standard
 - 2.5.5 if the Owner receives a Defects Notice in respect of the Open Space they shall use reasonable endeavours to complete the works specified in the Defects Notice as soon as reasonably practicable and in any event no longer than 8 weeks from receipt of a Defects Notice (or such longer period as may be agreed by the District Council) and then invite the District Council to re-inspect the Open Space
 - 2.5.6 the procedure set out in paragraphs 2.5.1 to 2.5.3 above shall be repeated in respect of the Open Space until such time as the District Council issues a Practical Completion Certificate
- 2.6 not cause or permit the Occupation of any of the Dwellings until the Practical Completion Certificate has been issued for the Open Space;

- 2.7 maintain the Open Space to the reasonable satisfaction of the District Council until the transfer referred to in paragraph 2.12 is completed;
- 2.8 upon completion of the twelve month maintenance period continue to maintain the area of Open Space until its transfer to the District Council following the issue of the Final Completion Certificate for the Open Space transfer the unencumbered freehold of the Open Space to the District Council (or as the District Council directs) in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) to and subject to no other contribution by the District Council (or by such other person as the District Council directs to take the transfer) such transfer to be with full title guarantee, vacant possession on completion and free unrestricted rights of access for the general public at all reasonable times;
- 2.9 provide an unrestricted right of access for the general public to the Open Space at all reasonable times following the issue of the Practical Completion Certificate for those areas save as necessary to carryout maintenance and in the interests of health and safety;
- 2.10 at all reasonable times and upon reasonable notice permit the District Council's officers servants and agents to enter onto any necessary part of the Site for the purpose of inspecting the Open Space;
- 2.11 transfer that part of the Site containing the Open Space (the Open Space Land) to the District Council or to such other body as the District Council may direct once the District Council has issued a Final Certificate
- 2.12 within two months of the issue of a Final Certificate deliver an executed Transfer of the Open Space Land that complies with the following:
- 2.12.1 the consideration for the transfer shall be £1
- 2.12.2 it shall not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency; and
- 2.12.3 it shall not include any terms which would directly or indirectly affect the construction servicing or occupation of the part of the Site that is retained by the Owner; and

- 2.12.4 shall include any reasonable reservation of rights of access and services over the Open Space Land for the benefit of any other part of the Site for the purpose of managing maintaining replacing renewing cleaning and repairing services including but not limited to as applicable sustainable urban drainage measures, water, gas, sewerage, drainage or electricity PROVIDED THAT the Council has agreed pursuant to paragraph 2.4 above that services can be laid through or under those areas; and
- 2.12.5 shall include for the benefit of the Open Space Land the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Open Space Land over any adjoining land for its intended purpose as set out in this Schedule; and
- 2.12.6 shall be at no cost (including legal costs) to and subject to no other contribution by the District Council; and
- 2.12.7 shall be a transfer of the entire freehold interest with full title guarantee and vacant possession on completion; and
- 2.12.8 shall be free from any pre-emption or option agreement and free from any mortgage charge or lien or other encumbrance which restrict the use of the land for its intended purpose other than those which exist at the date of this Deed and / or are agreed in the Transfer;
- 2.12.9 may contain covenants not to use the area transferred for any purpose other than for a publicly accessible games and play area or publicly accessible free at the point of use recreational facilities;
- 2.13 on delivering the transfer referred to in paragraphs 2.11 and 2.12 above, pay to the District Council or as the District Council may direct the Open Space Commuted Sums

3. SUDS

The owner covenants with the District Council that they will:

- 3.1 not Commence Development until the SUDS Scheme has been submitted in writing to and approved in writing by the District Council;
- 3.2 lay out and equip the SUDS in accordance with the SUDS Scheme (approved pursuant to paragraph 3.1 above) to the reasonable satisfaction of the District

Council and such laying out and equipping shall be completed prior to the Occupation of 30% of the Dwellings;

- 3.3 will on completion of the SUDS Scheme secure the approval of the District Council and the provisions of paragraphs 2.5 and 2.6 above (in relation to the issue of a Practical Completion Certificate and a Final Completion Certificate) shall apply mutatis mutandis to the SUDS;
- 3.4 not grant or cause or permit to be granted any rights or easements over the SUDS (save where necessary to any statutory undertaker) or any part thereof without the prior written consent of the District Council (such consent not to be unreasonably withheld or delayed) whether by way of conditions pursuant to the Planning Permission or any Qualifying Permissions or otherwise;
- 3.5 at all reasonable times and upon reasonable notice permit the District Council's officers servants and agents to enter onto any necessary part of the Site for the purposes of inspecting the SUDS;
- 3.6 following receipt of the Final Completion Certificate for the SUDS transfer the unencumbered freehold of the SUDS to a Management Company or to the District Council as the Owner elects (or if the transfer is to be to the District Council as the District Council directs) in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) to and subject to no other contribution by the Management Company or the District Council (or by such other person as the District Council directs to take the transfer) such transfer to be with full title guarantee, vacant possession on completion;
- 3.7 on the date of the transfer referred to in paragraph 3.6 above, if the transfer is to the District Council to pay to the District Council or as the District Council may direct the SUDS Commuted Sums and if the transfer is to be to a Management Company will secure suitable arrangements in accordance with the Management Scheme including the imposition of estate charges on the owners of each Dwelling to ensure adequate funding for the maintenance of the SUDS including any initial funding of the Management Company by the Owner as is reasonably necessary to make up any likely shortfall in funding from individual households such funding to be agreed with the District Council;
- 3.8 will continue to maintain the SUDS to their original completed standard and to the reasonable satisfaction of the District Council until the date of completion of the transfers in paragraph 3.6 above

4. LAP

The Owner covenants with the District Council that they:

- 4.1 will upon the terms of paragraphs 4.2 to 4.12 below provide the LAP as a local area of play in accordance with the District Council's adopted planning guidance regarding the provision and maintenance of amenity and recreational open spaces as at the date of Commencement ("the Guide") a copy of which has been supplied to the Owner and will not at any time use the LAP or cause or permit the LAP to be used for any purpose other than as a local area of play (and the words "any other purpose" shall include using the subsoil of the LAP for the laying of services unless so agreed by the District Council or conditions pursuant to the Planning Permission or otherwise and using the LAP or the site thereof for the storage of materials, the parking of cars and/or any other vehicles or as a site compound or for any other purpose detrimental to the structure of the soil or existing vegetation);
- 4.2 will not Implement the Development until there has been submitted in writing to and agreed with the District Council a scheme (including a phasing programme) for the laying out landscaping and equipping of the LAP in accordance with the Guide and which scheme shall include:
 - 4.2.1 details of the location of the LAP;
 - 4.2.2 a timetable for carrying out the works and the planting comprised in the said laying out landscaping and equipping of the LAP;
 - 4.2.3 provision to ensure that the LAP is suitable for disabled users; and
 - 4.2.4 detailed provision for the maintenance of the LAP for a period of twelve months following its completion, such maintenance to include regular inspection;
- 4.3 will carry out and complete the laying out landscaping and equipping of the LAP in accordance with the scheme referred to in paragraph 4.2 above and the Guide and to the reasonable satisfaction of the District Council;
- 4.4 will on completion of the SUDS Scheme secure the approval of the District Council and the provisions of paragraphs 2.5 and 2.6 above (in relation to the issue of a Practical Completion Certificate and a Final Completion Certificate) shall apply mutatis mutandis to the SUDS

- 4.5 maintain the LAP to its original completed standard for a period of twelve months following its completion as certified by the District Council, replacing and/or repairing to the reasonable satisfaction of the Council any items (including surfaces) which are defective in the reasonable opinion of the Council in accordance with the approved details contained in the scheme referred to in paragraph 4.2 above and replacing any trees shrubs plants or grass which may die are removed or become seriously damaged or diseased with others of similar size and species to the reasonable satisfaction of the District Council;
- 4.6 will not cause or permit to be occupied any Dwelling on the Development until the LAP is completed and ready for use in accordance with paragraph 4.1 above;
- 4.7 will notify the District Council on the completion of the laying out landscaping and equipping of the LAP and on the expiry of the twelve month maintenance period so that it can inspect the same and issue a certificate confirming the practical completion of such works ("LAP Practical Completion Certificate") to the District Council's reasonable satisfaction and a certificate confirming the final completion of such works ("LAP Final Completion Certificate") on completion of the twelve month maintenance period (where applicable) (including the making good of any defects) to the District Council's reasonable satisfaction in accordance with paragraph 4.5 above PROVIDED ALWAYS THAT the District Council shall only be obliged to issue a LAP Practical Completion Certificate or a LAP Final Completion Certificate as the case may be if it (the District Council) is satisfied in accordance with paragraph 4.5 above;
- 4.8 will provide an unrestricted right of access for the general public to the LAP at all times following the issue of the said LAP Practical Completion Certificate;
- 4.9 will not grant or cause or permit to be granted any rights or easements over the LAP or any part of it without the prior written consent of the District Council (such consent not to be unreasonably withheld or delayed) whether by way of conditions pursuant to the Planning Permission or otherwise;
- 4.10 will on completion of the transfer referred to in paragraph 4.13 below hand over to the District Council and assign to the District Council or other person at the District Council's direction all contract documents and documents of guarantee relating to any play equipment and its installation on the LAP;

- 4.11 will at all times prior to the issuing of the LAP Practical Completion Certificate referred to in paragraph 4.7 above upon reasonable notice permit the District Council's officers servants and agents to enter onto any necessary part of the Site and the LAP or any of it and will afford them access to do so for the purpose of inspecting the laying out of the LAP and following the issuing of the LAP Practical Completion Certificate referred to in paragraph 4.7 above will provide an unrestricted right of access to the LAP and (if access cannot be gained by or over public highways) over an appropriate part of the Site for the purpose of maintaining the LAP; and
- 4.12 will provide to the District Council prior to the issue of the LAP Practical Completion Certificate a RoSPA post installation report and Risk Assessment for the LAP which RoSPA report and Risk Assessment must be satisfactory to the District Council (acting reasonably) and thereafter will provide a satisfactory RoSPA report in respect of the LAP annually until the date of transfer of the LAP none of which RoSPA reports shall be more than eleven months old at the date they are provided to the District Council.
- 4.13 will in the event that the LAP is maintained in accordance with paragraph 4.5 above notify the District Council on the expiry of the twelve month maintenance period referred to in paragraph 4.5 above so that it can inspect the same and the Officer appointed by the District Council shall if appropriate issue a LAP Final Completion Certificate and will continue to maintain the LAP in all respects in accordance with paragraph above from the date of the LAP Final Completion Certificate until the date of completion of the transfer to the District Council or as it may direct referred to in paragraph 4.13 PROVIDED THAT:- if there is no 12 months maintenance period in accordance with paragraph above then they shall continue to maintain the LAP to the standard required in paragraph above until its transfer in accordance with paragraph 4.13;
- 4.14 following receipt of the LAP Final Completion Certificate
- 4.14.1 arrange the transfer of the unencumbered freehold of the LAP to the District Council in consideration of the sum of £1.00 but otherwise at no cost (including legal costs) to and subject to no other contribution by the District Council such transfer to be with full title guarantee, vacant possession on completion and free and unrestricted rights of access for the general public at all times; AND

- 4.14.2 pay to the District Council or as the District Council may direct the LAP Commuted Sum;
- 4.15 will continue to maintain the LAP to its original completed standard and to the reasonable satisfaction of the District Council until the date of completion of the transfer of the LAP; and
- 4.16 will complete the transfer of the LAP within fourteen working days of the receipt of Deeds of the transfer to the District Council in the form agreed.

5. OTHER COVENANTS

In providing the Open Space and SUDS the Owner shall:

- 5.1 notify the Surveyor of all pre-construction design or technical site meetings with the contractor relating to the construction or landscaping of the Open Space and SUDS;
- 5.2 permit the Surveyor to attend and to put forward his views at said site meetings and on reasonable notice to inspect during construction of the Open Space and SUDS and to suggest items for inclusion in any necessary schedule of defects issued to the contractor; and
- 5.3 Send the Surveyor copies of all instructions issued to a contractor in respect of the equipment, materials or signage for the Open Space and SUDS at the same time as issuing them.

FOURTH SCHEDULE
COVENANTS WITH THE DISTRICT COUNCIL – OTHER CONTRIBUTIONS

1. DEFINITIONS

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

Expression	Meaning
“Approval (Qualifying Permission)”	the Qualifying Permission which first establishes the Composition of the Development
“Approval (Variation)”	any Qualifying Permission which alters the Composition of the Development as established further to the Approval (Qualifying Permission) or as applicable a preceding Approval (Variation).
“Community Hall Facilities Contribution”	a contribution of four hundred and twenty-eight pounds (£428) per Dwelling Index Linked for the provision of additional or enhanced facilities at Sibford Village Hall
“Composition of the Development”	the aggregate number of Dwellings comprised in the Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling
“Contributions”	together the Community Hall Facilities Contribution, the Off Site Outdoor Sports Facilities Capital Provision Contribution, the Off Site Indoor Sports Facilities Contribution and the Refuse Contribution and ‘relevant Contribution’ is to be construed in accordance with the context
Index Linked	increased according to the fluctuations between the date of this Deed and the quarter period in which payment is made to the District Council in the BCIS All in one Tender Index (or such other item reference as may from time to time replace the item reference) published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing and for the avoidance of doubt means increases only in the BCIS All in

Expression	Meaning
	one Tender Index
“Notification (Initial)”	written notification of the Approval (Qualifying Permission) containing a copy of that approval and details of the Composition of the Development established by that approval
“Notification (Variation)”	written notification of an Approval (Variation) containing a copy of that approval and details of the Composition of the Development established applying that approval.
“Off Site Outdoor Sports Facilities Capital Provision Contribution”	a contribution of two thousand and seventeen pounds and three pence (£2,017.03) per Dwelling Index Linked towards improving community access to the playing pitches and tennis courts at Sibford School
“Off Site Indoor Sports Facilities Contribution”	a contribution of Three hundred and thirty five pounds and thirty two pence (£335.32) per Dwelling Index Linked towards improving community access of the Sibford School swimming pool the changing rooms serving the swimming pool at the Warriner Academy
“Refuse Contribution”	a contribution of one hundred and six pounds (£106.00) per Dwelling towards the provision of refuse and recycling bins for the Development Index Linked
“Revised Contributions”	the amount of each of the Contributions calculated subsequent to the approval of an Approval (Variation)

2. OTHER CONTRIBUTIONS

- 2.1 It is agreed that for the purposes of this Schedule
- 2.1.1 each of the Contributions shall first be calculated having regard to the number of Dwellings in the Approval (Qualifying Permission); and
 - 2.1.2 each of the Contributions shall be re-calculated in accordance with each Approval (Variation)
- 2.2 The Owner covenants with the District Council
- 2.2.1 to give to the District Council the Notification (Initial) within 20 Working Days of the issue of the Approval (Qualifying Permission);

- 2.2.2 to give to the County Council a Notification (Variation) within 20 Working Days of the issue of each Approval (Variation);
- 2.2.3 where a Notification (Variation) has been given (or is required to be given further to paragraph 2.2.2 above) and the relevant Approval (Variation) results in the establishment of Revised Contributions then;
- (a) for the purposes of calculating any relevant Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Contribution shall be applied in place of the Contribution in question; and
 - (b) there shall be calculated the difference between any Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Contribution would have been if they had been calculated by reference to the Revised Contribution (in both instances disregarding Index Linking);
- 2.2.4 not to cause or permit the Planning Permission or any Qualifying Permission to be implemented until the Notification (Initial) has been given to the District Council;
- 2.2.5 to pay to the District Council the sum calculated further to paragraph 2.2.3 above Index- Linked with the next payment towards the relevant Contribution subsequent to the date of grant of the relevant Approval (Variation) or if all the Contributions have been paid to pay such sum Index Linked within 10 Working Days of the grant of the Approval (Variation.) PROVIDED THAT if the Composition of the Development alters at the time of approval of Reserved Matters such that the Contributions payable are lower than the figures provided in this Deed the District Council will refund any difference due to the person who made the payment.
- 2.3 The Owner covenants with the District Council that they will:
- 2.3.1 pay to the District Council the Community Hall Facilities Contribution prior to the Occupation of 50% of the Market Dwellings;
 - 2.3.2 not to cause or permit more than 50% of the Market Dwellings to be Occupied until the Community Hall Facilities Contribution has been paid in full to the District Council; and

- 2.3.3 pay to the District Council the Off Site Outdoor Sports Facilities Capital Provision Contribution prior to the Occupation of 50% of the Market Dwellings;
- 2.3.4 not to cause or permit more than 50% of the Market Dwellings to be Occupied until the Off Site Outdoor Sports Facilities Capital Provision Contribution has been paid to the District Council; and
- 2.3.5 pay to the District Council the Off Site Indoor Sports Facilities Contribution prior to the Occupation of 50% of the Market Dwellings;
- 2.3.6 not to cause or permit more than 50% of the Market Dwellings to be Occupied until the Off Site Indoor Sports Facilities Contribution has been paid to the District Council; and
- 2.3.7 pay to the District Council the LAP Commuted Sum prior to the Occupation of 75% of the Market Dwellings;
- 2.3.8 not to cause or permit Occupation of more than 75% of the Market Dwellings to be Occupied until the LAP Commuted Sum has been paid to the District Council; and
- 2.3.9 pay to the District Council the Refuse Contribution prior to the Occupation of any of the Market Dwellings;
- 2.3.10 not to cause or permit any Market Dwellings to be Occupied until the Refuse Contribution has been paid in full to the District Council;

**FIFTH SCHEDULE
COUNTY CONTRIBUTIONS**

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:

Expression	Meaning
“County Contributions”	together the Public Transport Contribution and the TRO Contribution and “County Contribution” shall be construed accordingly
“Index Linked”	<p>in relation to the Public Transport Infrastructure adjusted according to any increase occurring between November 2018 and the date when a relevant payment is paid 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 set out below against each such index namely: -</p> <p style="margin-left: 40px;">Index 1 – Labour and Supervision 25%</p> <p style="margin-left: 40px;">Index 2 – Plant and Road Vehicles 25%</p> <p style="margin-left: 40px;">Index 3 – Aggregates 30%</p> <p style="margin-left: 40px;">Index 9 – Coated macadam and bituminous products 20%</p> <p>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 Owner and the County Council</p> <p>in relation to the the TRO Contribution adjusted according to any increase occurring between November 2018 and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics or if at any time for any reason it becomes impracticable to use this index such alternative index as may be agreed between the Owner and the County Council</p>

Expression	Meaning
“Public Transport Contribution”	the sum of Twenty Thousand Pounds (£20,000) Index-Linked towards a new bus shelter and hardstanding for the existing bus stop on Main Street, Sibford Ferris
“TRO Contribution”	the sum of Four Thousand and Eight Hundred and Fifty Pounds (£4,850) Index-Linked towards the consultation for the alteration of the speed limit on Hook Norton Road and provision of a footway from pedestrian access on Hook Norton Road to the existing footway network

2. COVENANTS

- 2.1 The Owner covenants with the County Council not to cause or permit the Commencement of the Development until it has paid the Public Transport Contribution and the TRO Contribution to the County Council and to pay, the Public Transport Contribution and the TRO Contribution to the County Council prior to Commencement of the Development

SIXTH SCHEDULE 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):

Expression	Meaning
“Works”	the works set out in the annex to this Schedule
“Section 278 Agreement”	an agreement made pursuant to inter alia Section 278 of the Highways Act 1980 in accordance with the template form annexed to this Agreement as Appendix 1 (subject to any amendments that the circumstances may reasonably and properly require) which provides for the execution of the Works by the Owner at its own expense

2. BACKGROUND

2.1 The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act.

2.2 The parties intend to enter into the Section 278 Agreement

3. COVENANTS

3.1 The Owner covenants with the County Council:

3.1.1 not to cause or permit any planning permission obtained for the Development to be Commenced until:

(a) there has been submitted to the County Council and approved in writing by it 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;

(b) there have been submitted to the County Council and approved in writing by it plans detailing the land to be dedicated (if any) following completion of the Works and there has been deduced to the

satisfaction of the County Council title in respect of any such land to be dedicated.

- (c) the anticipated duration of construction of the Highway Works has been submitted to the County Council and approved in writing by it together with the longstop date for completion of the Highway Works and details of the commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Highway Works have been submitted to the County Council
 - (d) 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 or the Promoter 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.
- 3.1.2 not to cause or permit the first Occupation of any Market Dwelling until the Highway Works have been completed to adoption standards in accordance with the provisions of the Section 278 Agreement.

ANNEX

(1) PRINCIPAL WORKS

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

- (a) Site access simple priority junction from the Site to Hook Norton Road, as shown indicatively on the BHP Harwood Architects Concept Schematic drawing no. 3361.101 or such other drawing as may be approved by the County Council
- (b) Provision of a new 2.0m wide footway link from the Site pedestrian access (location to be confirmed) on Hook Norton Road to the east side of Hook Norton Road , as shown indicatively on Drawing SK004A or such other drawing as may be approved by the County Council;

(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
- (c) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (d) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- (e) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (f) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (g) all measures necessary to ensure visibility for drivers at any bend or junction
- (h) all traffic signs road markings bollards and safety barriers
- (i) 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.

SEVENTH SCHEDULE
DISTRICT COUNCIL'S COVENANTS WITH THE OWNER

1. REPAYMENT OF CONTRIBUTIONS

- 1.1 The District Council covenants with the Owner to use all sums received from the Owner under the terms of the Fourth Schedule to this Deed or the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree.
- 1.2 The District Council covenants with the Owner that following written request from the person who made the relevant payment the District Council will repay to that person the balance (if any) of any payment made by that person to the District Council under the terms of the Fourth Schedule to this Deed in accordance with the provisions of this Deed which has not been expended or committed 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 five years of the date of receipt by the District Council of such payment. Any contribution or part of a contribution which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the District Council prior to that date. Any payment or part thereof which the District Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been committed by the District Council prior to that date
- 1.3 The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of this Deed upon a written request by the Owner such request not to be made more than once in any year.

2. DISCHARGE OF OBLIGATION

- 2.1 At the written request of the Owner, the District Council shall provide written confirmation of the discharge of the obligations contained in this deed when satisfied that such obligations have been performed

EIGHTH SCHEDULE
COUNTY COUNCIL'S COVENANTS WITH THE OWNER

1. APPLICATION OF MONIES RECEIVED

- 1.1 The County Council shall not apply any of the contributions referred to in the Schedule v5 for any purpose other than as set out in the definition of each contribution therein in such form and at such time as the County Council shall in its discretion decide

2. REPAYMENT

- 2.1 Following written request from the person who made the relevant contribution the County Council will repay to that person the balance (if any) of such contribution which at the date of the receipt of such written request has not been expended 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 shall be made prior to the expiry of ten years from the due date or the date of receipt by the County Council (whichever is the later) of the last instalment of any such contribution.
- 2.2 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.

**NINTH SCHEDULE
THE SECTION 278 AGREEMENT**

DATED _____ **20[]**

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

Agreement relating to highway works at [] to be undertaken by Developer (with optional
provision for contribution)
1 only applies if contribution

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

THIS DEED is made on the _____ day of _____ Two
Thousand and []

BETWEEN:-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** (“the Council”)
- (2) (“the Owner”)
- (3) (company registration number)
of (“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 31 of the Standard Conditions
- 1.4 “Certificate of Completion” means a certificate issued under Condition 29 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 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 (including Engineering)(1990 Series) as made available through the Building Cost Information Service (BCIS) of The Royal Institution of 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 & Bituminous 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 Owner and the 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 to cover the cost of future maintenance of the Works

1.15 ["the Mortgagee" means the said of/whose registered office 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 (2013 Edition) a copy of which is annexed to this Deed
- 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 to pay the Maintenance Costs to the Council on substantial completion of the Works and not to apply for the issue of the Certification of Completion until it has paid the Maintenance Costs to the Council

- 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 payment¹

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 Condition 33 of the Standard Conditions be a highway maintainable at public expense
- 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]¹

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

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]

8. **Costs**

8.1 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]

8.2 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

8.3 [The Owner will not claim any compensation in respect of the provision of this Deed]

9. **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

10. **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) Speedwell House Speedwell Street Oxford OX1 1NE 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

11. 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 or Promoter from any liability under this Deed

12. No Fetter

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

13. 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

14. Jurisdiction

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

15. 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

TENTH 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

(2) **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

in the presence of:

}

THE COMMON SEAL of **THE OXFORDSHIRE**

COUNTY COUNCIL was affixed to this Deed in

the presence of:-

}

County Solicitor/
Designated Officer

**STANDARD CONDITIONS
OXFORDSHIRE COUNTY COUNCIL**

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

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

Huw Jones
Director for Environment & Economy
Speedwell House
Speedwell Street
Oxford OX1 1NE

2013 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. 19/03 (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 2007 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

2.1 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

3.1 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 Speedwell House Speedwell Street Oxford OX1 1NE 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;

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;

5.1.3 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

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

- 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;
- 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

7.1 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

8.1 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

9.1 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

Information	Timetable	Notes
Detailed plans (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	No later than 3 months before any tender is invited 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

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;		cost of the Works as identified in Condition 12
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A detailed programme 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 2 weeks after the acceptance of any tender 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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(a) Measures for the control of vehicles and plant 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	
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Safety Audit Stage 2 Report	No later than 3 months before any tender is invited for the execution of the Works	
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Details in accordance with Condition 15 of the persons proposed to be invited to tender.	No later than 1 month before any tender is invited for the execution of the Works.	
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Other Matters

<p>Details of the guarantor 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.</p>	<p>No later than 1 month before the Works are expected to commence.</p>	
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<p>Details of the insurances required by Condition 14.</p>	<p>No later than 1 month before the Works are expected to commence.</p>	
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<p>Part 1 Noise survey and assessment and modelling 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 If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council: a map and list of all eligible properties. a list of all occupiers and landlords 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</p>	<p>No later than 1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</p> <p>As above</p>	<p>Precise timing of survey to be agreed with the Council. Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p>
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<p>Condition survey (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 1 month before the Works are expected to commence.</p>	
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<p>Notification of the identity of the contractor who has submitted a successful tender.</p>	<p>No later than 2 weeks after the acceptance of any tender for the execution of the Works.</p>	
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- 9.2 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):-
- 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;
 - 11.1.4 street works licence further to the New Roads and Street Works Act 199
 - 11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in the Council's opinion to enable the Works to proceed and/or to be implemented and function; 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.

12 BOND

- 12.1 The Developer and a guarantor 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

- 14.1 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

- 16.1 The Developer shall not let any contract for the execution of Works unless and until:-
- 16.1.1 The Scheme of Works has been approved by the Council; and
- 16.1.2 Safety Audit Stage 2 Report has been approved by the Council.

IMPLEMENTATION OF THE WORKS

17 COMMENCEMENT OF WORKS

- 17.1 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

- 21.1 If in the course of execution of the Works it shall appear to the Council:
 - 21.1.1 that any error has arisen in the position, levels, dimensions or alignment of the Works; or
 - 21.1.2 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

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

21.1.4 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

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

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

22.1.2 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

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

23.1.1 if discovery is made of adverse ground conditions or artificial obstruction or other unforeseen factor of a like nature 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

23.1.2 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

23.1.3 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

23.2 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 CLEARANCE OF SITE

- 27.3 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.

29 COMPLETION CERTIFICATE

- 29.1 On substantial completion of the Works and clearance of the site of the Works in accordance with Condition 28 the Developer shall lodge a stage 3 Safety Audit report with the Council. 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 and if the Council has approved the Safety Audit Stage 3.
- 29.2 Where the Council is not satisfied and/or has not approved the Safety Audit Stage 3 report the Certificate of Completion will be issued when all remedial/outstanding work has been carried out to the satisfaction of the Council and without cost to the Council.

30 DEDICATION AS HIGHWAY

- 27.4 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 Condition 33 be a highway maintainable at public expense.

31 EASEMENTS

- 31.1 The Developer shall forthwith following the issue of the Certificate of Completion:-
- 31.1.1 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 11.1.5; and
- 31.1.2 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.
- 31.2 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.

32 HEALTH AND SAFETY (AND NOISE INSULATION)

- 31.3 The Developer shall within two months following the issue of the Certificate of Completion (or such longer period as the Council may in writing agree) furnish to the Council the Health and Safety File prepared in accordance with the Construction (Design and Management) Regulations. 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.

- 31.4 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.

33 REMEDYING OF DEFECTS AND OUTSTANDING WORKS

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

33.1.1 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

33.1.2 the Developer shall fail to complete any of the outstanding works mentioned in Condition 29 (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.

- 33.2 The Council may require the Developer to carry out the Safety Audit Stage 4 within 3 months of the opening of the Works and to lodge the report with the Council within one month thereafter and if the Council is not satisfied with the Safety Audit Stage 4 report the Council may then notify the Developer of this at any time prior to the expiry of two years following the date on which the Council issue the Certificate of Completion

- 33.3 Forthwith on receipt of any notification from the Council further to Condition 33.1 and/or as applicable Condition 33.2 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).

34 RELEASE OF BOND

- 34.1 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;

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

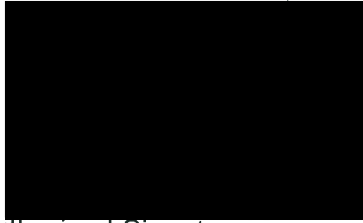
34.2.1 the date two years after the date on which the Council issue the Certificate of Completion; and

- 34.2.2 the date on which all defects and outstanding works have been made good and completed as referred to in Condition 33; and
 - 34.2.3 the date on which the Council have recovered their full expenses in all cases where Condition 5 applies (Council may act in default or emergency);
 - 34.2.4 the date on which the Council have received the transfers or grants further to Condition 31;
 - 34.2.5 the date on which the Developer shall have furnished to the Council the detailed plans and drawings and consent to use as referred to in Condition 32.
- 34.3 Conditions 34.1 and 34.2 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.

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EXECUTION

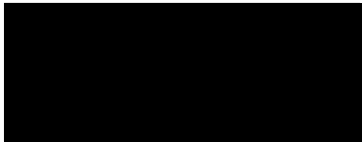
THE COMMON SEAL of CHERWELL DISTRICT COUNCIL was affixed in the presence of:-



Authorised Signatory



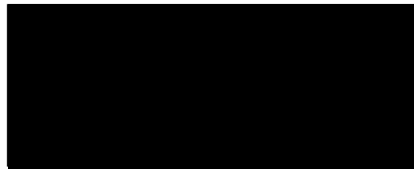
THE COMMON SEAL of OXFORDSHIRE COUNTY COUNCIL was affixed in the presence of:-



Authorised Signatory
(the officer appointed for this purpose)



SIGNED as a DEED by KEVIN JOHN BISHOP in the presence of:-



Witness Name:.....TOBIAS WASHARE

Witness Signature:.....

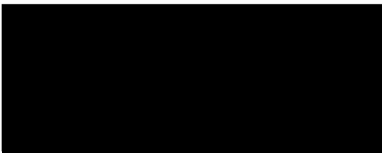
Witness Occupation:.....PROJECT ASSISTANT

Witness Address:.....WOOD MEAD,

.....WHEELER END,.....BUCKS,

.....HP14 3NQ.....

SIGNED as a DEED by EMILY BISHOP in
the presence of: -



Witness Name: ... TOBIAS ... WARSHARE

Witness Signature: ...

Witness Occupation: ... PROJECT ASSISTANT

Witness Address: ... WOODVIEW, ...
... WHEELER END, ... BUCKS, ...
... HP14 3WQ

EXECUTED as a DEED by LAND &
PARTNERS LIMITED acting by a Director
in the presence of



Director

Name

Witness Name: ... ALEXANDER ... DALTON

Witness Signature: ...

Witness Occupation: ... TOWN PLANNER

Witness Address: ... 13 MEDWAY HOUSE
... PENFOLD STREET, LONDON ...
... NW8 8BH