

DATED 11 SEPTEMBER

2019

CHERWELL DISTRICT COUNCIL

-and-

OXFORDSHIRE COUNTY COUNCIL

-and-

PAUL EDWARD BENNETT & EDWINA CAROLINE FASSOM

-and-

HOLLINS STRATEGIC LAND LLP

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

under section 106 of the Town and Country Planning Act 1990 (as amended) and section 111 of  
the Local Government Act 1972 and section 1 of the Localism Act 2011

Relating to land at Tappers Farm, Oxford Road, Bodicote, Banbury Oxfordshire OX15 4BM

DATE 11 SEPTEMBER

2019

## **PARTIES**

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA (the District Council);
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall, New Road, Oxford OX1 1ND (the County Council);
- (3) **PAUL EDWARD BENNETT** of 21 Campden Road, Ickenham, Uxbridge UB10 8EU & **EDWINA CAROLINE FASSOM** of Beechcote, The Street, West Clandon, Guildford GU4 7TD (the Owner);
- (4) **HOLLINS STRATEGIC LAND LLP** (LLP. Regn. No. OC330401) of Suite 4, 1 King Street, Manchester M2 6AW (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 purposes of the Act and has for the area in which the Site is situated sundry powers and duties in respect of education, and in respect of highways and the regulation of traffic.
- (C) The Owner is the freehold owner of the Site subject to a unilateral notice dated 19th January 2018 in respect of an Option Agreement dated 9<sup>th</sup> January 2018 made between (1) the Owner and (2) the Promoter but otherwise free from incumbrances.
- (D) The Promoter submitted the Application to the District Council and the District Council refused to grant planning permission for the Development at its Planning Committee Meeting of 25<sup>th</sup> October 2018 and a notice of refusal to grant planning permission was issued by the District Council on 31<sup>st</sup> October 2018.
- (E) The Promoter has entered and Option Agreement with the Owner in respect of the Site and has submitted the Appeal to the Planning Inspectorate against the refusal of the District Council to approve the Application and enters into this Deed which is required to mitigate the impact of the Development in the event that the Appeal is allowed.

## **NOW THIS DEED WITNESSES AS FOLLOWS**

**OPERATIVE PART**

**1. DEFINITIONS**

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

<b>Act</b>	the Town and Country Planning Act 1990 as amended
<b>Appeal</b>	The appeal made to the Planning Inspectorate by the Promoter under reference APP/C3105/W/19/3222428 against the refusal of the District Council to approve the Application
<b>Application</b>	the application for outline planning permission submitted to the District Council for the Development and allocated reference number 18/00792/OUT
<b>Construction</b>	the construction of any building forming part of the Development including footings or foundations and "Construct" and "Constructed" shall be construed accordingly
<b>Development</b>	the Development of the Site for the erection of up to 46 dwellings with public open space, associated parking, landscaping, new vehicular access and servicing as set out in the Application
<b>Dwelling</b>	a building (including a house flat or maisonette) constructed or proposed to be constructed upon 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 Part 3 of Schedule 3)
<b>Illustrative Masterplan/Layout Plan</b>	the Drawing entitled Illustrative Masterplan number 1732-URB-UD-GA-90-001 submitted as part of the Application
<b>Implementation</b>	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 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 including site compound, the temporary display of site notices or advertisements and "Implement" "Implemented" and "Implementing" shall be construed accordingly
<b>Interest</b>	interest at 5% per annum above the base rate of National Westminster Bank plc from time to time
<b>Market Dwelling</b>	a Dwelling being part of the Development which is not Affordable Housing
<b>Occupation and Occupied</b>	occupation for the purposes permitted by the Planning Permission or a Qualifying Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
<b>Owner</b>	the Owner and any successor in title and any assignees
<b>Plan</b>	the plan attached to this Deed at Appendix 1
<b>Planning Inspectorate</b>	The Planning Inspectorate of Temple Quay, Bristol BS1 6PN
<b>Planning Obligation(s)</b>	those obligations of the Owner contained and set out in Schedules 2, 3 and 4 of this Deed of which each and every obligation is subject to the provisions of clause 4 of this Deed and reference to Planning Obligation shall be construed accordingly
<b>Planning Permission</b>	the outline planning permission to be granted by the Planning Inspectorate pursuant to the Appeal as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the Act
<b>Qualifying Application</b>	an application for reserved matters approval pursuant to the Planning Permission or any



	application under Section 73 of the Act for the Development
<b>Qualifying Permission</b>	a reserved matters approval or planning permission issued pursuant to a Qualifying Application as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the Act
<b>Secretary of State</b>	means the Secretary of State for Housing Communities and Local Government responsible for determining the Appeal (or the Planning Inspector if the Appeal is to be determined by Inspector);
<b>Site</b>	the land against which this Deed may be enforced as shown edged red on the Plan

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

Council the successors to their respective statutory functions and any duly appointed employee or agent of the District Council and County Council or such successor.

**3. LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 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 the County Council as planning authorities against the Owner.

**4. CONDITIONALITY**

4.1 This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) Implementation

save for the provisions of Clauses 8, 12, 15 and 16 (legal costs, change of ownership, jurisdiction and delivery) which shall come into effect immediately upon completion of this Deed and paragraphs 3.1 and 3.2 of the Third Schedule and paragraph 2.1 of the Fourth Schedule which shall come into effect immediately upon grant of Planning Permission.

4.2 In the event that the Secretary of State (or Inspector as the case may be) expressly states in his Decision Letter that any individual Planning Obligation within this Deed is not compliant with Regulation 122 of the CIL Regulations and that no weight has been given to the same in reaching his decision then that Planning Obligation or those Planning Obligations will cease to have effect and shall be void for the purposes of this Deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect.

**5. OWNER'S COVENANTS**

5.1 The Owner covenants with the District Council as set out in the Second Schedule.

5.2 The Owner covenants with the County Council as set out in Schedules 3 and 4.

**6. DISTRICT COUNCIL'S COVENANTS**

6.1 The District Council covenants with the Owner as set out in the Fifth Schedule.

**7. COUNTY COUNCIL'S COVENANTS**

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

**8. MISCELLANEOUS**

8.1 The Promoter will on completion of this Deed pay to the District Council and the County Council their respective reasonable legal costs of and in connection with this Deed.



- 8.2 The Promoter will within seven working days of the grant of Planning Permission pay to the County Council the sum of One Thousand Five Hundred Pounds (£1,500) towards the costs relating to the administration and monitoring of the contributions under this Deed.
- 8.3 No provisions of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the parties and their successors in title and assigns and any successor to the District Council's or the County Council's functions).
- 8.4 This Deed shall be registrable as a local land charge by the District Council.
- 8.5 Where the agreement, approval, consent or expression of satisfaction of any party is required under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.6 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall note this in the Register of Local Land Charges in respect of this Deed.
- 8.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission and all Qualifying Permissions shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) modified by any statutory procedure or expire prior to Implementation PROVIDED ALWAYS that the Development has not been Implemented.
- 8.9 No person shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Agreement:
- 8.9.1 after they shall have parted with their interest in the Site or the part of the Site in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant which occurred prior to parting with their interest; or
- 8.9.2 to the extent that such breach relates to any part of the Site in which the person has no interest.
- 8.10 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission or a Qualifying Permission nor against those deriving title from them PROVIDED ALWAYS THAT Dwellings shall be bound by any provisions placing a restriction on the Occupation of Dwellings contained within this Deed.
- 8.11 This Deed shall not be enforceable against any public utility company or statutory undertaker having an interest in the Site for the sole purpose of providing utility services to the Site.

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

**9. CONSENT**

- 9.1 The Promoter acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the interest of the Owner and Promoter shall be bound by the terms of this Deed PROVIDED THAT the Promoter shall otherwise have no liability under this Deed unless it becomes a successor in title to the Owner in which case the Promoter too will be bound by the obligations in this Deed as a person deriving title from the Owner and/or the Promoter takes possession of the Site or any part of it and/or Implements the Development on the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**10. WAIVER**

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.

**11. NO FETTER**

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.

**12. CHANGE OF OWNERSHIP ETC**

- 12.1 The Owner agrees with the District Council and the County Council:

- 12.1.1 To give the District Council and the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan provided that this clause shall not apply to:

12.1.1.1 the sale of individual Dwellings on the Development; or

12.1.1.2 any disposal of any part or parts of the Site for servicing or utility requirements or to a statutory body or service supply company of an electricity substation gas governor pumping station water pumping station or other statutory service which have been constructed or installed in or on the Site



12.1.2 to notify the District Council and the County Council in writing within ten working days of the occurrence of each of the following events and to specify in the notification the date on which it occurred:

12.1.1.3 Implementation

12.1.1.4 the Occupation of the first Dwelling

12.1.1.5 the Occupation of 30% of the Dwellings.

12.1.1.6 the Occupation of 50% of the Dwellings

12.1.1.7 the Occupation of the 23<sup>rd</sup> Dwelling

12.1.1.8 the Occupation of 70% of the Dwellings

12.1.1.9 the Occupation of the 40<sup>th</sup> Dwelling on the Site to be Occupied.

12.1.3 to notify the District Council and the County Council within fourteen days of the each of the usual quarter days (25 March, 24 June, 29 September and 25 December) the number of Dwellings on the Development which have been occupied on that quarter day and their addresses/plot numbers together with a plan showing plot numbers

### 13. **INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

### 14. **VAT**

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

### 15. **JURISDICTION**

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

### 16. **DELIVERY**

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. **DISPUTE RESOLUTION**

17.1 In the event of there being any dispute between the District Council and the Owner in respect of any matter to be agreed pursuant to this Deed such dispute shall be determined in accordance with this Clause 17 and either of those parties may at any time require by notice in writing to the other an independent expert to be appointed to resolve the dispute ("the Expert")

17.2 The Expert (who shall be a person having not less than ten (10) years' experience of the type of dispute in question) may be agreed upon by the relevant Parties and in default of such

agreement within one (1) month of a requirement being made pursuant to Clause 17.1 shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application' of the relevant Party or Parties made at any time after the said period of one (1) month

- 17.3 If such dispute shall relate to matters concerning construction, interpretation and/or the application of this Deed the Expert shall be a barrister or a solicitor as agreed between the relevant Parties
- 17.4 If such a dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed the Expert shall be a chartered accountant as agreed between the relevant Parties
- 17.5 If such a dispute shall relate to the valuation of any interest or estate in any part of the Site the Expert shall be a RICS chartered Surveyor as agreed between the relevant Parties
- 17.6 If such dispute shall relate to matters connected with education the Expert shall be an appropriately qualified person in the field of primary and secondary education facility provision as agreed between the relevant Parties
- 17.7 In any other case the Expert shall be (at the discretion of the President of the Chartered Institute of Arbitration) either an architect or civil engineer or a member of the Royal Town Planning Institute
- 17.8 If such dispute shall relate to matter falling within two or more of sub clauses 17.3-17.6 the President of the Chartered Institute of Arbitrators may appoint such person or persons falling within the description of sub-clauses 17.3-17.6 as he thinks appropriate including joint Experts
- 17.9 If the Expert nominated pursuant to such application shall die or decline to act another Expert may be appointed in his place as agreed between the relevant Parties
- 17.10 Notice in writing of his appointment shall be given by the Expert to the relevant Parties and he shall invite each to submit within a specified period (which will not exceed four (4) weeks) any written representations each wishes to make to him and any submissions shall be provided to those Parties with an invitation to respond within a specified period (not exceeding two (2) weeks)
- 17.11 The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement
- 17.12 The Expert shall give notice in writing of his decision with reasons therefore to the relevant Parties within one (1) month of his appointment or within such extended period as those Parties may together allow
- 17.13 The decision of the Expert shall be final on all matters referred to him and in the absence of manifest error shall be binding on the relevant Parties

- 17.14 If for any reason the Expert shall fail to make a decision and give notice thereof within the time and in the manner herein before provided the relevant Party or Parties may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary
- 17.15 Each relevant Party shall bear its own costs save that the fees of the Expert and of the Royal Institution of Chartered Surveyors shall be in the Expert's award
- 17.16 It is agreed that nothing in this Clause 17 shall be taken to fetter the relevant Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed

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

## **SCHEDULE 1**

### **THE SITE**

Land at Tappers Farm, Oxford Road, Bodicote, Banbury, Oxfordshire shown edged red on the Plan and the title registered at the Land Registry under Title Numbers ON304067 and ON310707.



**SCHEDULE 2**  
**COVENANTS WITH THE DISTRICT COUNCIL**  
**Part 1 – Open Space and Play Areas**

**Definitions**

**Balancing Pond**

means a balancing pond or ponds that may be provided within the Public Open Space on the Development as identified within any Qualifying Application

**Completion Certificate**

means a certificate issued by the District Council which shall be conclusive evidence that the LAP and/or LEAP and/or Public Open Space as relevant has been laid out in conformity with this Deed to the reasonable satisfaction of the District Council

**Final Completion Certificate**

means a certificate to be issued by the District Council which shall be conclusive evidence that the LAP and/or LEAP and/or Public Open Space as relevant has been properly maintained during the Maintenance Period

**Guide**

the District Council's adopted planning guidance regarding the provision and maintenance of amenity and recreational open spaces as at the time of Implementation

**Hedges**

means any existing hedgerow within the Site that is to be retained and/or enhanced and any new hedgerow that may be planted within the Public Open Space on the Development as identified within any Qualifying Application

**Index Linked**

means adjusted according to the fluctuations between the date of this Deed and the quarter period in which payment is due to the District Council in the BCIS All in One Tender Price Index published by the Royal Institution of Chartered Surveyors or any successor organisation

<b>Informal Open Space</b>	Means any areas of informal open space within the Site
<b>LAP</b>	means a local area of play which will be provided by the Owner as part of the Development
<b>LAP Commuted Sum</b>	means the sum of Twenty Seven Thousand Five Hundred and One Pounds and Fifty Two Pence (£27,501.52) Index Linked for the future maintenance and management of the LAP
<b>Public Open Space Commuted Sum</b>	<p>means a payment for the future maintenance and management of the Public Open Space calculated as follows:</p> <ul style="list-style-type: none"> <li>• Eleven Pounds and Sixty Three Pence per square metre (£11.63/sqm) of Balancing Pond Index Linked</li> <li>• Fourteen Pounds and Thirty Five Pence per linear metre (£14.35/lin m) of Hedges Index Linked</li> <li>• Three Hundred and Thirty Four Pounds and Eighty Two Pence per tree (£334.82) Index Linked</li> </ul> <p>and the remaining areas of Public Open Space at Nine Pounds and Thirty Two Pence per square metre (£9.32/sqm) of Public Open Space Index Linked (excluding the area covered by the Play Area)</p>
<b>Public Open Space</b>	means areas of public open space to be provided on the Development as identified within any Qualifying Application, which may include Balancing Pond(s), Hedges and Trees, Informal Open Space
<b>"Surveyor"</b>	means 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

## **Trees**

means any existing mature trees on the Site to be retained on the Development as determined by Qualifying Permissions

## **Local Area of Play**

1. The Owner covenants with the District Council that they:
  - 1.1 will upon the terms of paragraphs 1.2 to 1.10 below provide the LAP on the Development 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 Implementation ("the Guide") 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 children's play area (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 by way of conditions pursuant to the Planning Permission or a Qualifying Permission or otherwise and using the LAP 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);
  - 1.2 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 "The Play Area Scheme" shall include (1) details of the location of the LAP (2) a timetable for carrying out the works and the planting comprised in the said laying out landscaping and equipping of the LAP (3) provision to ensure that the LAP is suitable for disabled users and (4) detailed provision for the maintenance of the LAP for a period of twelve months following its completion, such maintenance to include regular inspection;
  - 1.3 will during the first planting season (or such other time as is appropriate to secure the provision of the LAP at the same time as the Dwellings on the Development and as is agreed by the District Council) following the commencement of Construction of any Dwelling on the Development carry out and complete the laying out landscaping and equipping of the LAP in accordance with the Play Area Scheme and the Guide and to the reasonable satisfaction of the District Council;
  - 1.4 will not cause or permit to be Occupied 50% (fifty per cent) of the Dwellings on the Development until the LAP is completed and ready for use;
  - 1.5 will on completion of the LAP, secure the approval of the District Council as follows:
    - 1.5.1 the Owner shall invite the District Council in writing to inspect the LAP with a view to issuing a Practical Completion Certificate
    - 1.5.2 the District Council shall inspect the LAP within 10 working days of receipt of the invitation in paragraph 1.5.1 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 LAP has not been provided to the District Council's reasonable satisfaction and set out details of the work required to reach that standard

1.5.3 if the Owner receives a Defects Notice in respect of the LAP, they shall use reasonable endeavours to complete the works specified in the notice as soon as reasonably practicable and in any event no longer than 8 weeks from receipt of a Defects Notice and then invite the District Council to re-inspect the LAP

1.5.4 the procedure set out in paragraphs 1.5.1 to 1.5.3 above shall be repeated in respect of the LAP until such time as the District Council EITHER:

- (a) issues a Practical Completion Certificate; OR
- (b) fails to inspect the LAP within 10 working days of receipt of the invitation in paragraph 1.5.1 above in which case a Completion Certificate for that the LAP shall be deemed to have been issued 10 working days after receipt of the relevant invitation; OR
- (c) fails to serve within 10 working days of their inspection a Defects Notice in which case a Practical Completion Certificate for that LAP shall be deemed to have been issued 10 Working Days following the relevant inspection

1.5.5 the Owner shall maintain the LAP for a period of 12 months from the issue of the Practical Completion Certificate (the Maintenance Period) to the reasonable satisfaction of the District Council, rectifying any defects arising and (where relevant) replacing any trees shrubs plants or grass which have died or been removed or become seriously diseased or damaged with others of a similar size and species

1.6 upon completion of the 12 month maintenance period specified in paragraph 1.5.5 above, the Owner shall secure the final approval of the District Council for the LAP by inviting the District Council in writing to inspect the LAP with a view to issuing a Final Certificate and the provision of paragraph 1.5.1 to 1.5.4 above shall apply mutatis mutandis and the Owner shall continue to maintain the LAP in accordance with paragraph 1.5.5 above until its transfer to the District Council (or as the District Council directs) in accordance with paragraph 2 below;

1.7 will provide an unrestricted right of access for the general public to the LAP at all times following the issue of the Practical Completion Certificate save as required to carry out works of maintenance or in the interests of health and safety;

1.8 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;



- 1.9 will at all times prior to the issuing of the Practical Completion Certificate referred to in paragraph 1.5 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 and will afford them access to do so for the purpose of inspecting the laying out of the LAP; and
- 1.10 will provide to the District Council prior to the issue of the Final Completion Certificate for the LAP a RoSPA post installation report and Risk Assessment for the Play Area 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 none of which RoSPA reports shall be more than eleven months old at the date they are provided to the District Council.
2. The Owner will following receipt of the Final Certificate for the LAP:
  - 2.1 transfer the unencumbered freehold of the LAP 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 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 the District Council hereby covenants to take a transfer of the Play Area on the circumstances anticipated by this clause; **AND**
  - 2.2 on the date of the transfer referred to in paragraph 2.1 above, pay to the District Council or as the District Council may direct the LAP Commuted Sum.
3. The Owner covenants with the District Council that they 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 in paragraph 2.1 above.

#### **Public Open Space**

4. The Owner covenants with the District Council that they will:
  - 4.1 not implement the Development until there has been submitted in writing to and agreed with the District Council a scheme (including a phasing programme) ("Landscaping Scheme") for the location, laying out and landscaping of the Public Open Space;
  - 4.2 during the first planting season following Implementation or as otherwise agreed with the District Council commence the laying out and landscaping of the Public Open Space in accordance with the Landscaping Scheme for the Development and to the reasonable satisfaction of the District Council and the laying out of the Public Open Space shall be completed prior to the Occupation of 50% of the Dwellings
  - 4.3 will on completion of the Public Open Space secure the approval of the District Council **AND** the provisions of paragraphs 1.5 and 1.6 above shall apply mutatis mutandis to the Public Open Space;

- 4.4 will not grant or cause or permit to be granted any rights or easements over the Public Open Space 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;
- 4.5 will provide an unrestricted right of access for the general public to the Public Open Space at all times following the issue of the Practical Completion Certificate for the Public Open Space; and
- 4.6 will at all 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 Public Open Space.
5. The Owner will following receipt of the relevant Final Certificate for the Public Open Space:
- 5.1 following receipt or deemed receipt of the Final Completion Certificate for the Public Open Space transfer the unencumbered freehold of the Public Open Space, including any Balancing Pond(s) and Hedges and Trees, 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 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;
- 5.2 on the date of the transfer referred to in paragraph 5.1 above, pay to the District Council or as the District Council may direct the Public Open Space Commuted Sum
- 5.3 will continue to maintain the Public Open Space, including any Balancing Pond(s) and Hedges and Trees to their original completed standard and to the reasonable satisfaction of the District Council until the date of completion of the transfers in paragraph 5.1; and
- 5.4 will not cause or permit to be Occupied 50% (fifty per cent) of the Dwellings until the Practical Completion Certificate has been issued for that Public Open Space.
- 5.5 Will not cause or permit to be Occupied more than 75% of the Dwellings until the Final Completion Certificate has been issued for that Public Open Space.

## Part 2

### District Council Contributions

#### Definitions

##### Community Hall Contribution

a sum calculated in accordance with the following:

No. of Dwellings in Qualifying Application x 2.49  
(average occupancy per Dwelling) x £428.00  
(four hundred and twenty eight pounds) to be  
used towards the delivery of improvements  
and/or enhancements to Bodicote Village Hall

##### Healthcare Contribution

a sum calculated in accordance with the  
following:

No. of Dwellings in Qualifying Application x 2.49  
(average occupancy per Dwelling) x £360.00  
(three hundred and sixty pounds to be used for  
the enhancement of existing primary care  
medical infrastructure within the Banbury area to  
meet the needs of the growing population by the

##### Off-site Indoor Sports Facilities Contribution

a sum calculated in accordance with the  
following:

No. of Dwellings in Qualifying Application x 2.49  
(average occupancy per Dwelling) x £335.32  
(three hundred and thirty five pounds thirty two  
pence) to be used towards the extension and  
enhancement of Spiceball Leisure Centre in  
Banbury



**Off-site Outdoor Sports Facilities Contribution**

a sum calculated in accordance with the following;

No. of Dwellings in Qualifying Application x £2017.03 (three hundred and sixty pounds) to be used towards the provision of a 3G all weather pitch at North Oxfordshire Academy in Banbury

**Refuse Contribution**

£111.00 (one hundred and eleven pounds) for each Dwelling comprising of £106.00 (one hundred and six pounds) for the provision of waste bins and £5.00 (five pounds) towards the provision of recycling banks in the District Council's area

**The Contributions**

1. The Owner covenants with the District Council as follows:

- 1.1 **Community Hall Contribution**

- 1.1.1 To pay 50% of the Community Hall Contribution to the District Council prior to the First Occupation of any Dwelling on the Site and not to permit Occupation of any Dwelling on the Site until this has been paid; and

- 1.1.2 To pay the remaining 50% of the Community Hall Contribution to the District Council prior to the First Occupation of the 11<sup>th</sup> Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid.

- 1.2 **Off-site Indoor Sports Facilities Contribution**

- 1.2.1 To pay 50% of the Off-site Indoor Sports Facilities Contribution to the District Council prior to the first Occupation of any Dwelling on the Site and not to permit Occupation of any Dwelling on the Site until this has been paid; and

- 1.2.2 To pay the remaining 50% of the Off-site Indoor Sports Facilities Contribution to the District Council prior to the First Occupation of the 11<sup>th</sup> Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid.

- 1.3 **Off-site Outdoor Sports Facilities Contribution**

- 1.3.1 To pay 50% of the Off-site Outdoor Sports Facilities Contribution to the District Council prior to the first Occupation of any Dwelling on the Site and not to permit Occupation of any Dwelling on the Site until this has been paid; and



1.3.2 To pay the remaining 50% of the Off-site Outdoor Sports Facilities Contribution to the District Council prior to the First Occupation of the 11<sup>th</sup> Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid

#### **1.4 Refuse Contribution**

1.4.1 To pay 50% of the Refuse Contribution to the District Council prior to the first Occupation of any Dwelling on the Development and not to permit Occupation of any Dwelling on the Site until this has been paid; and

1.4.2 To pay the remaining 50% of the Refuse Contribution to the District Council prior to the Occupation of more than 50% of the Dwellings on the Site and not to permit Occupation of more than 50% of the Dwellings on the Site until this has been paid

#### **1.5 Healthcare Contribution**

1.5.1 To pay 50% of the Healthcare Contribution to the District Council prior to the first Occupation of any Dwelling on the Development and not to permit Occupation of any Dwelling on the Site until this has been paid; and

1.5.2 To pay the remaining 50% of the Healthcare Contribution to the District Council prior to the First Occupation of the 11<sup>th</sup> Dwelling on the Site and not to permit Occupation of more than 10 Dwellings on the Site until this has been paid

### **Part 3**

#### **Affordable Housing**

##### **Definitions**

In this part of 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):

##### **Affordable Housing**

housing for sale or rent that will be available for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) and which meets the definition in Annex 2 of the National Planning Policy Framework dated February 2019 (or as may be amended from time to time)

##### **Affordable Housing Dwellings**

the Intermediate Housing or Affordable Rented Housing or such alternative tenure to be agreed with the District Council that shall comprise not

**Affordable Housing Indicative Dwelling and Tenure Mix**

less than 35% (thirty five per cent) of the total number of Dwellings on the Development

the mix of tenure and dwelling types whereby not less than 35% (thirty five per cent) of the Dwellings within the Development are provided as Affordable Housing as follows and whereby 70% of the Affordable Housing Dwellings shall be provided as Affordable Rented Housing.

or such other dwelling and tenure mix as may be agreed between the Owners, the Promoter and the District Council from time to time

**Affordable Housing Site**

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 Affordable Housing Site from the Site and the provision of all necessary infrastructure and connections thereto and the necessary installations thereof for the dwellings to be constructed on the Affordable Housing Site

**Affordable Housing Standards**

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

- (in relation to the Affordable Rented Housing only) 50% to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings;
- shall be located in clusters of no more than 10 Affordable Housing Dwellings with no more than 5 units of Affordable Rented Housing in any one cluster;
- shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Housing; and
- they shall be constructed to the nationally described space standard as set out in the Department for

**Affordable Rented Housing**

rented housing provided by the Registered Provider to households who are eligible for social rented housing and which is not subject to the national rent regime but in line with the District Council's tenancy strategy, the rents shall be no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting

**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 Site or any part of it and includes any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

**Help to Buy Agent**

that organisation which is appointed by the Regulator or other such successor body to assess eligibility for and market low cost home ownership products

**Infrastructure**

in relation to the Affordable Housing Site:

- roads and footpaths to serve the Affordable Housing Site
- temporary services for contractors and a haul road for the use of contractors;

- adequate inverts for the foul and surface water drains sufficient to serve the drainage requirements of the Affordable Housing Site;
- pipes sewers and channels sufficient to serve the Affordable Housing Site;
- 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 Site such spur connections to be to a specification agreed with the Registered Provider;

and the following services:

- a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider;
- a water supply connection from the mains (size and termination position to be agreed with the Registered Provider);
- 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 Site (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 Site nor to the Affordable Housing Dwellings

#### **Intermediate Housing**

housing at prices and rents above those for social rented housing but below open market prices or rents and for the avoidance of doubt the expression 'Intermediate Housing' includes Shared Ownership, shared equity and low cost homes for sale but does not include Affordable Rented Housing. The Intermediate Housing will be delivered as Shared Ownership Housing unless otherwise agreed between the District Council, the Owners and the Promoter

#### **Market Dwellings**

that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

#### **Mortgage Land**

the Affordable Housing Site or any part of it which is mortgaged or charged to the Chargee

#### **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 which shall guide in conjunction with the Allocations Scheme those persons eligible to

be nominated 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 Affordable Rented Housing in accordance with this Allocations Scheme and the Nominations Agreement

**Registered Provider**

a private provider of social housing which is designated in the register maintained by the Regulator or any similar future authority carrying on substantially the same regulatory or supervisory functions pursuant to section 111 of the Housing and Regeneration Act 2008 as a non-profit organisation under subsections 115(1)(a) or 278(2) of the Housing and Regeneration Act or which is designated in that register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008 which is on the District Council's list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and been approved in writing by the District Council

**Shared Ownership Housing**

ownership under the terms of a lease which accords with the Regulator's 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 housing provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity and where the lessee has the option to increase their percentage of ownership through a process of staircasing up to outright ownership

**The Regulator**

the Regulator of Social Housing constituted pursuant to the Housing and Regeneration Act

2008 (as amended) and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing

### **Affordable Housing Covenants**

1. The Owner covenants with the District Council that they:
  - 1.1 will submit a detailed scheme ('the Affordable Housing Scheme') for the provision, proposed location and construction programme of the Affordable Housing Dwellings, including details of the tenure mix and property type to the District Council for approval by the District Council;
  - 1.2 not Implement or cause or permit the Implementation of the Development until a detailed scheme ('the Affordable Housing Scheme') for the provision, proposed location and construction programme of the Affordable Housing Dwellings, including details of the tenure mix and property type, has been submitted to and approved in writing by the District Council;
  - 1.3 will not Occupy or cause or permit the Occupation of more than thirty per cent (30%) of the Market Dwellings in any Phase until
    - 1.3.1 each area comprising the Affordable Housing Site in that Phase has been offered 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 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 Site in that Phase;and
      - 1.3.1.1 there has been provided to the District Council's reasonable satisfaction the Infrastructure to serve each parcel of the Affordable Housing Site and the Affordable Housing Dwellings in that Phase at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);
    - 1.3.2 construct the Affordable Housing Dwellings in each Phase and make the same ready for Occupation in accordance with the Affordable Housing Standards and the approved Affordable Housing Scheme to the reasonable satisfaction of the District Council as part of the Development upon the Site prior to use or Occupation of more than sixty per cent (60%) of the Market Dwellings in that Phase;
    - 1.3.3 will not cause or permit more than seventy five per cent (75%) of the Market Dwellings in any Phase to be used or Occupied unless and until the Owner has constructed the Affordable Housing Dwellings in that Phase and made the same ready for Occupation as aforesaid in accordance with the Affordable Housing Standards and the approved Affordable



Housing Scheme and the Affordable Housing Site in that Phase 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 services and properly connected to the public highway.

2. The Owner covenants with the District Council:
  - 2.1 will not use or cause or permit the use of the Affordable Housing Site for any other purpose than for the provision of Affordable Housing in accordance with this Deed unless otherwise specified in this Deed;
  - 2.2 will not without the consent in writing of the District Council transfer the freehold interest or the long leasehold interest in the Affordable Housing Site 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 interest and provided that this shall not apply to the tenancies being granted to any of the occupiers of individual Affordable Housing Dwellings; and
  - 2.3 will provide the Affordable Housing Dwellings in line with the Affordable Housing Indicative Dwelling and Tenure Mix or such other mix as may be agreed in writing between the Owner and the District Council.
3. For the avoidance of doubt paragraphs 2.1 and 2.2 are binding on the Chargee PROVIDED THAT paragraphs 2.1 and 2.2 will not be binding on a bona fide purchaser for value from the Chargee exercising its power of sale (other than a purchaser which is a Registered Provider) or the successors in title of such purchaser provided that the provisions of paragraph 4 below have been complied with.
4. It is hereby agreed and declared that the proviso contained in paragraph 3 will only apply where the Chargee exercising its power of sale:
  - 4.1 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, in its mortgage, charge or other security; and
  - 4.2 has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 4.1 above to dispose of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed to a Registered Provider or the District Council PROVIDED ALWAYS 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 within this Schedule) or all sums due under the terms of the Chargee's 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 expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 4.1 above and provided the steps detailed 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 paragraph 2.1 and 2.2 and paragraph 6 of the Second Schedule Part 3 with the effect that they shall cease to bind the Mortgage Land.

5. The provisions of this part will not be binding on any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any owner of Shared Ownership Housing who has staircased up to 100% or any mortgagee, chargee or successor in title thereto.
6. The Owner will not allocate or cause or permit to be allocated any of the Affordable Housing Dwellings other than as follows:
  - 6.1 the Affordable Rented Housing shall only allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement;
  - 6.2 the Shared Ownership 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 Shared Ownership Housing; or
  - 6.3 as agreed by the District Council.
7. For the avoidance of doubt, if the Affordable Housing Dwellings are vested or transferred to another Registered Provider pursuant to a proposal made by the Homes and Communities Agency 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 Agreement shall continue in respect of such other Registered Provider.

**SCHEDULE 3**  
**COUNTY COUNCIL CONTRIBUTIONS**

**Part 1**

**Definitions**

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):

- 1.1. "Approval (Reserved Matters)" means the approval of reserved matters (or where applicable approval of another Qualifying Application) which first establishes the Composition of the Development
- 1.2. "Approval Variation" means any approval (further to an application for approval of reserved matters or approval of a non-material change to a Qualifying Permission, the Planning Permission or otherwise) which alters the Composition of the Development as established further to the Approval (Reserved Matters) or as applicable preceding Approval (Variation)
- 1.3. "Bedroom" means a room in a Dwelling designed as a bedroom or study/ bedroom and
- 1 Bedroomed Dwelling means a Dwelling with 1 Bedroom
  - 2 Bedroomed Dwelling means a Dwelling with 2 Bedrooms
  - 3 Bedroomed Dwelling means a Dwelling with 3 Bedrooms
  - 4 Bedroomed Dwelling means a Dwelling with 4 or more Bedrooms



- 1.4. "Composition of the 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
- 1.5. "Index Linked"
- means in respect of the Primary Education Contribution and the Revised Primary Education Contribution adjusted according to any increase occurring between the fourth quarter of 2014 and the quarter period in which the relevant payment is paid (by reference to the index value for that quarter) in the Extension of PUBSEC Tender Price Index of Public Sector Building Non Housing" within the BCIS Public Sector Price and Cost Indices and made available through the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors or if at any time or for any reason it becomes impracticable to use this Index such alternative Index as may be agreed between the Owners and the County Council
  - means in relation to the Primary School Land Contribution and the Revised Primary School Land Contribution adjusted according to any increase occurring between November 2016 and the date 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
  - means in relation to the Public Transport Service Contribution adjusted according to any increase occurring between November 2018 and the date

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

- means in relation to the TRO Contribution adjusted according to any increase occurring between June 2018 and the date 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"

1.6. "Matrix Sum" means the sum calculated in accordance with the following formula:

$$(A \times W) + (B \times X) + (C \times Y) + (D \times Z)$$

When

A means the number of 1 Bedroomed Dwellings;

B means the number of 2 Bedroomed Dwellings;

C means the number of 3 Bedroomed Dwellings; and

D means the number of 4 Bedroomed Dwellings;

and

W, X, Y and Z are as set out in (Part 2) to this Schedule

1.7. "Notification (Initial)" means written notification of the Approval (Reserved Matters) containing a copy of that approval and details of the Composition of the Development established by that approval

1.8. "Notification (Variation)" means written notification of an Approval (Variation) containing a copy of that approval and details of the Composition of the Development established applying that approval

- 1.9. "Primary Education Contribution" means the sum of Two Hundred and Ninety Five Thousand Six Hundred and Thirty Three Pounds (£295,633) or if higher the sum calculated by applying the Matrix to the Composition of the Development as identified in the Notification (Initial) such sum to be Index Linked towards the construction of and provision of facilities at a new primary school south of Salt Way, Banbury payable in the following instalments both Index Linked:
- Primary Education Instalment 1 being 50% of the Primary Education Contribution
  - Primary Education Instalment 2 being 50% of the Primary Education Contribution
- 1.10. "Primary School Land Contribution" means the sum of Twenty Nine Thousand Nine Hundred and Twenty Eight Pounds (£29,928) or if higher the sum calculated by applying the Matrix to the Composition of the Development as identified in the Notification (Initial) such sum to be Index Linked towards the cost to the County Council of acquiring sufficient land south of Salt Way, Banbury for a new primary school
- 1.11. "Public Transport Service Contribution" means the sum of Forty Six Thousand Pounds (£46,000) Index Linked towards increasing the frequency of bus services between Banbury and Oxford
- 1.12. "Revised Primary Education Contribution" means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix where this is higher than the Primary Education Contribution or in the event that there is more than one Approval (Variation) the Revised Primary Education Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix if that sum is higher
- 1.13. "Revised Primary School Land Contribution" means the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix where this is higher than the Primary School Land Contribution or in the event that



- there is more than one Approval (Variation) the Revised Primary School Land Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix if that sum is higher
- 1.14. "TRO Contribution" means the sum of Two Thousand Seven Hundred Pounds (£2,700.00) Index Linked towards the costs of the promotion, consultation and if appropriate the making of a TRO to enable the implementation of double yellow lines along White Post Road between its junctions with the A4260 and the White Post Road/Bankside/Sycamore Drive Roundabout

### **Payment Contributions**

2. The Owner covenants with the County Council:-
- 2.1 not to cause or permit the first Occupation of any Dwelling on the Site until they have paid the Public Transport Service Contribution, Primary Education Instalment 1 the Primary School Land Contribution and the TRO Contribution to the County Council and
- 2.2 to pay the Public Transport Service Contribution, Primary Education Instalment 1 the Primary School Land Contribution and the TRO Contribution to the County Council prior to the first Occupation of any Dwelling on the Site
- 2.3 not to cause or permit the first Occupation of more than 22 Dwellings on the Site until they have paid Primary Education Instalment 2 to the County Council and
- 2.4 to pay Primary Education Instalment 2 to the County Council prior to the first Occupation of the 23<sup>rd</sup> Dwelling to be Occupied on the Site

### **Supplemental Payments**

3. The Owner covenants with the County Council:-
- 3.1 to give to the County Council the Notification (Initial) within 14 days of the issue of the Approval (Reserved Matters)
- 3.2 not to cause or permit the Implementation of the Development until the Notification (Initial) has been given to the County Council

- 3.3 to give to the County Council a Notification (Variation) within 14 days of the issue of each Approval (Variation)
- 3.4 where a Notification (Variation) has been given (or is required to be given further to paragraph 3.3) and the relevant Approval (Variation) results in the establishment of a Revised Primary Education Contribution and a Revised Primary School Land Contribution then
- 3.4.1 for the purposes of calculating any payment which will payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Primary Education Contribution and the Revised Primary School Land Contribution shall be applied in place of the Primary Education Contribution and the Primary School Land Contribution
- 3.4.2 there shall be calculated the difference between any payment paid prior to the issue of the relevant Approval (Variation) and the amount that such payment would have been if it had been calculated by reference to the Revised Primary Education Contribution and the Revised Primary School Land Contribution (in both instances disregarding index linking)

#### **Covenants – Payment (additional covenant)**

4. The Owner covenants with the County Council:-
- 4.1 to pay to the County Council the sums calculated further to paragraph 3.4.2 Index Linked with the next relevant payment subsequent to the date of grant of the relevant Approval (Variation) or if all the relevant payments have been paid to pay such sums Index Linked within 14 days of the grant of the Approval (Variation)

#### **PART 2 – Matrix**

	1 Bed	2 Bed	3 Bed	4+ Bed
Primary Education	£0.00	£3,610.46	£8,282.82	£10,831.38
Primary School Land	£0.00	£306.64	£797.26	£1,287.89
<b>Total</b>	<b>W = £0.00</b>	<b>X = £3,917.10</b>	<b>Y =£9,080.08</b>	<b>Z = £12,119.27</b>

## **SCHEDULE 4**

### **HIGHWAYS**

#### **Part 1**

##### **Definitions**

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):
  - 1.1. "the 1980 Act" means the Highways Act 1980 (as amended)
  - 1.2. "Highway Agreement" means an agreement under section 278 (and if appropriate section 38) of the 1980 Act which provides for the execution of the Works by the Owner at the Owner's expense and to be substantially in the form of the draft agreement and subject to the conditions at Appendix 2 to this Deed including such amendments as may be agreed
  - 1.3. "Works" means the works described in Part 2 of this Schedule
  - 1.4. "Works Plan" means indicative drawings as set out in Part 2 of this Schedule or such amendments or variations to those drawings as approved in writing by the County Council acting with absolute discretion
  - 1.5. The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act
  - 1.6. The parties intend to enter into the Highway Agreement or Highway Agreements

##### **Works Obligations**

2. The Owner covenants with and undertakes to the County Council:
  - 2.1 not to cause or permit the Implementation of the Development until
    - 2.1.1 there have been submitted to the County Council and approved by it in writing in respect of the Works
      - a in principle drawings of the Works
      - b duration of construction of the Works and the long stop for completion of the Works



- c     commuted maintenance sums in respect of the cost of future maintenance of the Works; and
  - d     (if applicable) a plan identifying the land to be dedicated for the purposes of the Works
- 2.1.2     title has been deduced to the satisfaction of the County Council in respect of any land to be dedicated for the purpose of the Works and any mortgagee of such land has released it from its charge; and
- 2.1.3     a Highway Agreement incorporating the matters agreed and approved as set out in paragraph 2.1.1 has been entered into by the Owners and all parties with an interest in any land to be dedicated have also joined in such agreement; and
- 2.2     not to cause or permit any Dwelling on the Site to be Occupied before the Works have been completed pursuant to and in accordance with the Highway Agreement; and
- 2.3     not to cause or permit any building constructed on the Site to be open for use before the Works have been completed pursuant to and in accordance with the Highway Agreement

## **PART 2 - THE WORKS**

### **(1)     Principal Works**

The provision and construction of the following works as shown indicatively on the Works Plan attached ("the Principal Works"):

- (a)     The construction and tying in of a 5.5 metre wide bell-mouth to include a 2 metre wide footway for vehicular and pedestrian access to the existing highway network on White Post Road, together with dropped kerbs, tactile paving, and road markings as shown on Drawing No. 1608/01.
- (b)     The construction of a ghosted right turn lane, together with appropriate road markings as shown on Drawing No. 1608/01.
- (c)     The construction of a pedestrian refuge, together with dropped kerbs and tactile paving, on White Post Road as shown on Drawing No. 1608/01.
- (d)     The construction of two hardstanding areas within the existing highway boundary on the western side of the A4260 Oxford Road, one at a point approximately 86m south of the mid-point of the A4260 Oxford Road/White Post Road junction, and one approximately 160m south of the mid-point of the A4260 Oxford Road/White Post Road junction to connect two proposed pedestrian accesses to the existing footway on the western side of the A4260 Oxford Road.

- (e) The restoration of a full-height kerb and the installation of verging that will not interfere with the existing footway across the existing access to the existing land use of this site, which is approximately 217m west of the proposed vehicular and main pedestrian access to the site.
- (f) Double yellow line marking along White Post Road between the junctions with the A4260 and the White Post Road/Bankside/Sycamore Drive roundabout, subject always to consultation on a traffic regulation order which would require such works
- (g) Provision of an informal crossing with a pedestrian refuge across Oxford Road. The location of this crossing should be agreed in writing with the County Council but indicatively should be at the point east of where the pedestrian cut-through comes out on to Oxford Road north-east of plots 33-34 as shown on the Illustrative Masterplan/Layout Plan.

(2) **Preparatory and Ancillary Works**

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

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

- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

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

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



**SCHEDULE 5**  
**DISTRICT COUNCIL'S COVENANTS**

**Repayment of Contributions**

1. The District Council covenants with the Owner to use all sums received from the Owner under the terms of the Second Schedule of this Deed for 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.
2. The District Council covenants that following written request it will pay to the person who made the payment such amount of any payment made to the District Council under the terms of the Second Schedule of this Deed in accordance with the provisions of this Deed which has not been expended at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of ten years 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. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph.
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 by the Owner under the terms of the Second Schedule of this Deed upon a written request by the Owner such request not to be made more than once in any year.
4. The District Council shall within 10 working days of a written request from the Oxfordshire Care Commissioning Group forward the Healthcare Contribution to the Oxfordshire Care Commission Group.

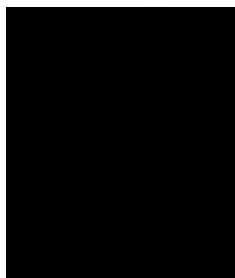
**Discharge of Obligations**

5. 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.

**SCHEDULE 6**  
**COUNTY COUNCIL'S COVENANTS**

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):
  - 1.1. "County Contributions" means the Public Transport Service Contribution and/or the Primary Education Contribution (or the Revised Primary Education Contribution) and/or the Primary School Land Contribution (or the Revised Primary School Land Contribution) and/or the TRO Contribution, all as defined in Schedule 3
2. The County Council shall not apply County Contributions for any purpose other than that identified in the definition of the relevant County Contribution.
3. The County Council covenants with the Owner that it will following written request from the person who paid the relevant County Contribution repay to that person such amount of any County Contribution made by them to the County Council under this Agreement which has not been expended at the date of such written request together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of ten years from the due date for payment of the County Contribution or the final instalment of the County Contribution as the case may be or if later prior to the expiration of ten years from the date of payment of the relevant County Contribution or the final instalment of the relevant County Contribution as the case may be. Any County Contribution or part of a County 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.

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



cpc 20130

Authorised Signatory

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

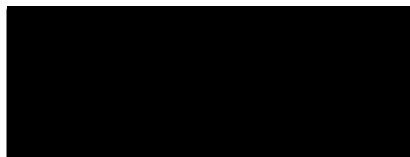


980/19



~~Director of Law and Governance/Designated~~  
Officer

SIGNED AS A DEED by )  
PAUL EDWARD BENNETT )  
In the presence of:- )



Witness Signature:...



Witness Name:

CHRISTIAN OAR

Witness Occupation:

LAND AND PLANNING EXEC

Witness Address:

1 LIVINGSTON ROAD

SALFORD, M6 8GQ



SIGNED AS A DEED by )

EDWINA CAROLINE FASSOM )

In the presence of:- )

Witness Signature.....

Witness Name:.....

Witness Occupation:.....

Witness Address:.....

SALFORD, M6 8QQ

EXECUTED AS A DEED BY  
HOLLINS STRATEGIC LAND LLP  
Acting by:

Designated Member - MARK COOPER

in the presence of

Witness Signature.....

Witness Name:.....

Witness Address:.....

ALTRINCHAM, WA14 1UR

Witness Occupation:.....

STRATEGIC LAND MANAGER

## APPENDIX 1

### PLAN

COC 20130

COUNCIL





## **APPENDIX 2**

### **DRAFT HIGHWAYS AGREEMENT AND STANDARD CONDITIONS**

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)  
*<sup>1</sup>only applies if contribution*  
-----

Nick Graham  
Chief Legal Officer and Monitoring Officer  
Oxfordshire County Council  
County Hall  
New Road  
Oxford OX1 1ND

Two Thousand and [      ]

**BETWEEN:-**

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

### 1. Interpretation

**In this Deed:-**

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



appointed employee or agent of the Council or such  
successor

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

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

1.9 "the Development" means [    ]

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

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

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



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

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

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

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

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

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

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

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

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

1.27 Where the context so requires:-

1.27.1 the singular includes the plural and vice versa



1.27.2 the masculine includes the feminine and vice versa

1.27.3 persons includes bodies corporate associations and partnerships and vice versa

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

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

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

## 2. **Preliminary**

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

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

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

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

Alternative 1

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

Alternative 2

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

Alternative 3

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

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

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

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

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

### 3. **Covenants**

The Owner and the Developer covenant:-

3.1 not to cause or permit [any planning permission obtained for the Development the Planning Permission to be implemented (save insofar as is necessary for the execution of the Works)]building forming part of the Development [to be occupied] [to open for business] before the Works have been completed]

3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council



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

4. **Adoption as Highway**

- 4.1 On the issue of a Certificate of Completion for the Works the whole of the land shown [hatched black] on the Dedication Plan (subject to modification as provided in clause 4.2) shall be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of the Standard Conditions be a highway maintainable at public expense
- 4.2 The Council may after consideration of the As-Built Drawings require the substitution of a modified dedication plan in which event that shall be agreed with the Owner [the Developer the Mortgagee] and the dedication as provided in clause 4.1 shall have effect in respect of the modified area
- 4.3 the Owner [and the Mortgagee] consent to the noting of the provisions of clause 4 of this Deed on the register under title number [                      ]

5. **Application of Monies Received**

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

5/6 **Act Reasonably**

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

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

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

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

7/8 **Costs**

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



**8 Third Party Rights**

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

**9 Notice**

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

**10 No Waiver**

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

**11 No Fetter**

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

## **12 VAT**

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

## **13 Jurisdiction**

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

## **14 Delivery**

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

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

## **SCHEDULE**

### **The Works**

(1) **Principal Works**

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

(a)

(b)

(c)

(2) **Preparatory and Ancillary Works**

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

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works



- (d) all ducts cables columns lamps and other things  
necessary for the permanent lighting of the Principal  
Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the  
grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at  
any bend or junction
- (g) all traffic signs road markings bollards and safety  
barriers
- (h) all tapers joints and reinstatements necessary where the  
Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

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

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

# OXFORDSHIRE COUNTY COUNCIL

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

### CONTENTS

#### **General**

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

#### **Preliminaries**

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

#### **Implementation of Works**

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

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

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

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

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

2016 Edition

## **OXFORDSHIRE COUNTY COUNCIL**

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

#### **GENERAL**

##### **1 INTERPRETATION**

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 30.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.
- 1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.



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

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

## **2 RELATIONSHIP WITH AGREEMENT**

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

## **3 COMMUNICATIONS WITH THE COUNCIL**

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

## **4 APPROVALS AND CERTIFICATES**

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

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

4.3 The matters referred to in Condition 4.1 are:

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

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



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

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

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

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

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

## **6 INDEMNITY**

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

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

**7 HEALTH AND SAFETY**

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

**8 PAYMENTS**

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

**PRELIMINARIES**

**9 SUBMISSIONS TO THE COUNCIL**

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

**Highway Matters**

**9.1**

Information	Timetable	Notes
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 comply with the relevant standards and specifications of the Council for the time being in force, together with such structural and drainage calculations as the Council may consider necessary having regard to the nature of the Works;	No later than <b>3 months before any tender is invited</b> for the execution of the Works	There shall be paid to the Council on the submission a sum equal to 0.4% of the estimated gross cost of the Works as identified in Condition 12



## 9.2

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

## 9.3

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

## 9.4

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

## 9.5

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

## Other Matters

9.6

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

9.7

Details of the <b>insurances</b> required by Condition 14.	No later than <b>1 month before the Works are expected to commence.</b>	
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## 9.8

<p><b>Part 1</b>  <b>Noise survey and assessment and modelling</b> sufficient to establish whether any properties will be eligible for noise insulation according to regulation 3 or regulation 4 (as applied by the Council) of the Noise Insulation Regulations 1975 applying the requirements of the Design Manual of Roads and Bridges Volume 11 – Environmental Assessment and the Calculation of Road Traffic Noise 1988 to be undertaken by a noise expert approved by the Council.</p> <p><b>Part 2</b>          If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council:</p> <p>(a) a map and list of all eligible properties.<sup>1</sup></p> <p>(b) a list of all occupiers and landlords</p> <p>(c) a survey and assessment for each eligible property of the work to be carried out to comply with requirements of the Noise Insulation Regulations 1975 and the specification for that work</p>	<p>No later than <b>1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</b></p> <p>As above</p>	<p>Precise timing of survey to be agreed with the Council.          Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p>
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## 9.9

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

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

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

## 10 UNDERTAKERS' APPARATUS

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

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

## 11 AUTHORISATIONS

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

- 11.1.1 planning permission for the Works;
- 11.1.2 authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and / or be implemented and function;
- 11.1.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function<sup>3</sup>;
- 11.1.4 street works licence further to the New Roads and Street Works Act 1991;
- 11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in

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

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



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

11.1.6 any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.

11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.

11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.

11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.

11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.

11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

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

## **12 BOND**

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

12.2 The amount of the Bond shall be

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

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

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

## **13 MONITORING AND OTHER COSTS**

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

Note: The provisions of Condition 27.2 also apply

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

## **14 INSURANCE**

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



## **15 CONTRACTORS**

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

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

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

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

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

## **16 PRECONDITIONS TO LETTING CONTRACT**

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

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

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

## **IMPLEMENTATION OF THE WORKS**

### **17 COMMENCEMENT OF WORKS**

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

**18 NO WORK PENDING APPROVALS ETC**

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

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

18.1.2 Safety Audit Stage 2 Report has been approved;

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

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

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

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

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

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

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

**19 GENERAL CONDUCT**

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

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



## **20 MONITORING OF SITE AND MATERIALS**

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

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

## **21 ERRORS AND DEFECTS**

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

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

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

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

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

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

## **22 SUSPENSION OF WORK**

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

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

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

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



## **23 VARIATIONS AND ADDITIONS**

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

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

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

## **24 PREVENTION OF NOISE, DISTURBANCE ETC**

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

## **25 PROTECTION OF HIGHWAY**

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

## **26 SAFEGUARDING OF COMPLETED WORK**

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

## **COMPLETION AND CONSEQUENTIAL MATTERS**

### **27 COMPLETION OF WORKS**

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



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

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

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

**29. HEALTH AND SAFETY**

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

**30. COMPLETION CERTIFICATE**

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

**31. DEDICATION AS HIGHWAY**

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



## **32. EASEMENTS**

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

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

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

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

## **33. NOISE INSULATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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