

DATED 18<sup>th</sup> June.....2021

**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**ALEXANDER CHARLES STEER AND GORDON JAMES HODSON WRIGHTON AND  
CATHERINE WRIGHTON**

**-and-**

**CALA MANAGEMENT LIMITED**

**PLANNING OBLIGATION BY DEED OF AGREEMENT  
under Section 106 of the Town and Country Planning Act 1990  
relating to land at OS PARCEL 9507  
south of 26 and adjoining Fewcott Road Fritwell**

**APPLICATION 19/00616/OUT**

*Anita Bradley  
Head of Law & Governance  
Bodicote House  
White Post Road  
Bodicote  
Banbury  
Oxfordshire OX15 4AA*

***Cherwell***  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE



## TABLE OF CONTENTS

<b>PARTIES .....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>OPERATIVE PART .....</b>	<b>2</b>
1.    DEFINITIONS .....	2
2.    CONSTRUCTION OF THIS DEED .....	6
3.    LEGAL BASIS.....	7
4.    CONDITIONALITY .....	7
5.    THE FIRST OWNER AND THE SECOND OWNER'S COVENANTS.....	8
6.    THE DISTRICT COUNCIL'S COVENANTS.....	8
7.    MISCELLANEOUS .....	8
8.    DISTRICT COUNCIL'S COVENANTS .....	11
9.    COUNTY COUNCIL'S COVENANTS .....	11
10.   PURCHASER'S CONSENT .....	11
11.   INDEMNITY .....	12
12.   WAIVER.....	12
13.   NO FETTER .....	13
14.   CHANGE OF OWNERSHIP ETC .....	13
15.   NOTIFICATIONS .....	13
16.   INTEREST .....	14
17.   VAT.....	14
18.   NOTICES .....	15
19.   JURISDICTION.....	16
20.   DELIVERY .....	16
21.   DATA PROTECTION.....	16
22.   DISPUTES.....	16
<b>FIRST SCHEDULE DETAILS OF THE FIRST OWNER'S AND THE SECOND OWNER'S TITLE, AND DESCRIPTION OF THE SITE.....</b>	<b>19</b>
<b>SECOND SCHEDULE AFFORDABLE HOUSING .....</b>	<b>23</b>
1.    DEFINITIONS .....	23
2.    AFFORDABLE HOUSING COVENANTS .....	28

3.	MORTGAGEE EXEMPTION .....	30
4.	ALLOCATION .....	31
5.	MISCELLANEOUS .....	31

### **THIRD SCHEDULE OPEN SPACE INCLUDING SUDS..... 33**

1.	DEFINITIONS .....	33
2.	PRE-COMMENCEMENT/OCCUPATION.....	42
3.	OPEN SPACE .....	42
4.	SUDS .....	43
5.	COMPLETION OF OPEN SPACE.....	44
6.	ELECTION .....	46
7.	MANAGEMENT COMPANY .....	46
8.	TRANSFER .....	47
9.	FINANCIAL PROVISIONS.....	47
10.	DEFAULT BY MANAGEMENT COMPANY.....	48
11.	TRANSFER TO THE DISTRICT COUNCIL.....	51

### **FOURTH SCHEDULE FINANCIAL CONTRIBUTIONS PAYABLE TO THE DISTRICT COUNCIL IN RESPECT OF DISTRICT MATTERS ..... 53**

1.	DEFINITIONS .....	53
2.	OTHER CONTRIBUTIONS.....	55
3.	SUPPLEMENTAL PAYMENTS.....	55

### **FIFTH SCHEDULE FINANCIAL CONTRIBUTIONS PAYABLE IN RESPECT OF COUNTY COUNCIL MATTERS ..... 57**

1.	DEFINITIONS.....	57
2.	COVENANTS .....	59
3.	COVENANTS (NOTIFICATION AND ASSESSMENT).....	59
4.	COVENANTS – PAYMENT (ADDITIONAL COVENANT) .....	60

### **SIXTH SCHEDULE HIGHWAYS..... 61**

#### **PART 1 - PRELIMINARIES ..... 61**

1.	DEFINITIONS .....	61
2.	HIGHWAY WORKS COVENANTS.....	61

#### **PART 2 - THE WORKS ..... 62**

1.	PRINCIPAL WORKS .....	62
2.	PREPARATORY AND ANCILLARY WORKS .....	63
3.	AMENITY AND ACCOMMODATION WORKS .....	64



<b>ANNEX 1 DRAFT 278 AGREEMENT .....</b>	<b>65</b>
<b>ANNEX 2 OXFORDSHIRE COUNTY COUNCIL STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT.....</b>	<b>79</b>
<b>PRELIMINARIES .....</b>	<b>84</b>
<b>SEVENTH SCHEDULE DISTRICT AND THE COUNTY COUNCIL'S COVENANTS .....</b>	<b>98</b>
1. REPAYMENT OF CONTRIBUTIONS BY THE DISTRICT COUNCIL ...	98
2. DISCHARGE OF OBLIGATIONS .....	99
3. REPAYMENT OF CONTRIBUTIONS BY THE COUNTY COUNCIL.....	99
4. REPAYMENT.....	99
<b>EIGHTH SCHEDULE DISPUTES .....</b>	<b>101</b>
<b>EXECUTION.....</b>	<b>104</b>



THIS AGREEMENT is dated

18<sup>th</sup> June

2021

## **PARTIES**

- (1) CHERWELL DISTRICT COUNCIL** of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA (“**the District Council**”)
- (2) OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall New Road Oxford OX1 1ND (“**County Council and separately First Owner**”)
- (3) ALEXANDER CHARLES STEER** of 84 East Street Fritwell Bicester OX27 7QF and **GORDON JAMES HODSON WRIGHTON** and **CATHERINE WRIGHTON** of 3 Southfield Lane Fritwell Bicester OX27 7QE, (“**the Second Owner**”)
- (4) CALA MANAGEMENT LIMITED** (Scot. Regn. No.SC013655) whose registered office is situate at Adam House, 5 Mid New Cultins, Edinburgh EH11 4DU (“**Purchaser**”)

## **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 Highway Authority and local planning authority for the administrative area of the County of Oxfordshire within which the Site is located for the purposes of the Act
- (C) The First Owner is entering into this Deed as a freehold owner of that part of the Site registered with Freehold Title Number ON24626
- (D) The Second Owner is the freehold Owner of the Site excluding the Option Land registered at the Land Registry under Freehold Title Number ON319035 free from encumbrances save for the interest of the Purchaser as set out below.
- (E) The Purchaser has:
  - a) an interest in the part of the Site owned by the Second Owner by virtue of an agreement for sale dated 29<sup>th</sup> March 2016 protected by a Unilateral Notice registered as Charge Numbers 2 and 3 in the Charges Register of Freehold Title Number ON319035

- b) an interest in the part of the Site owned by the First Owner by virtue of an option agreement dated [ 2021] to purchase from the First Owner its freehold interest in the Option Land after the Planning Permission has been granted and which is intended to be registered as a restriction in the Charges Register of Freehold Title Number ON24626
- (F) The Application was submitted to the District Council and the District Council resolved on 18 December 2019 to grant the Planning Permission for the Development subject to the prior completion of this Deed which is required to mitigate the impact of the Development.
- (G) The Contracting Parties and the First Owner and the County Council agree with the District Council that it is necessary in planning terms to enter into this Deed to mitigate the impact of the Development and make it acceptable in the event that the Planning Permission is granted.

**NOW THIS DEED WITNESSES** as follows:

## **OPERATIVE PART**

### **1. DEFINITIONS**

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

<b>Expression</b>	<b>Meaning</b>
<b>“Act”</b>	the Town and Country Planning Act 1990 (as amended);
<b>“Application”</b>	the application for outline planning permission submitted to the District Council and validated on 4 <sup>th</sup> April 2019 for the Development and allocated reference number 19/00616/OUT;
<b>“Approval (Initial)”</b>	means the approval of a Qualifying Application which first establishes the Composition of the Development

## **Expression**

## **Meaning**

### **“Approval (Variation)”**

means any approval (including 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 (Initial) or as applicable preceding Approval (Variation)

### **“Arms Length Transaction”**

means the first transfer of the freehold of the Option Land following the date of this Deed to a party who is independent of the statutory body known as Oxfordshire County Council

### **“Commencement of the Development”**

occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of:

- site clearance
- demolition work;
- archaeological investigations;
- investigations for the purpose of assessing ground conditions;
- remedial work in respect of any contamination or other adverse ground conditions;
- erection of any temporary means of enclosure;
- the temporary display of site notices or advertisements

and “Commence” “Commenced” and “Commencing” or any other derivation of this term shall be construed accordingly;

### **“Composition of the Development”**

the aggregate number of Dwellings comprised in the Development and where the context requires the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling as determined through a Qualifying Permission for Reserved Matters and **“Revised Composition of the Development”** means the number and so on determined by any subsequent Qualifying Permission

<b>Expression</b>	<b>Meaning</b>
<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>“Contracting Parties”</b>	means the Second Owner and the Purchaser
<b>“Development”</b>	the development of the Site with the erection of up to 28 dwellings and associated access at land off Fewcott Road, Fritwell. as set out in the Application
<b>“Due Date”</b>	the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs
<b>“Dwelling”</b>	a building (including a house bungalow flat or maisonette or any other self-contained unit of accommodation) Constructed or proposed to be Constructed on the Site as part of the Development or part of such building designed for residential Occupation by a single household pursuant to the Planning Permission or Qualifying Permission and including Affordable Housing (as defined in the Second Schedule);
<b>“Interest”</b>	Interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time;
<b>“Implementation”</b>	occurs when the Development is initiated in accordance with Section 56 of the Act notwithstanding that any condition requiring compliance before that has not been complied with and ‘Implemented’ and ‘Implement’ or any other derivation of this term shall be construed accordingly
<b>“Market Dwellings”</b>	that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

<b>Expression</b>	<b>Meaning</b>
<b>“Notification (Initial)”</b>	means written notification of the Approval (Initial) containing a copy of that approval and details of the Composition of the Development established by that approval
<b>“Notification (Variation)”</b>	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
<b>“Occupation”</b>	occupation for the purposes permitted by the Planning Permission or 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 “Occupied” and “Occupy” shall be construed accordingly;
<b>“Option Land”</b>	that part of the Site shaded green on the Plan
<b>“Plan”</b>	the plan attached to this Deed at the Annex to the First Schedule;
<b>“Planning Permission”</b>	the outline planning permission subject to conditions to be granted by the District Council pursuant to the Application;
<b>“Qualifying Application”</b>	an application for approval of Reserved Matters or any separate application(s) for full planning permission for the Development or any part of the Development or any application under Section 73 or Section 96A of the Act relating to the Planning Permission or any application for approval of Reserved Matters relating to such permission further to an application under Section 73 of the Act;
<b>“Qualifying Permissions”</b>	approval of Reserved Matters or full planning permission as the case may be issued pursuant to any Qualifying Application;

<b>Expression</b>	<b>Meaning</b>
<b>“Reserved Matters”</b>	Details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval;
<b>“Site”</b>	the land against which this Deed may be enforced as shown edged red on the Plan;
<b>“Trigger Event”</b>	any event that when it occurs requires any party to this Deed to pay any sum or carry out any works or take (or desist from taking) any other action including service of any notice.
<b>“Working Days”</b>	Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27 <sup>th</sup> and 31 <sup>st</sup> December in any Calendar Year.

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 **“Including”** means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and **“include”** shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause, permit or allow infringement of that restriction.



2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions.

2.9 The headings and contents list are for reference only and shall not affect construction.

### **3. LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act, Sections 101 and 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the First Owner and the Contracting Parties under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by -:

3.2.1 the County Council as local planning authority against the Contracting Parties

3.2.2 and the District Council as local planning authority against the First Owner and the Contracting Parties

and in accordance with Section 106(3)(b) against any person deriving title from them or either of them

### **4. CONDITIONALITY**

4.1 Save as set out below this Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of the Development,

4.2 The provisions of Clauses 1 to 21 shall come into effect immediately upon completion of this Deed.

- 4.3 The provisions of Clause 22 paragraph 2.2 of the Second Schedule and paragraph 2 of the Third Schedule and paragraph 2 and 3 of the Fifth Schedule and Paragraph 2 of the Sixth Schedule shall come into effect immediately upon the grant of the Planning Permission
- 4.4 If the Planning Permission and all Qualifying Permissions are quashed as a result of any legal proceedings (and refused upon redetermination) or pursuant to Section 97 of the Act are modified without the consent of the Contracting Parties or expire before Implementation then this Deed shall cease to have effect (insofar only as it has not already been complied with) save that the First Owner and the Contracting Parties will be required to fulfil any obligation(s) in respect of any Construction which has taken place pursuant to the Development (or part thereof) carried out to the date the Planning Permission or Qualifying Permissions is quashed unless all such Construction is required to be undone.

## **5. THE FIRST OWNER AND THE SECOND OWNER'S COVENANTS**

- 5.1 Subject to Clause 8 and Clause 9 the First Owner and the Second Owner covenant with the District Council as set out in the Second Schedule, the Third Schedule, the Fourth Schedule, the Fifth Schedule and the Sixth Schedule and in accordance with the body of this Deed
- 5.2 The Second Owner covenants with the County Council as set out in the Fifth Schedule and the Sixth Schedule and in accordance with the body of this Deed
- 5.3 The Purchaser covenants with the District Council and separately with the County Council as set out in Clause 10
- 5.4 The First Owner and the Second Owner covenant with each other as set out in Clause 11

## **6. THE DISTRICT COUNCIL'S COVENANTS**

The District Council covenants with the First Owner and the Second Owner as set out in the Seventh Schedule.

## **7. MISCELLANEOUS**

- 7.1 The Purchaser shall

7.1.1 pay to the District Council on the execution and completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation of the Agreement and the preparation and execution of this Deed;

7.1.2 pay to the County Council on the execution and completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation of the Agreement and the preparation and execution of this Deed

7.1.3 on completion of this Deed pay

(a) to the County Council the sum of **One thousand five hundred pounds only (£1,500.00)**; and

(b) to the District Council the sum of **One Thousand Pounds Only (£1,000.00)**

as a contribution towards the cost of monitoring and administering compliance with the obligations in this Deed

7.2 the First Owner and the Contracting Parties shall reimburse the District Council and the County Council as appropriate in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this Deed should the need for enforcement arise in the reasonable opinion of the District Council or the County Council

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

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

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

7.5.1 the District Council by the Assistant Director: Planning and Development; and

- 7.5.2 the County Council by the Director for Environment and Place,
- 7.6 Following the First Owner and/or the Contracting Parties notifying the District Council and (following completion of the Arms Length Transaction) the County Council and them being satisfied of the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings Constructed pursuant to the Planning Permission nor against those deriving title from them PROVIDED ALWAYS THAT this clause shall not apply to any provisions placing a restriction on Occupation of Dwellings.
- 7.10 Nothing contained or implied in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission and/or a Qualifying Permission granted (whether or not on appeal) after the date of this Deed.
- 7.11 This Deed shall not be enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services
- 7.12 If the District Council consents pursuant to a Qualifying Application to any variation or release of any condition contained in the Planning Permission (or a previous Qualifying Permission) or if any such condition is varied or released following an appeal under section 78 of the Act the covenants and provisions of this Deed shall be deemed to bind the Qualifying Permission and to apply in equal terms to that Qualifying

Permission save that where a different section 106 obligation is agreed by the District Council and/or the County Council as being binding on any Qualifying Permission this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

## **8. DISTRICT COUNCIL'S COVENANTS**

- 8.1 Subject to Clause 8.2 and Clause 9 below the District Council covenants with the County Council to pursue any default in the terms of this Deed against the Second Owner and against the First Owner and in relation to Clause 10 against the Purchaser
- 8.2 Following completion of the Arms Length Transaction the District Council covenants to delegate to the County Council its ability under Clause 8.1 of this Deed to pursue any default in the terms of this Deed against the First Owner and against the Second Owner and in relation to Clause 10 against the Purchaser

## **9. COUNTY COUNCIL'S COVENANTS**

The County Council (following completion of the Arms Length Transaction) covenants with the District Council to accept the delegation of the District Council's powers in Clause 8.1 of this Deed as set out in Clause 8.2 above such that the County Council may pursue any default in the terms of the obligations given in the body of this Deed and in Schedule 5 and Schedule 6 to the District Council by the First Owner and/or the Second Owner and in relation to Clause 10 against the Purchaser and the District Council shall on completion of that delegation be released from the covenant in Clause 8.1 in so far as it relates to the obligations in Schedule 5 and Schedule 6 for so long as that delegation remains in force and effect

## **10. PURCHASER'S CONSENT**

The Purchaser acknowledges and declares that this Deed has been entered into by the First Owner and the Second Owner with its consent and that the interest of the First Owner and the Second Owner and the Purchaser shall be bound by the terms of this Deed PROVIDED THAT the Purchaser shall have no liability under this Deed unless:

- 10.1 it becomes a successor in title to the First Owner and/or the Second Owner; and/or

10.2 it takes possession of the Site or any part of it; and/or

10.3 it undertakes any part of the Development on the Site.

in which case the Purchaser too will be bound by the obligations in this Deed as a person deriving title (or as if it were a person deriving title) from the First Owner and/or the Second Owner

## **11. INDEMNITY**

11.1 The First Owner covenants with the Second Owner to indemnify and keep the Second Owner indemnified against all actions, liabilities, claims, costs, expenses, damages, losses and proceedings (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Second Owner through any default in the terms of this Deed by the First Owner or incurred by the Second Owner arising out of or in connection with the Implementation or Commencement of Development by, on behalf of, by consent with, or at the sufferance of the First Owner unless the Second Owner has confirmed in writing that it agrees to any such Implementation or Commencement of the Development.

11.2 The Second Owner covenants with the First Owner to indemnify and keep the First Owner indemnified against all actions, liabilities, claims, costs, expenses, damages, losses and proceedings (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the First Owner through any default in the terms of this Deed by the Second Owner or incurred by the First Owner arising out of or in connection with Implementation or Commencement of Development by, on behalf of, by consent with, or at the sufferance of the Second Owner unless the First Owner has confirmed in writing that it agrees to any such Implementation or Commencement of the Development

## **12. WAIVER**

No waiver (whether expressed or implied) by the District Council and 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.

### **13. 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.

### **14. CHANGE OF OWNERSHIP ETC**

The First Owner and the Second Owner agree with the District Council and separately with the County Council to give the District Council and separately the County Council written notice of any change in the ownership of any of its interests in the Site within 10 working days and in any event before the next Trigger Event that arises following such change in ownership if sooner 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:

14.1 the sale of individual Dwellings on the Development; or

14.2 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

### **15. NOTIFICATIONS**

The First Owner and the Second Owner agree with the District Council and the Second Owner agrees with the County Council:

15.1 to notify the District Council and the County Council in writing no later than 5 Working Days before the anticipated date of the Commencement of the Development and not to Commence until 5 Working Days have passed since service thereof; and

15.2 to notify the District Council and the County Council in writing no later than 5 Working Days before

15.2.1 first Occupation of any Market Dwelling;

15.2.2 first Occupation of 50% (fifty per cent) of the Market Dwellings; and

15.2.3 first Occupation of 70% (seventy per cent) of the Market Dwellings

15.2.4 first Occupation of 75% (seventy five per cent) of all of the Dwellings (for the avoidance of doubt meaning Market Dwellings and Affordable Housing Dwellings together)

and not to Occupy or cause or permit Occupation until 5 Working Days after notification

15.3 to notify the District Council and the County Council in writing no later than 5 Working Days before first Occupation of any Dwelling and not to Occupy or cause or permit Occupation until 5 Working Days after notification

15.4 to notify the District Council and the County Council in writing of the actual date of the events referred to in Clauses 15.1, 15.2 and 15.3 above no later than 10 Working Days after the event occurs:

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

## **16. INTEREST**

16.1 If any payment due under this Deed is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.

16.2 Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the Due Date

## **17. VAT**

17.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the First Owner and the Contracting Parties



shall pay to the District Council and to the County Council any value added tax properly payable on any sums paid to the District Council and/or the County Council or works undertaken under this Deed upon presentation of any appropriate value added tax invoice addressed to the First Owner and/or the Contracting Parties.

## **18. NOTICES**

18.1 Any notice or notification to be given to the District Council under this Deed shall be sent to the District Council (quoting Reference 19/0350/OUT) for attention of the Assistant Director Planning and Development at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall direct from time to time.

18.2 Any notice or notification to be given to the County Council or the First Owner under this Deed shall be sent to the Director of Environment, Oxfordshire County Council, County Hall, New Road, Oxford, OX1 1ND (Ref: 19/00616/OUT) or to such other person at such other address as the County Council or the First Owner shall direct from time to time.

18.3 Any notice to be given to the Contracting Parties shall be sent to each of them at the address of each at the head of this Deed or to such other person at such address as each of them shall notify to the District Council and separately to the County Council in writing from time to time.

18.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

18.4.1 if delivered by hand, at the time of delivery;

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

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

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

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

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

## **19. JURISDICTION**

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

## **20. DELIVERY**

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

## **21. DATA PROTECTION**

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

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

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

## **22. DISPUTES**

22.1 The provisions of the Eighth Schedule shall apply to any dispute arising in respect of the provisions in

22.1.1 Paragraph 2.1 of the Second Schedule;

22.1.2 Paragraph 2.1 of the Third Schedule;

22.1.3 Paragraph 5.2 of the Third Schedule as regards the issue of a Certificate of Practical Completion or a Defects Notice;

22.1.4 Paragraph 5.5 of the Third Schedule as regards the issue of a Final Completion Certificate;

22.1.5 the Third Schedule and the Fourth Schedule as regards the calculation of any sum due thereunder

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



**FIRST SCHEDULE**  
**DETAILS OF THE FIRST OWNER'S AND THE SECOND OWNER'S TITLE, AND**  
**DESCRIPTION OF THE SITE**

All that freehold land at OS parcel 9507 south of 26 and adjoining Fewcott Road Fritwell which is registered at the Land Registry under Freehold title number, ON319035 and part of which (the Option Land) is also registered at the Land Registry as part of the land registered under Freehold title number ON24626





## **SECOND SCHEDULE**

### **AFFORDABLE HOUSING**

#### **1. DEFINITIONS**

- 1.1 In this Schedule and in the Fourth Schedule and the Seventh 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):

<b>Expression</b>	<b>Meaning</b>
<b>Affordable Housing</b>	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)
<b>Affordable Housing Dwellings</b>	the Intermediate Housing or Affordable Rented Housing or Social Rented Housing or such alternative tenure to be agreed with the District Council that shall comprise not less than 35% (thirty five per cent) of the total number of Dwellings on the Development
<b>Affordable Housing Tenure Mix</b>	the mix of tenure and dwelling types whereby not less than 70% of the Affordable Housing Dwellings shall be provided as Social Rented Housing or Affordable Rented Housing and the remainder shall be Intermediate Housing as approved in writing by the District Council as part of the Affordable Housing Scheme
<b>Affordable Housing Scheme</b>	a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out details of the numbers locations and external appearance of the Affordable Housing Dwellings;



<b>Expression</b>	<b>Meaning</b>
<b>Affordable Housing Site</b>	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
<b>Affordable Housing Standards</b>	<p>the design criteria with which the Affordable Housing shall comply, namely:</p> <ul style="list-style-type: none"> <li>• (in relation to the Affordable Rented Housing or Social Rented Housing only) 50% to comply with the Building Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings;</li> <li>• shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Housing; and</li> <li>• they shall be constructed to the nationally described space standard as set out in the Department for Communities and Local Government's technical housing standards</li> </ul>
<b>Affordable Rented Housing</b>	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 whichever is the lower
<b>Allocations Scheme</b>	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

<b>Expression</b>	<b>Meaning</b>
	1996 (and any amendment, re-enactment or successor provision)
<b>Chargee</b>	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 (including a Housing Administrator under the provisions of the Housing and Planning Act 2016) howsoever appointed or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security
<b>Help to Buy Agent</b>	that organisation which is appointed by the Regulator or other such successor body to assess eligibility for and market low cost home ownership products
<b>Infrastructure</b>	<p>in relation to the Affordable Housing Site:</p> <ul style="list-style-type: none"> <li>• roads and footpaths to serve the Affordable Housing Site</li> <li>• temporary services for contractors and a haul road for the use of contractors;</li> <li>• adequate inverts for the foul and surface water drains sufficient to serve the drainage requirements of the Affordable Housing Site;</li> <li>• pipes sewers and channels sufficient to serve the Affordable Housing Site;</li> <li>• spur connections to agreed inverts (to be available at a time or times to be agreed with the Registered Provider) from the First Owner and/or the Second Owners 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;</li> </ul> <p>and the following services:</p>

## **Expression**

## **Meaning**

- 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 First Owner and or the Second 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.

<b>Expression</b>	<b>Meaning</b>
<b>Local Housing Allowance</b>	the rate set by the Valuation Office Agency Rent Officers which is used to calculate housing benefits for tenants renting from private landlords based on private market rents and as set by the Secretary of State pursuant to powers in the Social Security Contributions and Benefits Act 1992 the Jobseekers Act 1995 the Housing Act 1996 and the Welfare Reform Act 2012
<b>Mortgage Land</b>	the Affordable Housing Site or any part of it which is mortgaged or charged to the Chargee
<b>Nominations Agreement</b>	an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Rented Dwellings and the Social Rented 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
<b>Qualifying Persons</b>	those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to Affordable Rented Housing and Social Rented Housing in accordance with this Allocations Scheme and the Nominations Agreement
<b>Registered Provider</b>	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

<b>Expression</b>	<b>Meaning</b>
	applicable to an organisation with preferred partner status and been approved in writing by the District Council
<b>Shared Ownership Housing</b>	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
<b>Social Rented Housing</b>	rented housing owned and managed by Registered Providers for which guideline target rents are determined though a national rent regime as described in Annex 2 of the National Planning Policy Framework dated February 2019
<b>Staircasing</b>	the exercise by the owner-occupier of a Shared Ownership Dwelling of the right to purchase additional equity shares up to 100% of the entire interest in the dwelling after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and 'Staircases' or any other derivative thereof shall be construed accordingly
<b>The Regulator</b>	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

## **2. AFFORDABLE HOUSING COVENANTS**

The First Owner and the Second Owner covenant with the District Council that they:

- 2.1 will submit a detailed scheme for the provision, proposed location and construction programme of the Affordable Housing Dwellings, including details of the proposed

Affordable Housing Tenure Mix to the District Council for approval by the District Council which when approved becomes the Affordable Housing Scheme;

2.2 will not Commence or cause or permit the Commencement of the Development until the Affordable Housing Scheme has been approved in writing by the District Council;

2.3 will not Occupy or cause or permit the Occupation of more than fifty per cent (50%) of the Market Dwellings until

2.3.1 the Affordable Housing Site 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; and

2.4 will not Occupy or cause or permit the Occupation of more than seventy per cent (70%) of the Market Dwellings until:

2.4.1 the Affordable Housing Dwellings have been Constructed and made 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; and

2.4.2 there has been provided to the District Council's reasonable satisfaction the Infrastructure to serve the Affordable Housing Site and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider (other than the price agreed for the sale of the Affordable Housing Site);

2.5 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;

2.6 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

- 2.7 will provide the Affordable Housing Dwellings in line with the approved Affordable Housing Scheme including the Affordable Housing Tenure Mix or such other mix as may be agreed in writing between the First Owner and the Second Owner and the District Council.

### **3. MORTGAGEE EXEMPTION**

The provisions of paragraph 2 of this Second Schedule are binding on the Chargee PROVIDED THAT they 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 below have been complied with.

- 3.1 It is hereby agreed and declared that the proviso contained in paragraph 3 will only apply where the Chargee exercising its power of sale:

- 3.1.1 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
- 3.1.2 has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 3.1.1 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
- 3.1.3 if upon expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 3.1.1 above and provided the steps detailed in this paragraph have been completed no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed 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 above with the effect that they shall cease to bind any person obtaining title to the Mortgage Land.

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

#### **4. ALLOCATION**

The First Owner and/or the Second Owner covenant not to allocate or cause or permit to be allocated any of the Affordable Housing Dwellings other than as follows:

- 4.1 the Affordable Rented and Social Rent Housing shall only be allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement;
- 4.2 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
- 4.3 as agreed by the District Council.

#### **5. MISCELLANEOUS**

It is agreed that

- 5.1 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 owner of a Dwelling subject to a charge in favour of the First Owner and or the Second Owner or shared equity loan provider (as applicable) (a shared equity unit) who has redeemed in full any such charge on such Dwelling or any mortgagee, chargee or successor in title thereto.
- 5.2 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.





### THIRD SCHEDULE OPEN SPACE INCLUDING SUDS

#### 1. DEFINITIONS

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

Expression	Meaning
"BCIS"	The All in One Tender Price Index published by the Building Cost Information Service or if such indices cease to be published such alternatives index as the District Council may reasonably select
"BS5837"	means the British Standard for Trees in relation to design, demolition and construction – Recommendations, the latest version being published in 2012 and applies to all trees that could be affected during the carrying out of the Development
"Final Completion Certificate"	means a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space and provision of the SUDS in accordance with the relevant scheme or specification approved pursuant to this Deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction
"Hedgerow"	means any hedgerow whether existing or to be planted identified in the Open Spaces Scheme
"Hedgerows Commuted Sum"	means Twenty pounds and sixty-six pence (£20.66) per linear metre of Hedgerow
"Index"	means the BCIS All in One Tender Price index published by the Royal Institution of Chartered Surveyors or such other index as may from time to time replace the BCIS All in One Tender Price index or any such alternative index or

Expression	Meaning
	comparable measure of price inflation as the First Owner and the Second Owner and the District Council may agree in writing
<b>"Index Linked"</b>	means adjusted according to the increase (if any) in the Index between the published figure for the first quarter of 2018 and the Due Date
<b>"Informal Open Space"</b>	means areas of informal open space to be provided on the Development as identified within any Qualifying Permission and/or the Open Space Scheme
<b>"Informal Open Space Commuted Sum"</b>	means Nine pounds and eighty-two pence (£9.82) per square metre of Informal Open Space as shown in the Open Spaces Scheme
<b>"Maintenance Period"</b>	means a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate or such longer period as the District Council may determine if it is not satisfied that any defects identified in the Open Space and/or SUDS have been rectified or if the Open Space and/or SUDS have not been maintained in accordance with the Maintenance Plan during that period
<b>"Maintenance Plan"</b>	means once approved by the District Council the plan or scheme submitted to the District Council pursuant to paragraph 2.1.3 below that sets out how the Open Space including the SUDS is to be maintained and managed after the issue of a Practical Completion Certificate and until transferred in accordance with paragraph 5 below such plan to be in accordance with and to incorporate the Technical Specification and also to accord with BS5837
<b>"Management Company"</b>	a body established or appointed by the First Owner and/or the Second Owner to carry out the long term management and maintenance of the Open Space which is to be managed by it in accordance with the provisions of this

## Expression

## Meaning

Agreement and whose objectives shall include (but not be limited to):-

- Setting the level of charges for funding the running of the body and collecting such Service Charges from residents (such term to include but is not limited to owners occupiers lessees and tenants of the Dwellings Index Linked from [1 May 2020]
- Ensuring that the level of any charges levied against any Affordable Housing Dwellings that are not owned outright by Registered Providers shall not materially affect the ability of these Dwellings to remain as Affordable Housing;
- Ensuring accountability to residents of the Development; and

Allowing the ability of residents to require the transfer of the maintenance and management responsibilities of the Open Space from the Management Company to the District Council (or its nominee) in the circumstances set out in the Management Company Structure Scheme such petition to be on grounds of dissatisfaction with the maintenance and management responsibilities of the Management Company only and in such circumstance to allow for any accrued Service Charges to be transferred to the District Council or its nominee that will assume management and maintenance

### **"Management Company Default Deposit"**

the sum of ONE THOUSAND NINE HUNDRED AND NINE POUNDS AND SIXTEEN PENCE (£1,909.16) Index Linked and calculated as follows:

the Open Space Commuted Sum including Mature Trees and Hedgerow (Index linked BCIS All in One Tender Price from Quarter 1 2021)

÷ 15

to be utilised in accordance with paragraph 10 below

Expression	Meaning
<b>"Management Company Forward Funding Deposit"</b>	<p>means the sum of TWO THOUSAND EIGHT HUNDRED AND SIXTY-THREE POUNDS AND SEVENTY FOUR PENCE (£2,863-74) Index Linked and calculated as follows:</p> <p>the Open Space Commuted Sum including Mature Trees and Hedgerow (Index linked BCIS All in One Tender Price from Quarter 1 2021)</p> <p>÷ 15</p> <p>÷ 2</p> <p>for a period two and a half years to be utilised by the Management Company for the management and maintenance of the Open Space</p>
<b>"Management Company Monitoring Payment"</b>	<p>the sum THREE THOUSAND, EIGHT HUNDRED AND EIGHTY ONE POUNDS AND FORTY TWO PENCE (£3,881.42) Index Linked towards the District Council's costs of monitoring the land and facilities transferred to the Management Company pursuant to the terms of this Schedule twice a year for 15 years</p>
<b>"Management Company Structure Scheme"</b>	<p>a scheme that addresses the following in relation to the Management Company:</p> <ul style="list-style-type: none"> <li>• Details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;</li> <li>• Proposed banking arrangements for the Management Company;</li> <li>• Procedures and justification that the Management Company will follow for drawing down monies by the Management Company from the ManCo Maintenance Escrow Account</li> <li>• Details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of the Open Space against those risks as are</li> </ul>

**Expression****Meaning**

reasonable to insure against in the circumstances then prevailing;

- Details of the mechanism together with suitable documentation to ensure the transfer of ownership (if the District Council so elects) and responsibility for management and maintenance of the Open Space that are in the ownership of the Management Company to the District Council or its nominee on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered (likely to be written petition by at least 66% of households occupying the Development) settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer)

**"Management Scheme"**

a written scheme for the detailed ongoing management and maintenance of the Open Space (including the maintenance of any balancing ponds and attenuation tanks or other aspects of the SUDS) which shall detail the frequency and standard of maintenance of the facilities that are the subject of the relevant scheme together with measures to replace any equipment or infrastructure that becomes damaged or planting that may die or become diseased following implementation of the relevant scheme and which may be varied from time to time with the written agreement of the District Council

**"ManCo Default Account"**

means an account set up by the Owner or the Management Company or their managing agents in respect of which the following shall apply:

- it shall hold the Management Company Default Sum;

## Expression

## Meaning

- monies can be drawn against by the District Council in the circumstances set out in paragraph 10 of this Schedule;
- monies may not be drawn by any other party without the consent of the District Council
- the Management Company Default Sum and any interest thereon shall be capable of being drawn against by the District Council for the maintenance of the Open Space in the circumstances set out in paragraph 10 of this Schedule; and

shall be opened and closed in accordance with the provisions of this Schedule.

### **"Mature Trees"**

means those trees identified as such in the Open Spaces Scheme

### **"Mature Trees Commuted Sum"**

means two hundred and forty-one pence (£200.41) per Mature Tree

### **"Open Space Commuted Sum"**

means the sum calculated as follows:

$((A \times \text{the Informal Open Space Commuted Sum}) \text{ Index Linked})$

+

$((B \times \text{the Hedgerows Commuted Sum}) \text{ Index Linked})$

+

$((C \times \text{the SUDS Commuted Sum}) \text{ Index Linked})$

+

$((D \times \text{the Mature Trees Commuted Sum}) \text{ Index Linked})$

Where, as shown on the Open Spaces Scheme and SUD Scheme:

A is the area in square metres of the Informal Open Space;

B is the length in linear metres of Hedgerows

C is the area in square metres of the Balancing Ponds comprised in the SUDS and

D is the number of Mature Trees

**Expression****Meaning****"Open Space"**

means the areas within the Site to be provided for recreation and amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include the Informal Open Space, Hedgerows, Mature Trees and SUDS

**"Open Space Scheme"**

means a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the Open Space to be submitted to and approved in writing by the District Council for approval in accordance with paragraph 2.1 below which shall include:

- i.) details of the locations of Informal Open Space, Hedgerows, Mature Trees (and their number) and SUDs to which the scheme relates; and
- ii.) a timetable for carrying out the works and the planting comprised in the laying out landscaping of the Open Space to which the scheme relates

**"Practical Completion Certificate"**

means a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Deed

**"Service Charge"**

the charge set by the Management Company as a relevant proportion of the costs of managing and maintaining the Open Space transferred to it payable by the occupiers of each Dwelling and which charge may vary depending on the size of each Dwelling

**"SUDS"**

means any balancing ponds, attenuation basins, ditches watercourses, swales or similar features, to be provided to form the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme



**Expression****Meaning**

and to be provided on the Development as determined by Qualifying Permissions

**“SUDS Commuted Sum”**

means the sum of Forty-five pounds and twenty-nine pence (£45.29) per square metre of the area of balancing ponds comprised in the SUDS

**“SUDS Scheme”**

means a sustainable urban drainage system scheme for the Development which is to be submitted and approved in writing by the District Council in accordance with paragraph 2.1 below which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development and the timescales for when the said works and features are to be carried out

**“Technical Specification”**

means the specification set out in the document headed “Cherwell Council and South Northamptonshire Council Contract for the provision of landscape maintenance services 01 April 2018 - 31 March 2024 Document 3: Technical Specifications” available at [https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim\\_screen\\_cherwell-dc.gov.uk/Eajlf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE](https://cherwellandsouthnorthants-my.sharepoint.com/:b:/g/personal/tim_screen_cherwell-dc.gov.uk/Eajlf5MeqBVEp1im7WLDjW4BZDanybKZnb985oqXkFSN1A?e=RtbtSE)

**“Transfer”**

to transfer the freehold of the Open Space from the First Owner and the Second Owner to the Management Company or from the Management Company to the District Council (or such other person or body as the District Council may direct) the terms of which shall:

- a) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency; and

## Expression

## Meaning

- b) not include any terms which would directly or indirectly affect the construction servicing or occupation of the part of the Site that is retained by the First Owner and or the Second Owner; and
  - c) include any reasonable reservation of rights of access and services over the Open Space for the benefit of any other part of the Site for the purpose of managing maintaining replacing renewing cleaning and repairing services including but not limited to as applicable sustainable urban drainage measures, water, gas, sewerage, drainage or electricity; and
  - d) include for the benefit of the Open Space the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the area being transferred over any adjoining land for its intended purpose as set out in this Schedule;
- 
- e) as regards a transfer to the District Council or its nominee be at nil consideration and otherwise at no cost (including legal costs) to and subject to no other contribution by the District Council or its nominee or the Management Company as applicable; and
  - f) be a transfer of the entire freehold interest of the Open Space with full title guarantee and vacant possession on completion;
  - g) be free from any pre-emption or option agreement and free from any mortgage charge or lien or other encumbrance which restrict the use of the land for its intended purpose other than those which exist at the date of this Agreement and / or are agreed in the Transfer;

**Expression****Meaning**

h) contain a restrictive covenant that the land transferred shall not be used for any purpose other than for a publicly accessible games recreation relaxation and play area and publicly accessible free at the point of use recreational facilities

**2. PRE-COMMENCEMENT/OCCUPATION**

2.1 Before Commencing the Development there shall be submitted to the District Council the proposed

2.1.1 Open Spaces Scheme;

2.1.2 SUDS scheme; and

2.1.3 Maintenance Plan

and the Development shall not be Commenced until the District Council has approved each of them.

**3. OPEN SPACE**

3.1 The Open Space shall be provided in accordance with the Open Spaces Scheme

3.2 Save as set out in the Open Spaces Scheme and/or the SUDS Scheme and/or the Maintenance Plan and/or BS5387 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the Open Spaces Scheme or the efficient implementation of the Maintenance Plan and in particular:

3.2.1 no materials or equipment shall be stored on;

3.2.2 no services shall be run over, under or through;

3.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;

3.2.4 no parking area or temporary roadway shall be created or designated on;

any part of the Site that is to accommodate the Open Space unless the express prior written permission of the District Council has been requested and given.

- 3.3 All trees and/or hedgerows currently on the Site shall be protected as set out in BS5837 unless shown in the Open Spaces Scheme or the Maintenance Plan as being removed and shall only be disturbed in accordance therewith
- 3.4 The District Council shall be entitled on reasonable written notice but no less than one Working Days' written notice to enter the Site with workman and contractors to remedy any default in compliance with paragraphs 3.2 and 3.3 above and to recover the cost thereof from the First Owner and or the Second Owner PROVIDED THAT the District Council shall not be entitled to take action under this paragraph nor recover reimbursement unless the District Council before taking action to enforce any of the terms of this Schedule shall have given the First Owner and the Second Owner a reasonable time period for remedying the breach and shall afford the First Owner and the Second Owner a reasonable opportunity to remedy the breach in accordance with the steps and time period in the written notice
- 3.5 The Open Space shall be constructed laid out and seeded in accordance with the approved Open Space Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing;

#### **4. SUDS**

- 4.1 The SUDS shall be provided in accordance with the SUDS Scheme
- 4.2 Save as set out in the Open Spaces Scheme and/or the SUDS Scheme and/or the Maintenance Plan and/or with BS5387 nothing shall be done on the Site that shall prevent, inhibit or otherwise compromise the carrying out of the SUDS Scheme or its efficiency or the efficient implementation of the Management Plan and in particular:
  - 4.2.1 no materials or equipment shall be stored on;
  - 4.2.2 no services shall be run over, under or through;
  - 4.2.3 no site offices, stores, hospitality or facilities cabins or other temporary structures shall be set up on;
  - 4.2.4 no parking area or temporary roadway shall be created or designated on;

any part of the Site that is to accommodate the SUDS or any part of it (Save as set out in the SUDS Scheme) without the express prior written permission of the District Council having been requested and given unless such is essential for the creation of the SUDS itself

4.3 The SUDS shall be constructed laid out and seeded in accordance with the approved SUDS Scheme and in accordance with the timetable set out therein unless otherwise approved by the District Council in writing;

4.4 The SUDS shall not be used for any purpose

4.4.1 that may prejudice its function as part of the drainage for the Site: or

4.4.2 subject to 4.4.1 above, as public open space land as an amenity for the occupiers of the Development and surrounding area

but with the prior written consent of the District Council the subsoil of the SUDS may accommodate services provided such services do not prejudice the maintenance and function of the SUDS;

4.5 The District Council shall be entitled on reasonable notice but no less than one Working Days' Notice to enter the Site with workman and contractors to remedy any default in compliance with paragraph 4.2 above and to recover the cost thereof from the First Owner and the Second Owner

## **5. COMPLETION OF OPEN SPACE**

5.1 No more than 18 of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued for the Open Space;

5.2 Upon completion of the Open Space the District Council shall be notified and invited to inspect the Open Space within 15 Working Days with a view to either

5.2.1 issuing a Practical Completion Certificate that certifies that the Open Space has been provided in accordance with the Open Spaces Scheme and the SUDS Scheme to the satisfaction of the District Council; OR

5.2.2 issuing a notice or notices (Defects Notice) which state that the Open Space or the SUDS (as the case may be) has not been provided in accordance with the Open Spaces Scheme and/or the SUDS Scheme to a standard that

satisfies the District Council and sets out details of the work required to reach that standard and the timescale in which the District Council expects such works to be done

but in the event that the District Council considers that any failure to comply with the Open Spaces Scheme or the SUDS Scheme is minor and can be remedied within the Maintenance Period a Practical Completion Certificate may still be issued but endorsed with a note of the minor works to be done and the period in which the District Council expects them to be completed.

5.3 If a Defects Notice is issued the works specified in the Defects Notice shall be carried out and the District Council invited to re-inspect the Open Space or the SUDS with a view to securing the issue of the Practical Completion Certificate.

5.4 Once the Practical Completion Certificate is issued the Maintenance Period shall begin and the First Owner and the Second Owner shall then comply with any Defects Notices that the District Council are satisfied may be complied with during the Maintenance Period as soon as reasonably practical and implement the Maintenance Plan.

5.5 Upon completion of the Maintenance Period the District Council

5.5.1 if satisfied that the Open Space and the SUDS have both been maintained throughout the Maintenance Period in accordance with the Maintenance Plan and any minor defects set out in the Practical Completion Certificate have been remedied shall issue a Final Completion Certificate; or

5.5.2 if not so satisfied issue a Defects Notice and the provisions of paragraphs 5.2 and 5.3 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate

5.6 At all reasonable times and upon reasonable notice officers servants and agents of the District Council may enter onto any necessary part of the Site for the purpose of inspecting the Open Space upon the District Council first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site.

## **6. ELECTION**

6.1 At any time before the Practical Completion Certificate is issued the First Owner and or the Second Owner may elect by written notice whether on the issue of a Final Completion Certificate

6.1.1 that the maintenance and management of the Open Space shall be secured through a Management Company

OR

6.1.2 that the District Council should acquire the Open Space and thereafter maintain and manage it

6.2 In the event that no such written notice is served in the time specified in paragraph 6.1 above (time being of the essence) the First Owner and or the Second Owner shall be deemed to have elected to require the District Council to acquire the Open Space.

6.3 If the First Owner and or the Second Owner shall elect to secure the maintenance and management of the Open Space through a Management Company (sub-paragraph 6.1.1 above) the provisions of paragraphs 7 to 10 below shall apply

6.4 If the First Owner and the Second Owner shall elect (or shall be deemed to have elected) for the District Council to acquire the Open Space (sub paragraphs 6.1.2 and 6.2 above) the provisions of paragraph 11 below shall apply

## **7. MANAGEMENT COMPANY**

The First Owner and the Second Owner covenant with the District Council as follows:

7.1 that they shall:

7.1.1 when electing to manage and maintain the Open Space via a Management Company submit a draft Management Company Structure Scheme to the District Council for its approval;

7.1.2 not Occupy or cause or permit the Occupation of more than 10 Dwellings until

(a) the District Council shall have approved the submitted Management Company Structure Scheme; and

- (b) the Management Company has been established in accordance with the approved Management Company Structure Scheme and evidence thereof has been submitted to the District Council that it has been so established

- 7.2 not to dispose of an interest in any Dwelling without putting in place in the plot documentation for each of the Dwellings a covenant whereby the owner/occupiers of each Dwelling (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge which shall be collected and ring-fenced by the Management Company as successor in title to the First Owner and or the Second Owner for application for the management and maintenance of the Open Space
- 7.3 to put in place in the sale documentation for each of the Dwellings a covenant whereby each of the residents (and their successors in title) shall be liable to make payment to the Management Company of the Service Charge prior to Occupation of the relevant Dwelling
- 7.4 prior to the Occupation of any Dwelling pay to the District Council the Management Company Monitoring Payment and shall not Occupy or cause or permit the Occupation of any Dwelling until the Management Company Monitoring Payment has been paid in full

## **8. TRANSFER**

The First Owner and the Second Owner shall Transfer (or secure the Transfer of) the Open Space to the Management Company within 28 days of the issue of the Final Completion Certificate; and

## **9. FINANCIAL PROVISIONS**

- 9.1 On or before the Transfer to the Management Company of the Open Space and in accordance with this Schedule, the First Owner and the Second Owner shall:
  - 9.1.1 set up the ManCo Default Account and provide evidence to the District Council that the account has been set up; and
  - 9.1.2 pay the Management Company Default Deposit into ManCo Default Account and provide evidence to the District Council that such payment has been made



9.1.3 pay the Management Company Forward Funding Deposit to the Management Company and provide evidence to the District Council that such payment has been made

9.2 The ManCo Default Account shall be retained for a period expiring 15 (fifteen) years after the date the ManCo Default Account is first opened and the ManCo Default Escrow Account shall be closed at this point (or earlier if the Management Company is wound up prior to the expiration of the said 15 years) and any monies whether capital or interest sums remaining in the ManCo Default Account at that time shall be released to the person who made the payments

## **10. DEFAULT BY MANAGEMENT COMPANY**

10.1 In the event that

10.1.1 the Management Company fails to maintain any part or aspect of the Open Space in accordance with the approved Management Scheme; or

10.1.2 the Management Company

- (a) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (b) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of it with one or more other companies or its solvent reconstruction
- (c) is wound up or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Management Company (other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction),

- (d) has an administrator appointed or an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given;
- (e) has an administrative receiver appointed or the holder of a qualifying floating charge over the assets of it has become entitled to appoint an administrative receiver;
- (f) a receiver is appointed over all or any of its assets or a person becomes entitled to appoint a receiver over all or any of those;
- (g) has a creditor or encumbrancer of it attach or take possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any of its assets, and such attachment or process is not discharged within ten Working Days
- (h) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (whether or not that part of the business involves maintaining the Open Space)

the District Council may enter on to the relevant area of the Open Space together with relevant personnel and equipment to ensure the performance of the obligations contained in this Schedule and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage or reinstate the relevant area of the Open Space ('Works in Default') and shall be entitled to full reimbursement by the First Owner and the Second Owner and the Management Company of all costs and expenses incurred in performing the said obligations

## 10.2 In the event that the Management Company

- 10.2.1 shall have failed to maintain the Open Space in accordance with the approved Management Scheme the District Council will not exercise the right in paragraph 10.1.2 above to carry out Works in Default before having given written notice to the Management Company stating the nature of the failure, the steps required to remedy the failure, and a reasonable time period for remedying it and shall afford the Management Company the opportunity to

remedy the failure in accordance with the steps and time period in the written notice

10.2.2 shall have failed for whatever reason to reimburse the costs and expenses incurred by District Council in carrying out any Works in Default within 14 days of a written demand therefor, the District Council shall be entitled to recover such costs and expenses from the ManCo Default Account

the District Council shall be entitled to draw down from the ManCo Default Account all sums then credited to that account.

### 10.3 In the event that

10.3.1 the District Council shall have served notice on the Management Company requiring it to remedy any failure to maintain the Open Space in accordance with the approved Management Scheme; and

(a) the Management Company have failed to remedy that failure within the time given in the notice; but

(b) at that point in time there are no funds in the ManCo Default Account or the funds in the ManCo Default Account are insufficient to defray the costs of the Works in Default

10.3.2 any of the circumstances set out in paragraph 10.1.2 above shall occur or the Management Company otherwise ceases to be able to carry out its obligations in the Management Scheme

then the provisions of paragraph 10.4 below shall apply

10.4 the Management Company (or the such other person or body as shall then have control over the Management Company's assets) as successor in title to the First Owner and the Second Owner shall, at the election of the District Council either

10.4.1 Transfer all its interest in the Open Space to the District Council or its nominee together with all responsibilities for management and maintenance of the same; or

10.4.2 Transfer the responsibility for management and maintenance of the Open Space to the District Council or its nominee and

10.4.3 pay any accrued Service Charges to the District Council or its nominee and assign

(a) its right to collect and receive payments of the Service Charge: and

(b) any rights it has to draw down funds from the ManCo Default Account

## **11. TRANSFER TO THE DISTRICT COUNCIL**

Upon completion of the Maintenance Period and issue of the Final Completion Certificate

11.1 the freehold interest in the Open Space shall be transferred to the District Council or such other body as the District Council may direct on the following terms:

11.1.1 Consideration for the transfer shall be no more than One pound (£1-00);

11.1.2 To be with

(a) full title guarantee, and

(b) vacant possession on completion

11.1.3 The transfer shall include such rights as may be necessary for the District Council to access the Open Space and SUDS for purposes of maintenance repair improvement and replacement of any aspect of the Open Space and/or the SUDS

(a) A covenant not to use or permit the Open Space to be used for anything other than the purposes that they were provided for and not to use them for any income generating use without the consent of the transferor (such consent not to be unreasonably withheld or delayed); and

(b) Save as is inconsistent herewith on the Law Society's Standard Conditions of Sale applicable at the time of the issue of the Completion Certificate

11.1.4 A draft transfer shall be prepared by the transferor and sent to the District Council for approval or amendment within Twenty (20) Working Days of the issue of the last Final Completion Certificate and once approved an executed

transfer shall be delivered to the District Council for its execution by the District Council within Ten (10) Working Days

11.2 The Open Spaces Commuted Sum and SUDS Commuted Sum shall be paid to the District Council

11.3 Notwithstanding the issue of a Final Completion Certificate the Open Space shall continue to be maintained in accordance with the Maintenance Plan until its transfer in accordance with paragraph 11.1 above

**FOURTH SCHEDULE**  
**FINANCIAL CONTRIBUTIONS PAYABLE TO THE DISTRICT COUNCIL IN RESPECT**  
**OF DISTRICT MATTERS**

**1. DEFINITIONS**

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

<b>Expression</b>	<b>Meaning</b>
<b>“Contributions”</b>	means together and separately the <ul style="list-style-type: none"><li>• Community Hall Facilities Contribution;</li><li>• Off Site Outdoor Sports Facilities Capital Provision Contribution;</li><li>• Off Site Indoor Sports Facilities Contribution;</li><li>• Play Equipment Commuted Sum; and</li><li>• Refuse Contribution</li></ul> unless the context otherwise requires
<b>“Community Hall Facilities Contribution”</b>	means a contribution calculated in accordance with the following:  £2,482 (Two thousand four hundred and eighty-two pounds) multiplied by 2.49 (being the average occupancy per Dwelling) multiplied by 0.185 (the community space requirement per resident being 0.185m <sup>2</sup> ) multiplied by the Composition of the Development Index Linked  for the provision of additional or enhanced facilities at Fritwell Village Hall
<b>Index Linked</b>	means the calculation of any financial contribution (upwards only) 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 and

<b>Expression</b>	<b>Meaning</b>
	where any financial contribution is to be paid in more than one instalment each instalment shall be Index Linked
<b>“Off Site Outdoor Sports Facilities Capital Provision Contribution”</b>	<p>means a contribution calculated in accordance with the following:</p> <p>£2017.03 (two thousand and seventeen pounds and three pence) multiplied by the Composition of the Development Index Linked</p> <p>for the improvement of sports fields and additional facilities (including potential green gym) at Sports Field in Fritwell</p>
<b>“Off Site Indoor Sports Facilities Contribution”</b>	<p>means a contribution calculated in accordance with the following:</p> <p>£335.32 (three hundred and thirty five pounds thirty two pence) multiplied by 2.49 (being the average occupancy per Dwelling) multiplied by the Composition of the Development Index Linked</p> <p>towards improvements at Bicester Leisure Centre</p>
<b>“Play Equipment Commuted Sum”</b>	means a contribution calculated by multiplying £2017.03 (Two thousand and seventeen pounds and three pence) by the Composition of the Development Index Linked for the upgrading of local play equipment at Fritwell
<b>“Refuse Contribution”</b>	means a contribution of £106.00 (one hundred and six pounds) multiplied by the Composition of the Development Index Linked towards the provision of refuse and recycling bins for the Development
<b>“Recalculated Contributions”</b>	means the Contributions recalculated as a result of a Qualifying Permission and ‘ <b>Recalculated</b> ’ and ‘ <b>Recalculation</b> ’ shall be construed accordingly

## **2. OTHER CONTRIBUTIONS**

The First Owner and the Second Owner covenant with the District Council that they will:

2.1 pay to the District Council the Refuse Contribution prior to the Occupation of any of the Market Dwellings and not cause or permit any Market Dwellings to be Occupied until the Refuse Contribution has been paid in full to the District Council

2.2 pay to the District Council 50% of

2.2.1 the Community Hall Facilities Contribution;

2.2.2 the Off Site Outdoor Sports Facilities Capital Provision Contribution;

2.2.3 the Off Site Indoor Sports Facilities Contribution; and

2.2.4 the Play Equipment Commuted Sum

before more than 50% of the Market Dwellings are Occupied and not to Occupy more than 50% of the Market Dwellings until those sums have been paid

2.3 pay to the District Council the remaining 50% of

2.3.1 the Community Hall Facilities Contribution;

2.3.2 the Off Site Outdoor Sports Facilities Capital Provision Contribution;

2.3.3 the Off Site Indoor Sports Facilities Contribution; and

2.3.4 the Play Equipment Commuted Sum

before more than 75% of the Market Dwellings are Occupied and not to Occupy more than 75% of the Market Dwellings until those sums have been paid

## **3. SUPPLEMENTAL PAYMENTS**

The First Owner and the Second Owner covenant with the District Council as follows:-

3.1 Where a Qualifying Permission has been granted that alters the Composition of the Development each of the Contributions (whether or not any have been paid in part or



in full) shall be Recalculated in accordance with that Revised Composition of the Development and shall become the Recalculated Contributions.

- 3.2 Where the Due Date for any Contribution is after that Contribution has been Recalculated the Recalculated Contributions shall be paid instead of the Contributions
- 3.3 Where Recalculation occurs after all or any part of any of the Contributions has been paid if the Recalculated Contributions are greater than the Contributions to pay or secure payment of the difference to the District Council forthwith or if the Due Date for any part of any of the Contributions has not occurred on the next Due Date

**FIFTH SCHEDULE**  
**FINANCIAL CONTRIBUTIONS PAYABLE IN RESPECT OF COUNTY COUNCIL**  
**MATTERS**

**1. DEFINITIONS**

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

<b>Expression</b>	<b>Meaning</b>
<b>“Bedroom”</b>	<p>means a room in a Dwelling designed as a bedroom or study/ bedroom and</p> <ul style="list-style-type: none"><li>• 1 Bedroom Dwelling means a Dwelling with 1 Bedroom</li><li>• 2 Bedroom Dwelling means a Dwelling with 2 Bedrooms</li><li>• 3 Bedroom Dwelling means a Dwelling with 3 Bedrooms</li><li>• 4 Bedroom Dwelling means a Dwelling with 4 or more Bedrooms</li></ul>
<b>Composition of the Development</b>	<p>means 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</p>
<b>Index Linked</b>	<p>means in relation to the Secondary Education Contribution and any supplemental payment made in accordance with paragraph 4 of this Schedule adjusted according to any increase occurring between the second quarter of 2017 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</p>

<b>Expression</b>	<b>Meaning</b>
	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 First Owner and the Second Owner and the County Council
<b>Matrix</b>	<p>means the formula:</p> $£(A \times W) + (B \times X) + (C \times Y) + (D \times Z)$ <p>When</p> <p>A means the number of 1 Bedroom Dwellings  B means the number of 2 Bedroom Dwellings  C means the number of 3 Bedroom Dwellings  D means the number of 4 or more Bedroom Dwellings</p> <p>and W, X, Y and Z are as set out in the Annex to this Schedule</p>
<b>Revised Secondary Education Contribution</b>	<p>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 Secondary Education Contribution or in the event that there is more than one Approval (Variation) the Revised Secondary 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. The Revised Secondary Contribution will be Index Linked</p>
<b>Secondary Education Contribution</b>	<p>means the sum of ONE HUNDRED AND EIGHTEEN THOUSAND, SIX HUNDRED AND SIXTY-TWO POUNDS (£118,662.00) or (if higher) the sum calculated by applying the Matrix to the Composition of the Development as identified in the Notification (Initial) towards the expansion of capacity in secondary education provision serving the Site payable in two instalments as follows:-</p> <ul style="list-style-type: none"> <li>• Education Payment 1 being 50% of the Secondary Education Contribution</li> <li>• Education Payment 2 being the remaining 50% of the Secondary Education Contribution</li> </ul>

**Expression****Meaning**

The Secondary Education Contribution will be Index Linked

**2. COVENANTS**

The First Owner and the Second Owner covenant with the District Council and the Second Owner covenants with the County Council:-

- 2.1 not to cause or permit the Development to be Commenced until they have paid Education Payment 1 to the County Council
- 2.2 to pay Education Payment 1 to the County Council before the Development is Commenced
- 2.3 not to cause or permit the first Occupation of any Dwelling comprised in the Development until they have paid Education Payment 2 to the County Council,
- 2.4 to pay Education Payment 2, to the County Council prior to the Occupation of any Dwelling comprised in the Development

**3. COVENANTS (NOTIFICATION AND ASSESSMENT)**

The First Owner and the Second Owner covenant with the District Council and the Second Owner covenants with the County Council as follows:

- 3.1 to give to the District Council and the County Council the Notification (Initial) within 10 (ten) Working Days of the issue of the Approval (Initial)
- 3.2 not to cause or permit the Commencement of the Development until the Notification (Initial) has been given to the District Council and the County Council
- 3.3 to give to the District Council and the County Council a Notification (Variation) within 10 (ten) Working 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 above) and the relevant Approval (Variation) results in the establishment of a Revised Secondary Education Contribution then
  - 3.4.1 for the purposes of calculating any Secondary Education Contribution payment which will payable subsequent to the date of issue of the relevant

Approval (Variation) the Revised Secondary Education Contribution shall be applied in place of the Secondary Education Contribution

- 3.4.2 there shall be calculated the difference between any Secondary Education Contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such Secondary Education Contribution would have been if it had been calculated by reference to the Revised Secondary Education Contribution (disregarding index linking)

#### 4. COVENANTS – PAYMENT (ADDITIONAL COVENANT)

- 4.1 The First Owner and the Second Owner covenant with the District Council to pay to the County Council any sum calculated further to paragraph 3.4.2 Index Linked with the next Secondary Education Contribution payment subsequent to the date of grant of the relevant Approval (Variation) or if all the Secondary Education Contribution has been paid to pay such sum Index Linked within 14 days of the grant of the Approval (Variation)

#### ANNEX: MATRIX

	1 Bed	2 Bed	3 Bed	4+ Bed
Secondary Education	£0.00	£2,077.74	£5,309.78	£8,080.10
<b>Total</b>	<b>W = £0.00</b>	<b>X = £2,077.74</b>	<b>Y =£5,309.78</b>	<b>Z = £8,080.10</b>

## **SIXTH SCHEDULE HIGHWAYS**

### **PART 1 - PRELIMINARIES**

#### **1. DEFINITIONS**

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

<b>Expression</b>	<b>Meaning</b>
-------------------	----------------

<b>“the 1980 Act”</b>	means the Highways Act 1980 (as amended)
-----------------------	--

<b>“Highway Agreement”</b>	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 First Owner and the Second Owner at their expense and to be substantially in the form of the draft agreement at Annex 1 to this Schedule and subject to the conditions at Annex 2 to this Schedule including such amendments as may be agreed
----------------------------	---

<b>“Works”</b>	means the principal works together with associated preparatory and ancillary works and the amenity and accommodation works described in Part 2 of this Schedule
----------------	---

<b>“Works Plan”</b>	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 local highway authority acting with absolute discretion
---------------------	--

- 1.2 The Works are works which the local highway authority for Oxfordshire is authorised to execute by virtue of Part V of the 1980 Act

- 1.3 The parties intend to enter into the Highway Agreement or Highway Agreements

#### **2. HIGHWAY WORKS COVENANTS**

The First Owner and the Second Owner covenant with the District Council and the Second Owner covenants with the County Council:

- 2.1 not to cause or permit Commencement of the Development until

- 2.1.1 there have been submitted to the local highway authority for Oxfordshire and approved by it in writing
- (a) in principle drawings of the Works together with associated drawings and technical information as set out in the local highway authority for Oxfordshire's Section 278 application form as adjusted from time to time;
  - (b) the anticipated duration of construction of the Works has been agreed with the local highway authority for Oxfordshire together with the long stop for their completion
  - (c) commuted maintenance sums in respect of the cost of future maintenance of the Works and as applicable replacement of the Works, has been agreed; and
  - (d) (if applicable) plans identifying the land to be dedicated for the purposes of the Works
- 2.1.2 title has been deducted to the satisfaction of the local highway authority 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 of the Site and all parties with an interest in any land to be dedicated have also joined in such agreement
- 2.2 Notwithstanding the terms of paragraph 2.1 not to Occupy any part of the Development until the Highway Agreement has been entered into in accordance with paragraphs 2.1.1 (a) to (d) above;
- 2.3 not to cause or permit any Dwelling to be Occupied 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 of a bell-mouth access and a pedestrian access from the development on to Fewcott road, Fritwell as shown on drawing no. J32-3847-PS-001 Rev F.
- (b) visibility splays in line with DMRB as shown on drawing no. J32-3847-PS-005 Rev A
- (c) the provision of a 1.8m wide footway from the site to join existing footway in village as shown on drawing no. J32-3847-PS-001 Rev F.
- (d) works to give effect to an extension of 30mph speed limit eastbound on Fewcott Road to approximately 30 metres east of the proposed site access as shown on drawing no. J32-3847-PS-001 Rev F.
- (e) the relocation of speed gate and new 30mph signs along with dragons teeth road markings to new location 30 metres east of site access on Fewcott road as shown on drawing no. J32-3847-PS-001 Rev F.
- (f) provision of vas sign at position of existing speed gate on Fewcott road as shown on drawing no. J32-3847-PS-001 Rev F.
- (g) Open up pedestrian access from site to Public Footpath 219/6, widen to 1.8m, surface with permeable material agreed at S278 stage and provide lighting columns from site access to village

## **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 local highway authority 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 local highway authority 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

This drawing has been produced by mode transport planning.  
No responsibility will be accepted for the use of this drawing in any other project.  
DO NOT SCALE OFF THIS DRAWING



Chief Legal Officer/Designated Officer

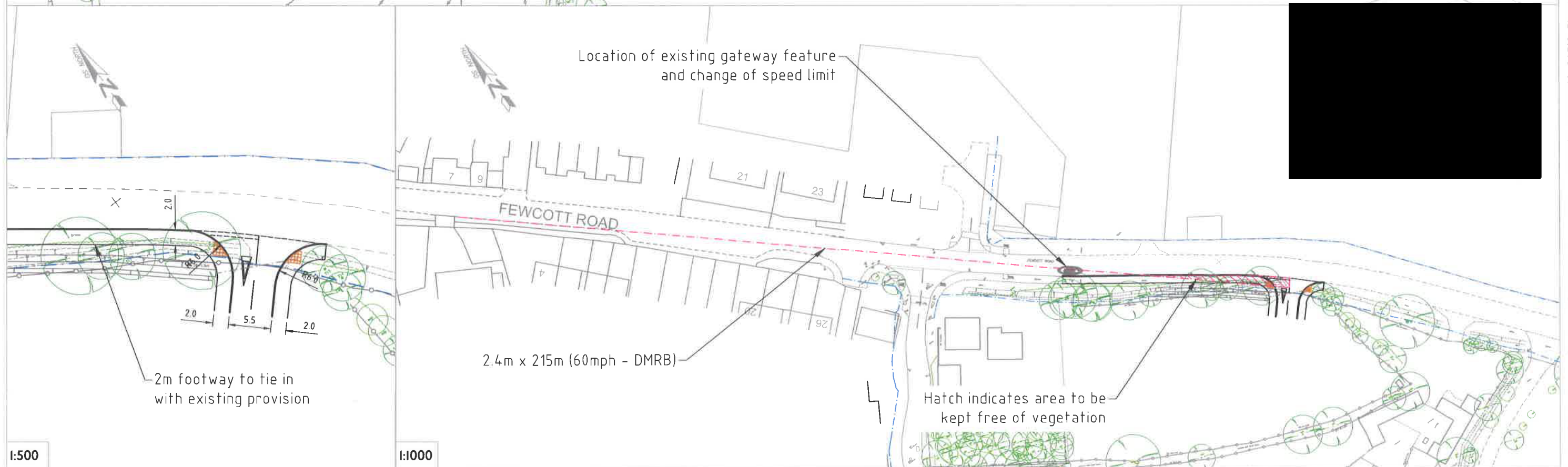
drawing title	client	mode transport planning	scale	FEEDBACK	Amended
Indicative Access Scheme	CALA Homes Ltd	LABS Atrium Stables Market Chalk Farm Road London NW1 8AH	Varies@A3	27-09-19	Amended
	job title	Fewcott Road, Fritwell	drawn jwrn	06-08-19	Amended
			checked bdf	27-06-19	Amended
Extent of Highway Boundary		 transport planning	created Oct '18	11-06-19	Amended
Visibility Splay (MfS - 30mph)			drawing no. J32-3847-PS-001	31-10-18	Amended
				08-10-18	Issued



This drawing has been produced by mode  
transport planning.  
No responsibility will be accepted for the  
use of this drawing in any other project.  
DO NOT SCALE OFF THIS DRAWING



Chief Legal Officer/Designated Officer



drawing title  
**Site Access and Visibility  
Splays Based on Posted  
Speed Limit (60mph)**  
Extent of Highway Boundary

client  
**CALA Homes Ltd**  
  
job title  
**Fewcott Road,  
Fritwell**

mode transport planning  
LABS, Atrium  
Stables Market  
Chalk Farm Road  
London  
NW1 8AH  
t: 020 7293 021  
e: info@modetransport.co.uk  
w: www.modetransport.co.uk

mode  
transport planning

scale	Varies@A3		
drawn	jwm	A	08-11-18
checked	ssd		Issued
created	Nov '18		
		drawing no.	J32-3847-PS-005

## ANNEX 1 DRAFT 278 AGREEMENT

DATED

20

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

-----  
Agreement relating to highway works at [ ]

to be undertaken by Developer

Planning Application number: [ ]  
-----

[ ]

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



**THIS DEED** is made on the ..... day of .....

Two Thousand and

**BETWEEN:-**

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

- 1.6 “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
- 1.7 “the Developer” means [ ] whose registered office is at [ ] and its successors in title and assigns
- 1.8 “the Development” means [ ]
- 1.9 “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
- 1.10 “including” means including without limitation and ‘include’ shall be construed accordingly
- 1.11 “Index-Linked” means adjusted according to any increase occurring between [ ] and the date of payment to the Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

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





1.20 “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

1.21 “the Works” means the works specified in the Schedule

1.22 “the Works Plan” means the drawing(s) numbered [            ]  
annexed to this Deed

1.23 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

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

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

1.26 Where the context so requires:-

1.26.1 the singular includes the plural and vice versa

1.26.2 the masculine includes the feminine and vice versa

1.26.3 persons includes bodies corporate associations and partnerships and vice versa

1.27 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

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

1.29 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 [It has been agreed [by virtue of the Section 106 Agreement that the Development shall not be implemented [as therein defined] prior to the completion of this Deed and that no Dwelling at the Development shall not be Occupied prior to the completion of the Works in accordance with the Deed

- 2.5 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.6 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
- 2.7 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

### 3. **Covenants**

The Owner and the Developer covenant:-

- 3.1 not to cause or permit [any Dwelling at the Site to be Occupied/ 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] until 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.

*Note a provision may be required for agreed payment under Section 59(3) Highways Act 1980*

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 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 **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 **[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 **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

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 People & 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")

(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

**[EXECUTION]**

**ANNEX 2**  
**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

Anita Bradley  
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



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

##### 9.2

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

9.3

<p><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</p> <p><b>(b) traffic safety measures and measures including lights, guards, fencing and warning signs</b> in order to protect the Works and/or for the safety and convenience of the public</p>	No later than 2 weeks before the Works are expected to commence	
---	---	--

9.4

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

9.5

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

**Other Matters**

9.6

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

9.7

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



## 9.8

<p><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>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>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>
<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>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>As above</p>	

## 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>	
---	--	--

## 9.10

<p>Notification of the <b>identity of the contractor</b> who has submitted a successful tender.</p>	<p>No later than <b>2 weeks after the acceptance of any tender</b> for the execution of the Works.</p>	
---	--	--

<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 the Council's opinion to

---

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

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

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.

## **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

---

<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.

12.2.2. 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 £2,150

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 only undertake the Works at such times as have previously been approved by 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)

34.1.3. 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.

**SEVENTH SCHEDULE**  
**DISTRICT AND THE COUNTY COUNCIL'S COVENANTS**

**1. REPAYMENT OF CONTRIBUTIONS BY THE DISTRICT COUNCIL**

1.1 The District Council covenants with the First Owner and the Second Owner to use all sums received from the First Owner and or the Second Owner under the terms of the Fourth Schedule 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 First Owner and the Second Owner and the District Council shall agree.

1.2 Subject to paragraph 1.4 below the District Council covenants with the First Owner and the Second Owner that following written request from the person who made the relevant payment the District Council will repay to that person

1.2.1 the balance (if any) of any payment made by that person to the District Council under the terms of the Fourth Schedule in accordance with the provisions of this Deed which has not been expended or committed at the date of such written request; or

1.2.2 the difference between the amount of the Contributions already paid if the Recalculated Contributions are lesser than the Contributions required by that Schedule

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 or the date that payment was due (whichever is later)

1.3 Pursuant to paragraph 9.2 of the Third Schedule the District Council shall take such steps as are necessary to ensure that any sums left in the ManCo Default Account and/or the ManCo Maintenance Account when closed are transferred to the person who paid or to such other person as they may direct.

1.4 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 or committed by the District Council prior to that date and

1.4.1 if capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph; and

1.4.2 the District Council shall not be obliged pursuant to this paragraph to return monies that do not relate to District Council functions or have been passed to persons/bodies other than the District Council.

1.5 The District Council shall provide to the First Owner and or the Second Owner such evidence as the First Owner and or the Second Owner shall reasonably require in order to confirm the expenditure of the sums paid under the terms of the Fourth Schedule upon a written request by the Owner such request not to be made more than once in any year.

## **2. DISCHARGE OF OBLIGATIONS**

At the written request of the First Owner and Second 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.

## **3. REPAYMENT OF CONTRIBUTIONS BY THE COUNTY COUNCIL**

The County Council shall not apply any of the contributions referred to in the Fifth Schedule for any purpose other than as set out in the definition of each contribution therein in such form and at such time as the County Council shall in its discretion decide or for such other purposes for the benefit of the Development as the Second Owner and the County Council shall agree in writing

## **4. REPAYMENT**

4.1 Following written request from the person who made the relevant contribution the County Council will repay to that person the balance (if any) of such contribution which at the date of the receipt of such written request has not been expended together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request shall be made prior to the expiry of 10 years from the Due Date or the date of receipt by the County Council of the last instalment of any such contribution (whichever is the later).

- 4.2 Any contribution or part of a contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date

## **EIGHTH SCHEDULE**

### **DISPUTES**

1. A dispute in the context of this agreement arises where any Party requires or seeks the approval or consent of another Party pursuant to any provision of this Deed mentioned in Clause 22 and that approval or consent is refused or is not given within 20 Working Days but FOR THE AVOIDANCE OF DOUBT:
  - 1.1. disputes relating to the construction, interpretation and/or the application of this Agreement shall only be determined by an Expert with the express further agreement of all other Parties and in the absence of such agreement can only be determined by a Court of competent jurisdiction;
  - 1.2. any dispute relating to a refusal or failure to determine any application (whether pursuant to Sec 106A of the Act or otherwise) to modify or discharge any provision hereof shall not constitute a dispute to be determined pursuant to this Schedule but in accordance with Section 106B of the Act or Section 84A of the Law of Property Act 1925 or otherwise as appropriate
2. Any Party may by serving notice on all the other Parties (the Notice) require a dispute to be referred to an Expert (as hereinafter defined) for determination.
3. The Notice must:
  - 3.1. specify the nature, basis and brief description of the dispute;
  - 3.2. identify the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
  - 3.3. propose a person to determine the dispute ('the Expert').
4. The Expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Notice is issued pursuant to paragraph 1 either Party may request that the following nominate the Expert at their joint expense:
  - 4.1. if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

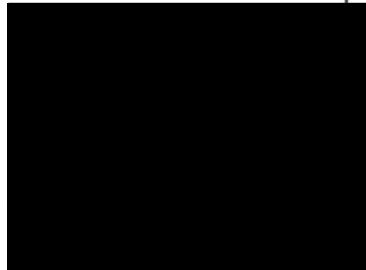


- 4.2. if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the Expert;
- 4.3. if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;
- 4.4. if such dispute relates to Affordable Housing the Expert shall be nominated by the President of the Royal Town Planning Institute; and
- 4.5. in all other cases, the President of the Law Society to nominate the Expert as he thinks appropriate
5. The Parties may agree to appoint joint Experts or (in default of agreement) invite joint Experts to be nominated pursuant to paragraph 4 and in which case 'Expert' shall mean both or all of them.
6. If an Expert (including one or more jointly nominated experts) nominated or appointed pursuant to this Schedule shall die or decline to act another Expert may be appointed in his place in accordance with the provisions of paragraph 4.
7. The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of the notice of his appointment given pursuant to paragraph 8.
8. Notice in writing of the appointment of an Expert pursuant to this Schedule shall be given by the Expert to the Parties and he shall invite each of the Parties to submit to him within ten Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
9. The Expert shall act as an expert and not as an arbitrator but shall consider any written representation submitted to him within the period specified in this Schedule although he shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.

10. The Expert shall give notice of his decision in writing
11. If the Expert consists of more than one person the decision shall be a joint decision approved by all such persons and the decision will (in the absence of manifest error) be final and binding on the Parties hereto.
12. If for any reason the Expert fails to make a decision and give notice thereof in accordance with this Schedule the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
13. The Expert's costs shall be in the Expert's award or in the event that no determination as to costs is made, such costs will be borne by the parties to the Dispute in equal shares.
14. Nothing in this Schedule shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

**EXECUTION**

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

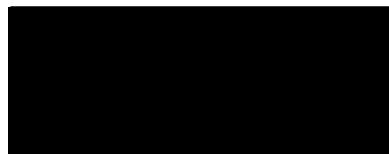


Authorised Signatory



*CDC 20474*

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



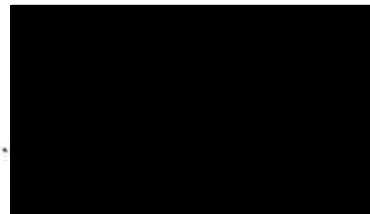
Authorised Signatory

(the officer appointed for this purpose)



*832/21*

**SIGNED AS A DEED by ALEXANDER  
CHARLES STEER** in the presence of



Witness signature.

Witness name

(BLOCK CAPS) *ANTHONY GRAHAM PARKER*

Address *1-3 High Street*

*Thame OX9 2BX*

Occupation *Solicitor*

SIGNED AS A DEED by GORDON  
JAMES HODSON WRIGHTON in the  
presence of

Witness signature

Witness name

(BLOCK CAPS) ANTHONY GRAEME PARKER

Address 1-3 High Street

Thame OX9 2BX

Occupation Solicitor

SIGNED AS A DEED by CATHERINE  
WRIGHTON in the presence of

Witness signature

Witness name

(BLOCK CAPS) ANTHONY GRAEME PARKER

Address 1-3 High Street

Thame OX9 2BX

Occupation Solicitor

EXECUTED as a DEED by CALA  
MANAGEMENT LIMITED acting by

ANDREW ALDRIDGE

and by JOHN ALLAN

as Attorney of CALA Management Limited  
in the presence of

Witness  
signature

Witness name  
(BLOCK CAPS) C. Holman

Address BOB Pitmans

The Anchorage Reading RG1 2UN

Occupation Solicitor

Attorney

Attorney

