

DATED 5<sup>th</sup> October. 1998

- (1) SECRETARY OF STATE FOR ENVIRONMENT TRANSPORT AND THE REGIONS ACTING BY THE DIRECTOR OF GOVERNMENT COMMUNICATION HEADQUARTERS
- (2) CHELTENHAM BOROUGH COUNCIL
- (3) GLOUCESTERSHIRE COUNTY COUNCIL

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**AGREEMENT Number 7**  
pursuant to s.106 Town and Country Planning Act 1990 and other powers relating to land at Oakley

[CB 11954/43]

[Residential development on 19 hectares of land and the provision of a District Centre incorporating food superstore on 2.85 hectares of land GCHQ Oakley]

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THIS DEED is made the Fifth day of October 1998

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR THE ENVIRONMENT TRANSPORT AND THE REGIONS ACTING BY THE DIRECTOR OF GOVERNMENT COMMUNICATIONS HEADQUARTERS** of Government Communications Headquarters Princess Elizabeth Way, Cheltenham Gloucester GL52 5AJ (**the "DETR"**)
- (2) **CHELTENHAM BOROUGH COUNCIL** of PO Box 12 Municipal Offices Promenade Cheltenham Gloucestershire GL50 1PP (DX 7406 Cheltenham 1) (**the "Council"**)
- (3) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall , Gloucester GL1 2TN (**the "County"**)

**WHEREAS**

- 1. The Council is the District Planning Authority and a Local Planning Authority as defined in this Act for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act for the area in which the Application Site is situated;
- 2. The County is a Local Planning Authority as defined in the Act and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act;
- 3. The County is the Highway Authority (other than for trunk roads) for the area in which the Application Site is situated and is of the opinion that the Highways Works are necessary to accommodate traffic likely to be generated by the Development;
- 4. The County and the Council are satisfied that this Agreement will be of benefit to the public;
- 5. The County is the Education Authority for the County of Gloucestershire and considers that the Proposed Development will necessitate additional educational facilities within the area;
- 6. The DETR is the owner in fee simple in possession of the land comprising the Application Site and for the avoidance of doubt by entering into this Deed binds both itself and GCHQ;
- 7. GCHQ is responsible for managing and operating thland comprising the Application Site and proposes to allow development to be carried out at the Application Site pursuant to the Private Finance Initiative;
- 8. The DETR have submitted the Application to the Council and the Council have resolved to grant the Planning Permission for the Development subject to DETR entering into this Deed;
- 9. The Application deals with the Residential Land and District Centre Land. This Deed provides for planning and other obligations which relate separately to the District

Centre Land and Residential Land and also which relate to both. It is intended that obligations which relate to the Residential Land shall be enforceable against that land only and against persons deriving title to the Residential Land and obligations which relate to the District Centre Land shall be enforced against that land only and against persons deriving title to the District Centre Land. Where obligations apply to both they shall be enforceable against persons deriving title to both;

10. The Director of Government Communications Headquarters is authorised to execute this Agreement on behalf of the Secretary of State for the Environment Transport and the Regions pursuant to SI 1997/2971.

## NOW THIS DEED WITNESSETH:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and expressions shall have the following meanings:

"**Act**" means the Town and Country Planning Act 1990 and any re-enactment or modification thereof for the time being in force

"**Affordable Housing**" means housing for rent by tenants of an Approved Organisation or for shared equity sale

"**Affordable Housing Plot**" means an affordable housing plot as referred to in paragraph 2.1 of Schedule 1 to this Deed

"**Affordable Housing Unit**" means a dwelling built on the Affordable Housing Plot

"**Agreements**" means this Deed and the Other Agreements

"**Application**" means the application for Planning Permission dated 13th August 1997 and bearing the reference number CB 11954/43 for residential development on 8.5 hectares of land and the provision of a District Centre incorporating food superstore on 2.85 hectares of land on the Application Site together with all plans specifications and particulars deposited with the Council and forming part thereof

"**Application Site**" means land at Oakley Cheltenham shown for identification purposes outlined by a thick black line on the Plan to the outside of the line

"**Approved Organisation**" means an Approved Organisation as referred to in paragraph 2.1 of Schedule 1 to this Deed

"**Bondsman**" means the Bondsman as defined in the relevant bond

"**CDM**" means the Construction (Design and Management) Regulation 1994

"**Corresponding Obligation**" means a requirement in any of the Other Agreements to make a contribution in respect of the same matters or perform the same obligation which appears in this Deed

"**Council's Head of Development Services**" means the Head of Development Services for the time being of the Council or such other officer notified in writing to the DETR by the Council

**"County Solicitor"** shall mean the County Solicitor for the time being of the County or such other Officer notified to DETR in writing by the County

**"Development"** means the development for which the Planning Permission is granted

**"District Centre Land"** means the area marked District Centre on the Plan

**"Director of Leisure"** means the Director of Leisure for the time being of the Council or such other notified to DETR in writing by the Council

**"Director of Education"** shall mean the Director of Education for the time being of the County or such other Officer notified to DETR in writing by the County as shall from time to time be responsible for the County Council's education function

**"Director of Environment"** means the Director of Environment for the time being of the County or such other officer notified to DETR in writing by the County

**"Education Contribution Bond"** means the bond referred to in Paragraph 1.5 of Schedule 3

**"Education Index"** means the Tender Price Index of Public Sector Building Non-Housing (All-In) Index

**"Final Determination"** means exhaustion of proceedings (including redetermination) with no right of appeal or expiry of time periods for appeal with no appeal made

**"GCHQ"** means the Government Communications Headquarters

**"Head of Legal Services"** shall mean the Head of Legal Services for the time being of the Council or such other Officer notified to DETR in writing by the Council

**"Head of Property Services"** shall mean the Head of Property Services for the time being of the Council or such other notified to DETR in writing by the Council

**"Highways Contribution Bond"** means the bond referred to in paragraph 2.3 Schedule 2

**"Highways Implementation"** means the carrying out of a material operation as defined in s.56(4) of the 1990 Act comprised in Priors Road Access Works and exclusively referable and pursuant to the Planning Permission save for the following matters which shall not constitute a material operation and consequently shall not individually or together constitute Highways Implementation:

enabling works (meaning provision of underground drainage, sewers and utilities, demolition and reinstatement of fences) demolition site clearance and preparation exploratory boreholes operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 or any amendment or replacement thereof construction of temporary construction accesses archaeological investigations and digs works matters and operations to enable any of the foregoing to take place;

**"Highways Works Bond"** means the bond referred to in paragraph 1.11 of Schedule 2

**"Housing Director"** shall mean the Director of Housing for the time being of the Council or such other officer notified to DETR in writing by the Council

**"Implementation"** means the implementation of the Planning Permission by the carrying out of a material operation as defined in s.56(4) of the 1990 Act comprised in the Development and exclusively referable and pursuant to the Planning Permission save for the following matters which shall not constitute a material operation and consequently shall not individually or together constitute Implementation:

enabling works (meaning provision of underground drainage, sewers and utilities, demolition and reinstatement of fences) demolition site clearance and preparation exploratory boreholes operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 or any amendment or replacement thereof construction of temporary construction accesses and the Priors Road Access Works archaeological investigations and digs works matters and operations to enable any of the foregoing to take place;

**"Index"** means the Roadcon Index published by the DETR

**"Low Cost Housing Plot"** means the Low Cost Housing Plot as referred to in paragraph 2.5 of Schedule 1 to this Deed

**"Low Cost Market Housing"** means residential development to be provided by a private developer the price of which on sale to the first residential occupier thereof falls within the first quartile of house prices over a consecutive period of three months prior to purchase by the first residential occupier calculated from information provided by the Land Registry for the following Cheltenham Post Code districts; GL50 1, GL50 2, GL50 3, GL50 4, GL51 0, GL51 5, GL51 6, GL51 7, GL51 8, GL51 9, GL52 2, GL52 3, GL52 5, GL52 6, GL53 0, GL53 7 and GL53 8

**"NPFA British Standards"** means the standards set out in National Playing Fields Association "Six Acre Standards" published in January 1994

**"Other Agreements"** means:

the agreement of even date herewith between the parties marked on its cover Agreement No 1 which relates to application CB 17418/13 and CB 17418/14; and

the agreement of even date herewith between the parties marked on its cover Agreement No 2 which relates to application CB 17418/15; and

the agreement of even date herewith between the parties marked on its cover Agreement No 3 which relates to application CB 17418/16; and

the agreement of even date herewith between the parties marked on its cover Agreement No 4 which relates to application CB 17418/17 & CB 17418/18; and

the agreement of even date herewith between the parties marked on its cover Agreement No 5 which relates to application CB 17418/19; and

the agreement of even date herewith between the parties marked on its cover Agreement No 6 which relates to application CB 11954/41 and CB 11954/42

**"Plan"** means the plan labelled "proposed redevelopment Oakley Residential (19ha) and District Centre (2.85ha)

**"Planning Permission"** means permission for development for the Application Site in the form of the draft planning permission attached hereto as Annex 1

**"Play Equipment"** means play equipment which complies with British Standards 3696 "Play Equipment Intended for permanent Installation Outdoors" and BS7188 "Methods of test for impact Absorbing Playground Surfaces"

**"Priors Road Access"** means the access and signalised junction referred to in paragraph 1.1 of Schedule 2 and shown on the Priors Road Access Plan

**"Priors Road Access Plan"** means the plan no 30163/13REVB annexed hereto

**"Priors Road Access Works"** means the works required to complete the Priors Road Access and Spur referred to in paragraph 1.1.1 of Schedule 2 to this Deed

**"Residential Unit"** means a self-contained flat, house or bungalow and shall not include an Affordable Housing Unit

**"Residential Land"** means the area marked "Residential" on the Plan

**"Registered Social Landlord"** means a landlord registered pursuant to the Housing Act 1996

**"Spur"** means the 100m portion of roadway described in paragraph 1.1.1 of Schedule 2 and shown on the Priors Road Access Plan

1.2 In this Deed:

- 1.2.1 words importing the masculine gender include the feminine and the neuter and vice versa
- 1.2.2 words importing the singular include the plural and vice versa
- 1.2.3 references to persons include bodies corporate and vice versa
- 1.2.4 save where the context otherwise requires all obligations given or undertaken by more than one person in the same capacity are given or undertaken by them jointly and severally so as to apply and be enforceable against all both or any of such persons and their and each of their personal representatives
- 1.2.5 reference to any party shall include any successors in title or person deriving title from the party
- 1.2.6 reference to any officer of the Council or the County shall include such officer for the time being of the Council or the County or anyone notified in writing to the DETR and authorised by him or the Council or the County to act on his behalf or in that capacity
- 1.2.7 the clause headings shall not affect the construction of this Deed

- 1.2.8 save where otherwise stated any reference to a numbered clause paragraph or schedule means the clause paragraph or schedule in this Deed which is so numbered
- 1.2.9 every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made in pursuance of such statute
- 1.2.10 any reference in this Deed to a working day shall exclude any day between 27<sup>th</sup> and 31<sup>st</sup> December inclusive in any year
- 1.2.11 where any expiry date falls on a Saturday Sunday or public holiday then the period concerned shall expire at the end of the next normal working day

## **2. STATUTORY PROVISIONS**

- 2.1 This Deed is made pursuant to the provisions of section 106 and section 299A of the Act section 111 of the Local Government Act 1972 section 38 and 278 of the Highways Act 1980 and all other enabling public general acts common law and rules of equity and the covenants herein shall be deemed to be planning obligations for the purposes of section 106 of the Act and shall (subject to clauses 2.2 and 2.3) bind successors in title to the Application Site and shall be enforceable by the Council and the County.

### **2.2**

- 2.2.1 Subject to Clause 2.2.2 a freehold or leasehold owner for the time being of any part of the Application Site shall upon providing the Head of Legal Services for the time being of the Council and the County Solicitor for the time being of the County with satisfactory evidence that it has parted with the fee simple or lease in any part of the Application Site be released from all obligations rights and duties under the terms of this Agreement in so far as they relate to such part of the Application Site (save in respect of liability for any antecedent breach of this Deed) and upon providing the Head of Legal Services for the time being and the County Solicitor for the time being of the County with satisfactory evidence that it has parted with the entirety of its interest in the Application Site as a whole be released from all liability whatsoever under the terms of this Deed save in so far as it relates to any antecedent breach of this Deed.
- 2.2.2 The Secretary of State for the Environment Transport and the Regions (here not including any successors in title or persons deriving title from him) shall not be released from liability for any sums to be paid pursuant to paragraph 2 of Schedule 2 or paragraph 1.2 of Schedule 3 for which but for paragraph 2.3.3 of Schedule 2 or 1.5.3 of Schedule 3 a bond would have been required unless and until a bond or bonds as envisaged by paragraph 2.3 of Schedule 2 or paragraph 1.5 of Schedule 3 shall have been provided in accordance with those paragraphs



- 2.3 This Deed shall not be enforceable against owner-occupiers or tenants of single dwellings constructed pursuant to the Planning Permission nor against occupiers who are tenants or licensees of the District Centre their successors in title or those deriving title under them.
- 2.4 Where consent approval or agreement of any party hereto is required for any purpose under or in connection with the terms hereof it shall be made in writing in accordance with clause 7 below and any such approval or agreement shall not be unreasonably withheld or delayed.

### **3. CONDITIONAL ENTRY INTO FORCE**

- 3.1 With the exception of:

3.1.1 Clause 4.2 Clause 5 to the extent necessary to give effect to paragraphs 1.1.2 1.3.1, 1.3.7, 1.3.9, 1.3.13, 1.4, 1.5, 1.11-1.15 of the Second Schedule Clause 2, this Clause 3, Clause 4.1.2 and 4.3 and Clauses 7, 8 and 9 (which have effect immediately upon the delivery of this Deed);and

3.1.2 Clauses 4.2 and 5 to the extent necessary to give effect to paragraphs 1.1.1, 1.2, 1.3.2, 1.3.3, 1.3.5, 1.3.6, 1.3.8, 1.3.10-1.3.12, 1.3.14-1.3.16, 1.6, 1.7, 1.8, 1.9 and 1.10 of Schedule 2 (which shall have effect on Highways Implementation)

none of the terms or provisions in this Deed will have operative effect unless and until Implementation.

### **4. COVENANTS BY THE DETR**

- 4.1 Pursuant to the powers listed in Clause 2.1 the DETR for itself and its successors in title hereby covenants with the Council
- 4.1.1 that the restrictions provisions and obligations specified in the First Schedule hereto shall be carried out and complied with in accordance with that Schedule
- 4.1.2 to give notice to the Council's Head of Development Services of its intention to Implement the Planning Permission at least 28 days before Implementation
- 4.1.3 in respect of paragraph 1 of the First Schedule, this covenant shall only be enforceable against the District Centre Land and in respect of paragraph 2 and 3 of the First Schedule, this covenant shall only be enforceable against the Residential Land.
- 4.2 Pursuant to the powers listed in Clause 2.1 the DETR for itself and its successors in title hereby covenants with the County as Highway Authority that the restrictions provisions and obligations specified in the Second Schedule hereto shall be carried out and complied with in accordance with that Schedule
- 4.3 Pursuant to the powers listed in clause 2.1 the DETR for itself and its successors in title hereby covenants with the County as Highway Authority to give notice to the County of its intention to Implement the Planning Permission at least 28 days before Implementation.

4.4 Pursuant to the powers listed in Clause 2.1 the DETR for itself and its successors in title hereby covenants with the County as Education Authority.

4.4.1 that the restrictions provisions and obligations specified in the Third Schedule hereto shall be carried out and complied with in accordance with that Schedule

4.4.2 this covenant 4.4 shall only be enforceable by the County against the Residential Land.

## **5. COVENANTS BY THE COUNCIL AND THE COUNTY**

5.1 The Council hereby covenants with DETR

5.1.1 that the Planning Permission shall be granted upon the completion hereof; and

5.1.2 to comply with the Fourth Schedule and that where the First Schedule places restrictions provisions and obligations on the Council the Council shall carry out and comply with the same.

5.1.3 that it will not enforce clause 4.1 insofar as it relates to paragraph 1 of the First Schedule against the Residential Land or against any person deriving title from DETR to the Residential Land and that it will not enforce clause 4.1 insofar as it relates to paragraphs 2 & 3 of the First Schedule against the District Centre Land or against any person deriving title from DETR to the District Centre Land.

5.2 The County hereby covenants with DETR:

5.2.1 to comply with the Fifth Schedule and that where the Second Schedule hereto places restrictions provisions and obligations on the County the County shall carry out and comply with the same.

5.2.2 it will not enforce the provision of Clause 4.4 against the District Centre Land.

## **6. AGREEMENTS AND DECLARATIONS**

6.1 There being several Other Agreements as defined it is hereby agreed and declared that subject to sub-clauses 6.2, 6.3 and 6.4 below:

6.1.1 there is no requirement to perform obligations or make payments which appear in more than one of the Agreements more than once

6.1.2 performance of an obligation or payment of a contribution or part thereof pursuant to this Deed discharges not only performance or payment pursuant to this Deed but also the Corresponding Obligation as herein defined up to the amount of the actual payment

6.1.3 performance of an obligation or payment of a contribution or part thereof pursuant to a Corresponding Obligation as herein defined discharges not only the Corresponding Obligation or part thereof but also the requirement in this Deed to perform the equivalent obligation or pay the equivalent contribution up to the amount of the actual payment or performance

6.2 If any of the Other Agreements containing an obligation to make a contribution to the Cheltenham Northern Relief Road becomes unconditional the total amount of the contribution to Cheltenham Northern Relief Road paid pursuant to this Deed and the Other Agreements shall be £300,000 and thus if a contribution pursuant to a Corresponding Obligation has been previously received by the County any difference between the Corresponding Obligation and the sum of £300,000 shall be paid to the County at the times set out in paragraph 2.1.1 of Schedule 2

6.3 If any of the Other Agreements containing an obligation to make a contribution to Park and Ride provision in the area become unconditional the total amount of the contribution to Park and Ride provision in the area paid pursuant to this Deed and the Other Agreements shall be £262,000 and thus if a Corresponding Obligation has been previously received by the County any difference between the Corresponding Obligation and the sum of £262,000 shall be paid to the County at the times set out in paragraph 2.1.9 of Schedule 2

6.4 It is further hereby agreed and declared:

6.4.1 Notwithstanding any of the provisions of this Clause if any of Agreements ~~1, 6 or 7~~ ~~2, 3, 4, or 5~~ become unconditional payment of the obligation in paragraph 2.2 of schedule 2 in respect of Bus Service Provision shall be paid in addition to the Corresponding Obligation pursuant to Agreements ~~6 or 7~~ 1, 2, 3, 4 & 5

6.4.2 the payee shall give a receipt for all payments made under this Deed or a certificate of performance of an obligation which shall be conclusive proof of payment or performance as the case may be

6.4.3 each paragraph in the Schedules which imposes a requirement to pay money or other obligation also lists the corresponding paragraphs in the Other Agreements

## 7. NOTICES

7.1 Any notice consent approval or invoice required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or through any document exchange of which the intended recipient is a member or by facsimile transmission

7.2 The address for service of any such notice consent approval or invoice as aforesaid shall be the address or document exchange number given in the definition of the parties hereto or such other address for service or document exchange number or fax number as shall have been previously notified to the other party

7.3 A notice consent approval or invoice under this Deed shall be deemed to have been served as follows:

7.3.1 if personally delivered at the time of delivery;

7.3.2 if posted at the expiration 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

7.3.3 if sent by facsimile transmission at the time of successful transmission;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent approval or invoice was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

## 8. DISPUTES

8.1 Save in relation to matters referred to in Clause 8.4 all differences and disputes which may arise between the parties hereto concerning this Deed shall:

8.1.1 where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

8.1.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South West of England or the Midlands and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise

8.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the City of London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 8.1.1 or 8.1.2 hereto is applicable

8.3 Except as aforesaid any expert appointed pursuant to Clauses 8.1.1, 8.1.2 or 8.2 any other person shall:

8.3.1 on his appointment serve written notice thereof on the parties in dispute;

8.3.2 consider any written representations by or on behalf of those parties which are received by him within 20 working days of such service and immediately to forward a copy of the written representation of one party to the other party;

- 8.3.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within fourteen days of receipt by the other party thereof;
  - 8.3.4 have an unfettered discretion to determine the reference to him;
  - 8.3.5 serve notice of his determination as soon as he has made it;
  - 8.3.6 give full and clear reasons for his decision;
  - 8.3.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine;
  - 8.3.8 and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) **PROVIDED THAT** if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert using the procedure set out in 8.1.1 and 8.1.2 and 8.2
- 8.4 Any dispute in relation to the location of the Affordable Housing Plot or the Low Cost Housing Plot or the content of the Green Transport Plan shall be referred to the Secretary of State for the Environment Transport and the Regions for his determination as though it were a planning appeal against the refusal to approve a submission required by a condition on a planning permission and he shall determine the same unless he shall refuse jurisdiction in which case the matter shall be referred to Leading planning counsel pursuant to Clause 8.1.1 and 8.3 who shall determine the matter as though it were a planning appeal against the refusal to approve a submission required by a condition on a planning permission

## 9. GENERAL PROVISIONS

- 9.1 The DETR has deduced title to the Council and the County prior to the date hereof who have satisfied themselves in relation thereto and shall not raise any further requisitions or objections after the date hereof.
- 9.2 Neither the Council nor the County may require title to be deduced in relation to any obligations contained in this Deed nor raise any requisition save in relation to matters arising after the date hereof. Neither the Council nor the County may raise any objection to any dealing or disposal after the date hereof
  - (A) which is contemplated by this Deed or
  - (B) under which the person deriving title takes subject to this Deed
- 9.3 This Deed is a local land charge and shall be registered by the Council as such
- 9.4 The DETR covenants that it will pay;
  - 9.4.1 to the Council no later than fourteen days after receipt of an invoice the Council's reasonable legal costs of and in connection with this Deed up to the

date hereof and for any registration at the Land Registry or the Land Charges Registry

- 9.4.2 to the County no later than fourteen days after receipt of an invoice the County's reasonable legal costs of and in connection with this Deed up to the date hereof.
- 9.4.3 to the County no later than the fourteen days after receipt of an invoice the County's reasonable engineering charges incurred by the County as Highways Authority up to the date hereof.
- 9.5 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council or the County in the exercise of its functions as local authority and their rights powers duties and obligations under all public or private statutes bylaws and regulations may be as fully and effectually exercised as if the Council or the County were not a party to this Deed and in particular this Deed shall not be deemed to restrict the Council or the County in the exercise of their rights powers duties and obligations as Local Planning Authority save that;
- 9.5.1 The Council and the County covenant that they will not prevent the DETR from carrying out the obligations in Schedule 2 nor make the same more onerous.
- 9.5.2 This Clause 9.5 shall not apply to Clause 5.1.3 and 5.2.2.
- 9.6 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 9.7 It is hereby agreed by the parties hereto that failure by DETR the Council or the County at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by DETR of any of the conditions covenants agreements or obligations of this Deed or any failure or delay by DETR the Council or the County to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Deed or any part thereof or the right of DETR the Council or County to enforce any provision and any variation of this Deed agreed between DETR and the Council or the County which does not affect the liability of the Bondman shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such amendments or amendments agreed
- 9.8 Where by this Deed any action approval consent direction authority certificate or agreement is required to be taken given or reached by any party hereto any such action approval consent direction authority certificate or agreement shall not be unreasonable or unreasonably withheld or delayed
- 9.9 In the event of the Council or the County considering it appropriate to note the provisions of this Deed against the title to the Application Site under the Land Charges Act 1972, or the Land Registration Act 1925 the DETR shall facilitate and not in any way hinder such action

**IN WITNESS** whereof the DETR the Council and the County have executed this Deed the day and year first before written

## SCHEDULE 1

### Covenants with the Council

#### 1. PROVISION OF AN ELEMENT OF PUBLIC ART

- 1.1 Unless already paid pursuant to the Other Agreements DETR shall pay to the Council £85,000 within 28 days of demand served not earlier than twelve months after Implementation to allow the Council to provide a work of public art in a location of the Council's choice subject to the following provisions:
- 1.1.1 DETR and the Council will use all reasonable endeavours to agree a brief in respect of the work of public art within two months after the Implementation of the Planning Permission;
- 1.1.2 The Council will be solely responsible for inviting artists to tender for the brief and will at its own discretion draw up a short list of preferred tenderers. A process of public consultation will be organised by the Council in respect thereof. If the public consultation is to take the form of an exhibition the Council agrees to make a suitable venue available;
- 1.1.3 The Council will submit the short list to DETR and DETR and the Council will use all reasonable endeavours to reach a joint decision with regard to the successful tenderers within two months of the submission of details of the short list to DETR by the Council.
- 1.2 The corresponding paragraphs to these paragraphs in the Other Agreements are Paragraphs 1.1 - 1.2 of Schedule One to Agreements numbers 1, 2, 3, 4, 5 and 6 and payment pursuant to this paragraph shall discharge the DETR's obligations pursuant to those paragraphs in those Agreements and the Council shall have no right thereafter to payment or performance pursuant to the Other Agreements of the corresponding sums or obligations.

#### 2. AFFORDABLE HOUSING

- 2.1 Prior to the expiration of two and a half years from the date of Implementation of the development to be carried out on the Residential Land the DETR and the Council shall agree the location on the Application Site and size of a parcel or parcels of land sufficient for the construction of 18% of the units to be built on the Application Site as units of affordable housing (an "**Affordable Housing Plot**")
- 2.2
- 2.2.1 Within two and a half years following the date of Implementation of the development to be carried out on the Residential Land DETR shall offer in writing to the Council or (if the Council so indicates in writing prior to two years from the date of Implementation and prior to the making of the offer) to a Registered Social Landlord or other organisation providing subsidised affordable housing to be first approved in writing by DETR and the Council (such approval not to be unreasonably withheld or delayed) (an "**Approved Organisation**") such offer to be open for acceptance for a period of two years to transfer to the Council or Approved Organisation as the case may be a



freehold interest in the Affordable Housing Plot at no monetary consideration but on the terms set out in the form of contract annexed in Schedule 7 or such other terms as may be agreed between the DETR <sup>and</sup> Approved Organisation all acting reasonably provided that DETR are not obliged to offer terms more onerous than those set out in Schedule 7 and the obligation to make the offer for a period will not be extended by any renegotiation of such terms.

- 2.2.2 Within one month of receipt by DETR of the acceptance of the offer or such other terms as may be agreed DETR shall prepare an original and counterpart engrossment of the Contract in its settled form and forward the counterpart to the Council or the Approved Organisation as the case may be who shall enter into the Contract within one month of that date.
- 2.3 The terms of such offers will include the condition that if the Council or the Approved Organisation accept the offer, the homes to be built on the Affordable Housing Plot shall be completed on or before the completion of the remainder of the Development on the Residential Land.
- 2.4 If there is a dispute or disagreement as to the size or location of the Affordable Housing Plot or Low Cost Housing Plot it shall be referred for determination pursuant to Clause 8 and the date for making the offer referred to in paragraph 2.2 or 2.5 as the case may be shall be six months after Final Determination of the determination.
- 2.5 Prior to the expiration of two and a half years from the date of Implementation of the development on the Residential Land DETR and the Council shall agree the location on the Application Site and size of a parcel or parcels of land sufficient for the construction of 12% of the units to be built on the Application Site as units of low cost market housing (the "**Low Cost Housing Plot**")
- 2.6 Within two and a half years following the date of Implementation of the development on the Residential Land DETR shall market for a period of two years a freehold interest in the Low Cost Housing Plot at market value for land on the assumption it is to be used for Low Cost Market Housing on reasonable market terms and in accordance with normal market practice.
- 2.7 Such terms shall include all reasonable and necessary road access and services (inter alia gas electricity water and drainage) over the Application Site to the respective boundaries of the Affordable Housing Plot and Low Cost Housing Plot
- 2.8 DETR will provide the Head of Property Services with the marketing strategy for the Low Cost Market Housing prior to commencing to market the Low Cost Market Housing in order that the Head of Property Services may confirm that the strategy complies with DETR's obligations to comply with normal market practice such confirmation to be given within two weeks failing which the Head of Property Services will be deemed to have provided such confirmation.
- 2.9 DETR may provide the Head of Property Services with the offer documentation including a draft contract containing all the terms of the offer in order the Council may confirm that the offer constitutes reasonable market terms such confirmation to be given within two weeks failing which the Council will be deemed to have provided such confirmation.

- 2.10 If the offer made under the terms of paragraph 2.2 is not accepted by the Council or an Approved Organisation as the case may be within two years DETR shall for the period of six months immediately thereafter market the land in accordance with normal market practice and offer a freehold interest in it for Low Cost Housing at market value for land on the assumption it is to be used for Low Cost Market Housing on reasonable market terms. If such offer is not accepted in writing by a private house developer within the six month period then DETR shall be free to use the land as it wishes and there shall be no further obligations pursuant to paragraphs 2.1 - 2.3, 2.10 and 2.11 inclusive. Paragraphs 2.7, 2.8 and 2.9 shall apply to the marketing and offer pursuant to this paragraph 2.10 as they apply to the marketing and offer pursuant to paragraph 2.6.
- 2.11 The Deed of Transfer of the freehold interest in respect of the Affordable Housing Plot and Low Cost Housing Plot will be subject to a restrictive covenant that the land is to be used respectively for Affordable Housing access thereto and related amenity space and (until construction and the first sale of each Low Cost Housing unit) for Low Cost Housing access thereto and related amenity space. If the Affordable Housing Plot is transferred pursuant to paragraph 2.10 the restrictive covenant in relation to it shall be that this land is to be used (until construction and the sale of each Low Cost housing unit) for Low Cost Housing access thereto and related amenity space.
- 2.12 If the offer under 2.6 or 2.10 has not been accepted by a private developer within two years or six months respectively the obligation in 2.11 to impose a restrictive covenant shall cease to bind DETR and the Deed of Transfer of the freehold interest in the Low Cost Housing Plot or the Affordable Housing Plot as the case may be will not be subject to the restrictive covenant that it be used for Low Cost Housing access thereto and related amenity space.

### **3. PROVISION OF PLAYSPACE**

- 3.1 Prior to the occupation of the 75<sup>th</sup> and 150<sup>th</sup> and 225<sup>th</sup> Residential Units will provide an area of land of not less than 500 square metres for use as local play areas ("the Local Play Areas") and will equip each Local Play Area to be equipped with:
- 3.1.1 five items of Play Equipment;
  - 3.1.2 metal dog proof fencing, seating and waste bins.
- to be provided in accordance with NPFA British Standards laid out and landscaped to a specification approved by the Director of Leisure pursuant to paragraph 3.10 hereof.
- 3.2 Prior to the occupation of the 50<sup>th</sup> Residential Unit DETR will pay a commuted sum of £20,000 to be applied by the Council to upgrade the open space facility at Priors Farm to NEAP Standards in accordance with the NPFA guidelines
- 3.3 Prior to the occupation of the 100<sup>th</sup> Residential Unit DETR will pay a commuted sum of £40,000 to be applied by the Council to upgrade the open space facility at Whaddon Recreation Ground to NEAP Standards in accordance with the NPFA guidelines

- 3.4 Prior to the occupation of the 200<sup>th</sup> Residential Unit, DETR will pay a commuted sum of £95,000 to be applied by the Council to upgrade existing youth outdoor playspace for sport within the Borough
- 3.5 DETR will offer the Council a freehold interest by providing to the Council an engrossed transfer in duplicate in the form set out in Schedule 6 in respect of each of the Local Play Areas, ("the Duplicate Transfers") within two months of:
- 3.5.1 receipt of a certificate from the Director of Leisure (not to be unreasonably withheld or delayed) that the relevant Local Play Area, has been maintained by DETR for a period of twelve months after completion and that any defects arising or works required in conjunction therewith during that period have been made good or carried out to his satisfaction; or
- 3.5.2 the date of payment of a commuted sum under paragraph 3.9.
- 3.6 Subject to the prior settlement of all outstanding sums as are due under paragraph 3.8 up to the date of the offer made under paragraph 3.5 the Council shall forthwith execute and return the Duplicate Transfers to DETR for completion.
- 3.7 Following completion of the transfer of the freehold interest in a <sup>local</sup> ~~Neighbourhood~~ Play Area ~~or Football Pitch~~ the same shall become amenity areas maintainable at public expense
- 3.8 DETR will pay the following commuted sums to be used by the Council to operate manage and maintain the equipped play areas within the Residential Land;
- 3.8.1 Prior to the occupation of the 75th Residential Unit £5,250
- 3.8.2 Prior to the occupation of the 150th Residential Unit £5,250
- 3.8.3 Prior to the occupation of the 225th Residential Unit £5,250
- 3.9 The DETR may discharge its obligations in relation to any Local Play Area pursuant to paragraph 3.1 by paying a commuted payment of £28,500 per Local Play Area prior to occupation of the Residential Unit which is not to be occupied prior to the provision of the Local Play Area.
- 3.10 The Director of Leisure will acting reasonably approve the lay out and landscaping of the Local Play Areas within three months of the receipt of a proposed scheme of layout and landscaping from DETR
- 3.11 In this paragraph " n<sup>th</sup> Residential Unit" means n<sup>th</sup> Residential Unit to be occupied

#### **4. CLOSED CIRCUIT TELEVISION CAMERAS**

- 4.1 Prior to occupation of the Development on the District Centre Land DETR shall install and submit a CCTV Scheme that has previously been approved by the Council such approval not to be unreasonably withheld. The application for approval of the CCTV Scheme shall include details of the installation, control room management, inspection and complaints procedures to be included in the CCTV scheme and such other issues as the Council may reasonably require to comply with the guidelines set

out in the Local Government Information Unit publication "A Watching Brief" published March 1996.

- 4.2 The Council may not require DETR to include within the CCTV scheme any development which cannot be carried out under Part 33 of Schedule 2 of the Town and County Planning (General Permitted Development) Order 1995.

## SCHEDULE 2

### Highway matters

#### 1. NEW SITE ACCESSES AND JUNCTION

##### 1.1

1.1.1 Unless already provided DETR shall prior to Implementation (and this paragraph shall not restrict any operations and uses already being carried out on the Application Site, the construction of accesses and site roads for such construction and operations permitted by the Town and Country Planning (General Permitted Development) Order 1995) construct and complete to the standard specified in paragraph 1.6.1(a) the Priors Road Access and the 100 metres portion of roadway leading from the Priors Road Access being 7.3 metres in width ("the Spur") to wearing course as both shown on the Priors Road Access Plan in accordance with paragraph 1.3

1.1.2 No demolition detritus or spoil arising from enabling works (meaning provision of underground drainage, sewers and utilities, demolition and reinstatement of fences), demolition, site clearance and preparation, exploratory boreholes, operations permitted by the Town and Country Planning (General Development) Order 1995 or any amendment or replacement thereof construction of temporary construction accesses and the Priors Road Access and Spur archaeological investigations, digs, works, matters and operations to enable any of the foregoing to take place shall be removed from the Application Site prior to construction and completion to the standard specified in paragraph 1.6.1(a) of the Priors Road Access and Spur

1.2 The corresponding paragraph to the obligations in paragraph 1.1.1 is paragraph 1.1.1 of Schedule 2 of Agreement 6

1.3 DETR hereby agrees and covenants with the County that it will in relation to the Priors Road Access Works

##### **1.3.1 Submission of Scheme re Priors Road Access Works**

(i) submit to the Director of Environment (all as one complete submission) a programme of works and plans and details of design dimension and construction (including any lighting signing cycle and pedestrian facilities road markings drainage accommodation works and landscaping) in respect of the Priors Road Access Works for his written approval all shown in outline only on the Priors Road Access Plan (such approval not to be unreasonably withheld or delayed)

(ii) forthwith upon issue of the written approval referred to in sub-paragraph (i) supply to the Director of Environment three full sets of the approved programme plans and drawings

### **1.3.2 Completion of Priors Road Access Works**

carry out and complete the Priors Road Access Works within four months of the date of commencement thereof save in relation to the Spur which shall be completed within six months of the date of commencement thereof (or such longer periods as may be agreed in writing by the Director of Environment) all at its own expense and to the reasonable satisfaction of the Director of Environment and in any event within five years of Highways Implementation

### **1.3.3 Specification**

carry out and complete the Priors Road Access Works in accordance with the "Specification for Highway Works" published by The Stationery Office as Volume 1 of the Manual of Contract Documentation for Highway Works 1991 as subsequently amended and modified (including any published supplements thereto) which shall only in so far as the same are not inconsistent with the terms and conditions hereof be deemed to form and to be read and construed as part of this Deed and DETR acknowledges that it is fully aware of the content and effect thereof

### **1.3.4 Street Lighting**

Intentionally omitted

### **1.3.5 Contractor**

only carry out the Priors Road Access Works by the employment of a Contractor or Sub-Contractor previously approved in writing by the Director of Environment (such approval not to be unreasonably withheld or delayed)

### **1.3.6 I.C.E. Conditions**

the Priors Road Access Works shall be carried out under a contract or contracts incorporating the fifth edition of the Conditions of Contract commonly known as the "I.C.E. Conditions of Contract" as currently amended and as may be further amended with the agreement of the Director of Environment by the DETR contractor or sub contractor such agreement not to be unreasonably withheld or delayed

### **1.3.7 Statutory Undertakers**

liaise and contract as necessary with all statutory undertakers and public utilities concerned in connection with the carrying out by them of any works they may deem necessary as a result of the construction of the Priors Road Access Works and afford to them such reasonable facilities as they may require and pay to them such sums as they may lawfully and properly claim in respect of those works including any sums for which the County may be liable under the provisions of Section 85 of the New Roads and Street Works Act 1991

### **1.3.8 Indemnity**

indemnify the County and its employees servants and agents against any statutory claim for depreciation arising from the use of the Priors Road Access Works (including any professional fees incurred by the County whether external or internal) and from and against all actions costs claims and demands which may be made

against the County or its employees servants or agents in connection with the use construction (including without prejudice to the generality of the foregoing arising in connection with Health and Safety legislation) or adoption of the Priors Road Access Works or arising directly or indirectly by reason of the failure by DETR to perform and observe any of the terms and conditions herein contained and against any loss suffered by the County as a result of the exercise of any third party rights (except such rights as may be pursuant to statute) in the land upon which the Priors Road Access Works are constructed which shall have been granted or reserved prior to the date hereof

#### **1.3.9 Notice before Start**

not commence construction of the Priors Road Access Works without having given 14 days previous notice in writing to the Director of Environment

#### **1.3.10 Continuation of traffic**

during the construction of the Priors Road Access Works take such measures as may reasonably be necessary to ensure the continued passage of traffic using the highway

#### **1.3.11 Peak hours**

not without the previous consent in writing of the Director of Environment cause any part of the Priors Road Access Works within the highway to be carried out other than between the hours of 09.30 and 16.00 on the days Monday to Saturday inclusive and not on Bank Holidays nor the days of the Cheltenham Gold Cup race meeting

#### **1.3.12 Chapter 8**

during the construction of the Priors Road Access Works comply at all times with Chapter 8 of the Traffic Signs Manual published by The Stationery Office and any amendments thereof and such directions as the Director of Environment shall in the exercise of the statutory powers and duties of the County think fit for the purposes of ensuring road safety and traffic control

#### **1.3.13 Wheel Washing**

submit to the Director of Environment for his approval in writing details of wheel washing apparatus and shall ensure that all vehicles leaving the Priors Road Access Works during construction thereof or the Development during construction thereof use such facilities

#### **1.3.14 Inspection**

permit the Director of Environment and his duly authorised representatives to have access to the Priors Road Access Works at all times during construction thereof for the purposes of ensuring compliance with the terms and conditions hereof

#### **1.3.15 Stage Certification**

take all reasonable steps to ensure that the Priors Road Access Works are properly supervised for line level materials and workmanship during their construction and will provide Stage Certificates to the Director of Environment as to compliance with

approved plans and specifications on completion of each of the following stages of the Priors Road Access Works and prior to proceeding with any subsequent stages of the Priors Road Access Works

- (i) excavation and preparation of formation
- (ii) surface water drainage
- (iii) sub-base
- (iv) road base and base course
- (v) streetlighting
- (vi) wearing course
- (vii) road markings and signs
- (viii) footways

**AND** DETR further agrees that all the said Stage Certificates in relation to the Priors Road Access Works shall have been issued before the issue of the Completion Certificate as referred to in Paragraph 1.6.1 hereof **AND FOR THE AVOIDANCE OF DOUBT** the Director of Environment shall not be regarded as fulfilling any role in any contract or sub-contract as referred to in Paragraph 1.3.5 hereof

#### **1.3.16 As built drawings**

before the issue of the Completion Certificate referred to in Paragraph 1.6 hereof supply to the County two sets of "as built" record drawings on A1 size paper weighing not less than 120g/m<sup>2</sup> such drawings to be to 1:500 scale showing the Priors Road Access Works

#### **1.4 Safety and Mobility Audit**

1.4.1 DETR and the County hereby agree that

- (a) DETR will arrange for the carrying out by a consultant previously approved in writing by the Director of Environment of
  - (i) safety audits of the Priors Road Access Works in accordance with Department of Transport Highways, Safety and Traffic Departmental Standard HD 19/94 together with Advice Note HA 42/94 entitled 'Road Safety Audits' published by The Stationery Office (as modified and amended from time to time) subject to the proviso that the monitoring period therein referred to shall be coincident with and limited to the Maintenance Period
  - (ii) a mobility audit prior to the approval referred to in Paragraph 1.3.1 hereof in accordance with 'Revised Guidelines for Reducing Mobility Handicaps: Towards a Barrier Free Environment' published in July 1991 by the Institute of Highways Transportation (as modified and amended from time to time)



and will provide the results of the same to the Director of Environment within seven days of completion thereof

- (b) Subject to paragraph 1.5.1(c) DETR will
- (i) prior to the issue of the Completion Certificate as referred to in Paragraph 1.6 hereof carry out and complete at its own expense any additional works or alterations or amendments to the Priors Road Access Works as are reasonably required to be carried out before commencement of the Maintenance Period as a result of the Safety Audit Report or the Mobility Audit Report within such reasonable time as the Director of Environment shall allow and subject to the terms and conditions hereof in relation to the carrying out of the Priors Road Access Works and
  - (ii) prior to the issue of a Final Certificate as referred to in Paragraph 1.8 hereof will carry out and complete at its own expense any additional works or alterations or amendments to the Priors Road Access Works as are reasonably required by the Director of Environment as a result of the Safety Audit Report or the Mobility Audit Report within such reasonable time as the Director of Environment shall allow and subject to the terms and conditions hereof in relation to the carrying out of the Priors Road Access Works

**PROVIDED** that subject to paragraph 1.5.1(c) the Director of Environment shall have the right (following receipt of any Safety Audit Report or Mobility Audit Report from DETR) to require the carrying out of works in addition to those proposed to be carried out by the Safety Audit Report or the Mobility Audit Report where such works can be carried out on land held by DETR the Council or the County in fee simple absolute in possession not subject to any adverse encumbrances which would prevent construction and use as a highway of the additional works by DETR or the Council or the County on the condition that the County and the Council grant DETR all necessary rights to do the additional works on such land and will enter into a deed of dedication on reasonable times in relation to such land

## **1.5 Amendment**

1.5.1 DETR and the County hereby agree that

- (a) subject to paragraph (c) below the Director of Environment shall have the right (which shall not be unreasonably exercised) to require any reasonable alteration or amendment to the Priors Road Access Works prior to the issue of the Completion Certificate
- (b) in the event of DETR wishing to alter or amend the Priors Road Access Works DETR shall submit to the Director of Environment amended drawings or details of design dimension and construction as the case may be illustrating such alteration or amendment which shall not be implemented without the prior approval in writing of the Director of Environment (such approval not to be unreasonably withheld or delayed)

- (c) The County shall not require any additional works amendments or alterations to the Priors Road Access Works following the approval to be given pursuant to paragraph 1.3.1(i) which require any works to be carried out other than within the Priors Road Access Works in so far as it is on land held by DETR in fee simple absolute in possession and not subject to any adverse encumbrances which would prevent the construction and use as a highway of the additional works or on the highway in which the County has power to do the additional works and lawfully permits DETR to carry out the additional works on the highway pursuant to that power

## 1.6 Completion Certificate

1.6.1 The County hereby agrees with DETR that following

- (a) completion of the Priors Road Access Works to the reasonable satisfaction of the Director of Environment and
- (b) completion of any works required by virtue of Paragraph 1.3 or 1.4 hereof and
- (c) production to the Director of Environment of written confirmation from any Statutory Undertakers and Public Utilities affected by the Priors Road Access Works that all works affecting their apparatus within the highway have been carried out and completed to their satisfaction and
- (d) in the case of new services in the highway or the Priors Road Access Works production to the Director of Environment of written confirmation from the appropriate Statutory Undertaker or Public Utility that such new services shall be or become within a reasonable period their responsibility

the Director of Environment shall issue a Completion Certificate to DETR to that effect upon issue of which the Priors Road Access Works shall thereafter be highway maintainable at the public expense PROVIDED that nothing in this Deed shall impose upon the County any liability for the future maintenance after completion of the Priors Road Access Works as aforesaid of any foul or surface water sewer or drain laid in or under the Priors Road Access Works other than a highway drain and DETR shall make arrangements with the appropriate authority for the future maintenance of such sewers and drains

1.6.2 DETR and the County will enter into a deed of dedication of the Priors Road Access Works (insofar as the same are not already in the highway) as a highway in the form of the Deed of Dedication annexed hereto in Schedule 11 within one month of written notice from the County served at any time following commencement of construction of the Priors Road Access Works and which the County covenants will be given prior to issue of the Completion Certificate

1.6.3 Subject to Clause 9.2 DETR agrees with the County that if the County when giving notice pursuant to paragraph ~~1.6.3~~ <sup>1.6.2</sup> requires the transfer of the fee simple in the sub-soil of the highway to be dedicated it will prove its title to the same and within one month of the issue of the Second Completion Certificate will transfer the same in accordance with paragraphs 1.6.4, 1.6.5, 1.6.6 and 1.6.7;

- 1.6.4 There shall be excepted from such transfer all pipes drains wires cables and other conduits situated in the sub-soil of the highway to be dedicated (the "Conducting Media") which have prior to the date of the transfer been enjoyed or which are necessary for the use and enjoyment of the transferor's adjoining land;
- 1.6.5 The land shall be transferred free of charge subject to and together with such matters and encumbrances as affect the same at the date hereof, Local Land Charges whether registered before or after the date hereof (other than financial encumbrances), rights granted to statutory undertakers, rights of services and such matters as are referred to in Clauses 9.2(A) (save for financial encumbrances);
- 1.6.6 The transferor may reserve the right to free and uninterrupted passage of water, soil, gas, electricity, telephone and other communication services from and to any part of its adjoining land through the Conducting Media which prior to the date of the transfer are (or subject always to compliance with all statutory provisions relating to the highway in respect thereof may at any time within 80 years from the date hereof be) laid under the land transferred;
- 1.6.7 The transferor may reserve the right to instal and connect to the Conducting Media in or under the land transferred and to enter upon the same for the purpose of repairing, maintaining, renewing, replacing, installing or connecting into such Conducting Media subject always to compliance with all statutory provisions relating to the highway in respect thereof.

## **1.7 Maintenance**

- 1.7.1 DETR hereby further agrees with the County that if during the period of twelve months from the date of the Completion Certificate and thereafter until the Director of Environment shall issue a Final Certificate in accordance with Paragraph 1.8 hereof there is any defect in or damage to the Priors Road Access Works or any part thereof DETR will at its own expense within such time limit as the Director of Environment may reasonably prescribe subject to Paragraph 1.3.5 make the same good to the reasonable satisfaction of the Director of Environment.

## **1.8 Final Certificate**

- 1.8.1 The County hereby agrees with DETR that upon
- (a) the expiration of the twelve month period referred to in Paragraph 1.7.1 hereof and
  - (b) DETR making good to the reasonable satisfaction of the Director of Environment such works as may be required to be made good under Paragraph 1.7.1 hereof and DETR having delivered to the County the Health and Safety file in relation to the Priors Road Access Works in accordance with CDM the Director of Environment shall issue a Final Certificate to DETR.

## **1.9 Default**

- 1.9.1 DETR hereby agrees with the County that if
- (a) there is any breach of Paragraph 1.1, 1.3 or 1.4 hereof or

(b) DETR in the reasonable opinion of the Director of Environment fails to carry out and complete the Priors Road Access Works or any part thereof within the period provided in Paragraph 1.3.2 hereof or

(c) DETR fails to perform any obligations on its part under Paragraph 1.1 hereof

the County shall without prejudice to any other action it shall be entitled to take (after having given twenty-one days notice in writing of its intention so to do) have the right to complete the Priors Road Access Works or any part thereof and to charge and recover the expenses thereof as certified by the Director of Environment against and from DETR PROVIDED that nothing in this Paragraph shall prevent the Director of Environment in his absolute discretion and without notice to DETR from carrying out any work or taking such action as he may deem appropriate forthwith in the event of an emergency or danger to the public arising from the construction of the Priors Road Access Works the cost of such work or action as certified by the Director of Environment being chargeable to and recoverable from DETR.

#### **1.10 Default Costs**

1.10.1 For the avoidance of doubt it is hereby agreed that any costs or expenses referred to in paragraph 1.9.1 hereof incurred or estimated by the County or the Director of Environment and payable by DETR shall be limited to the cost of

(a) any works in the reasonable opinion of the Director of Environment considered necessary to complete the Priors Road Access Works or any part thereof or any work or action taken as referred to in paragraph 1.9.1 hereof; and

(b) design and supervision charges being an amount representing 18% of the sum referred to in Sub-Paragraph (a) of this Paragraph and sums payable to Statutory Undertakers and Public Utilities; and

(c) internal administration charges and normal overheads being an amount representing 14% of the sum referred to in Sub-Paragraph (a) of this Paragraph and sums payable to Statutory Undertakers and Public Utilities; and

(d) sums payable to Statutory Undertakers and Public Utilities

#### **1.11 Index Linked Highways Works Bond Before Start**

(a) the DETR hereby covenants with the County for the benefit of the highway that it will not cause or permit any part of the Priors Road Access Works to be commenced until it has procured that a Company or person ("the Bondsman") approved by the County (which shall not unreasonably withhold or delay its approval) shall have entered into the Highways Works Bond with the County in the form set out in Schedule 8

(b) the amount of the Highways Works Bond to be given will be the greater of either

- (i) the sum of £270,000 ("the Basic Sum") being the Director of Environment's estimate of the cost of the Priors Road Access Works at the prices and the rates prevailing in 1998 or
  - (ii) the Basic Sum multiplied by the variable factor referred to in Paragraph (c) hereof
- (c) the variable factor shall be the percentage increase of the Index from the date of last publication prior to this Deed up to the date of last publication before the commencement of the Priors Road Access Works
  - (d) if during the currency of this Agreement the Index shall be related to some commencing date other than 1990 then an appropriate adjustment will be made to the calculation to allow the new index to be used
  - (e) the County hereby agrees with DETR that upon receipt of a written request so to do the Director of Environment shall review the amount of the said Bond and may thereafter notify DETR and the Bondsman of any reduction in such sum as he may in his absolute discretion think fit provided always that a written request may only be made if a reasonable amount of the works have been carried out by DETR since the previous review if any
  - (f) DETR may discharge its obligations to provide a Highways Contribution Bond and the Highways Works Bond by providing a single bond in respect of both sums in the form set out in Schedule 8 with such amendments as may be required to provide both bonds as a single bond

#### **1.12 Extraordinary Damage**

- (a) DETR and the County hereby agree that joint inspections shall take place from time to time as may be requested by either party and both immediately before commencement of and at the completion of the Priors Road Access Works to ascertain whether damage has been caused by its servants contractors and agents during the construction of the Priors Road Access Works to any highways maintainable at the public expense their drainage or street furniture which are the subject of the said joint inspections and if so DETR agrees to reimburse the reasonable cost of reinstatement of such damage caused by DETR or its servants contractors and agents as certified in writing by the Director of Environment within a period of fourteen days from the date of such certificate
- (b) DETR hereby agrees with the County to pay all costs as properly certified by the Director of Environment reasonably incurred by the County during the construction of the Priors Road Access Works and within six months of the date of completion of Priors Road Access Works (whichever is the later) in carrying out routine maintenance to highways maintainable at the public expense referred to in the immediately preceding Sub-Paragraph in addition to repairs to damage referred to in the immediately preceding Sub-Paragraph (where such maintenance is directly attributable to the construction of the Priors Road Access Works and would not have been required had such

construction not taken place) within fourteen days of the date of such certificate

### **1.13 Insurance**

1.13.1 DETR hereby agrees with the County that

- (a) at least 14 days before commencing any part of the Priors Road Access Works it will
  - (i) effect a policy of insurance ("the Insurance") in terms hereinafter referred to and
  - (ii) produce the Insurance to the Director of Environment together with the receipts for payment of the current premiums in respect thereof
- (b) the Insurance shall be kept in force until such time as the Priors Road Access Works shall have been completed including any works to be carried out under Paragraph 1.7 hereof and DETR will
  - (i) produce the Insurance together with the receipts for payment of the current premiums to the Director of Environment within seven days after
    - (a) being required in writing to do so by the Director of Environment
    - (b) any change in the terms of the Insurance (which the Developer shall not effect without the previous consent in writing of the Director of Environment)
    - (c) any change of Insurer (which DETR shall not effect without the previous consent in writing of the Director of Environment)
  - (ii) produce a Certificate of Insurance for the ensuing year to the Director of Environment at least seven working days before the expiry of the then current insurance
- (c) the Insurance shall be effected with an Insurer and in terms previously approved in writing by the Director of Environment (who shall not unreasonably withhold or delay his approval) in the minimum sum of Seven Million Pounds (£7,000,000) (for any one claim total number of claims unlimited) such terms to include indemnity with a maximum excess of One Thousand Pounds (in the event of there being any excess DETR shall provide a written undertaking in terms satisfactory to the Director of Environment agreeing irrevocably to be responsible for any third party claim or parts of claims within the excess amount) against any legal liability for damage loss or injury to any property or any person as a direct or indirect result of the execution of the Priors Road Access Works or any part thereof including any works to be carried out under Paragraph 1.7 hereof

- (d) if DETR shall fail upon request to produce to the County the Insurance said receipts or the said Certificate of Insurance in accordance with Paragraph 1.13.1(a) hereof
  - (i) the County may effect and keep in force any such Insurance and pay such premium or premiums as may be necessary for that purpose which premium or premiums shall be a debt due from DETR to the County
  - (ii) DETR shall immediately cease all of the Priors Road Access Works until such time as the Insurance and said receipts shall be produced as aforesaid
  - (iii) DETR shall pay to the County such expenses as the County shall reasonably incur (the certificate of the Director of Environment in this respect being conclusive) in taking such action and carrying out such works as the Director of Environment shall in his absolute discretion think fit to ensure the safe passage of traffic along those parts of the Highway affected by the Priors Road Access Works

#### **1.14 Costs**

##### **1.14.1 DETR hereby agrees with the County that**

- (a) it will upon the submission of the scheme under 1.3.1 hereof pay
  - (i) the County's legal administrative design approval and inspection charges in accordance with the County's scale of charges in force at the relevant time and
  - (ii) the sum of Thirty Pounds (£30) in respect of the 'Developer Information Pack - Traffic Signal Design' in consideration of which one copy of the same will be supplied to DETR forthwith following submission of the Scheme and
  - (iii) the sum of seven hundred and fifty pounds (£750) in respect of traffic signal design approval
- (b) the said costs have been calculated that taken together with the amount paid on completion hereof under Clause 9.4.3 reimburse the reasonable costs of the County incurred as Highway Authority on the basis that DETR's submission pursuant to Paragraph 1.3.1 hereof and the construction of the Priors Road Access Works are in accordance with the provisions of this Deed and in the event that this is not the case DETR agrees to pay to the County on demand such reasonable additional costs as the County shall require and without prejudice to the generality of the foregoing any additional costs required in relation to DETR's submission pursuant to Paragraph 1.3.1 shall be paid prior to the checking of further documentation in relation thereto

## **1.15 Lorry Routing**

1.15.1 DETR shall take all reasonable steps (including so far as within its power signing of the proposed routes to the reasonable satisfaction of the Director of Environment) to ensure that

- (a) construction vehicles plant and other machinery used in connection with the construction of the Development or the Priors Road Access Works only approach and depart from the Application Site along the A40 and Hales Road/Priors Road and/or along Evesham Road/Wellington Road/Prestbury Road/Priors Road; and or such other approach and departure routes as the Director of Environment may from time to time agree
- (b) that no construction vehicles plant and other machinery used in connection with the Development or the Priors Road Access Works shall approach and depart from the land on the dates of the Cheltenham Gold Cup race meeting

In this paragraph "construction vehicles plant and other machinery" does not include any vehicle under 7.5 tonnes unladen weight including any trailer.

## **2. CONTRIBUTIONS**

2.1 Unless paid and to the extent not paid pursuant to the Other Agreements DETR shall make the following payments to the County for the purposes and at the times specified:

2.1.1 Cheltenham Northern Relief Road - £170,000 total:

- (a) 30% after Implementation and within 28 days of notice served within 12 years of the date hereof from the County that they have a fixed and firm intention to put the road out to tender within 6 months.
- (b) 70% after Implementation and within 28 days of notice served within 12 years of the date hereof from the County that the contract will be let within six weeks. If the contract is not let within six months of the payment of the 70% it is to be refunded forthwith.

2.1.2 Traffic calming Whaddon - £150,000 total:

- (a) 50% on Implementation;
- (b) 50% within six months of Implementation.

2.1.3 Hales Road/Priors Road traffic calming/traffic management - £150,000 total:

- (a) 50% on Implementation;
- (b) 50% within six months of Implementation.

2.1.4 Hales Road/Priors Road/Hewlett Road/Harp Hill Junction - £110,000 total:

- (a) 50% on Implementation;
- (b) 50% within six months of Implementation.



- 2.1.5 Five Ways/Harp Hill traffic management £75,000 total:
- (a) 50% on Implementation;
  - (b) 50% within six months of Implementation.
- 2.1.6 Priors Road/Bouncers Lane traffic management - £75,000 total:
- (a) 50% on Implementation;
  - (b) 50% within six months of Implementation.
- 2.1.7 High Street/Hewlett Road pedestrian improvement - £11,000 total:
- (a) 50% on Implementation;
  - (b) 50% within six months of Implementation.
- 2.1.8 High Street/St James' Street pedestrian improvement - £22,000 total:
- (a) 50% on Implementation;
  - (b) 50% within six months of Implementation.
- 2.1.9 Park and Ride Service - £80,000 total:
- (a) £40,000 within 6 months of Implementation
  - (b) £40,000 within 18 months of Implementation
- 2.2 The DETR will pay to the County the sum of £250,000 within one year of the Implementation of the Development in order that the Council may improve the provision of Bus Services to the Application Site and payment of a corresponding sum under Agreements 1-5 inclusive shall not discharge this obligation.
- 2.3 The DETR hereto covenants with the County that it will prior to Implementation procure that a Company or person ("the Bondsman") approved by the County (which shall not unreasonably withhold or delay its approval) shall have entered into the Highways Contribution Bond with the County in the form set out in Schedule 9 ;
- 2.3.1 The amount of the Highways Contribution Bond shall be the greater of either
- (A) the sum of £1,093,000 (one million and ninety three thousand pounds) (the "**Contribution Basic Sum**") or
  - (B) such sum as may be equal to £170,000 + (£923,000 x the Contribution Variable Factor);
- 2.3.2 the County hereby agrees with DETR that upon receipt of a written request to do so the Director of Environment shall review the amount of the said Highways Contribution Bond and may thereafter notify DETR and the Bondsman of any reduction in the sum as he may in his absolute discretion think fit provided always that a written request may only be made if a reasonable amount of the contributions to be paid by DETR since the previous review if any have been paid;

- 2.3.3 no bond shall be required for as long as the Secretary of State for the Environment Transport and the Regions (as original covenantor under this Deed, but not any successor in title or person deriving title under him) has not been released from liability for payment of the sum to be bonded pursuant to Clause 2.2.
- 2.4 DETR may discharge its obligation to provide the Highways Contribution Bond and the Highways Works Bond by providing a single bond in respect of both sums in the form set out in Schedule 8 with such amendments as may be required to provide both bonds as a single bond and may provide a separate bond for the sum to be paid pursuant to paragraph 2.1.1 and one for the remainder of the sums to be paid pursuant to paragraph 2.1 in which case appropriate adjustments shall be made to the amounts of the bonds
- 2.5 The sums payable pursuant to paragraphs 2.1.2 - 2.1.9 and 2.2 only shall if Implementation does not occur within twelve months of the date hereof be increased by the percentage increase in the All Prices Retail Prices Index from the date twelve months from the date of the Agreement until the date of payment (the "**Contribution Variable Factor**").
- 2.6 The corresponding paragraphs to these paragraphs are paragraph 2 of the Second Schedule of Agreement 6 and paragraphs 2.1.1 of the Second Schedule of Agreements 1 and 4 and paragraph 2.1.8 of the Second Schedule of Agreement 3

## SCHEDULE 3

### Education Covenants

#### 1. EDUCATION PROVISION

- 1.1 The County is the Education Authority for Gloucestershire and considers that the proposed Development will necessitate additional education facilities within the area
- 1.2 DETR covenants with the County that they will pay to the County;
- 1.2.1 on the occupation of the 25th Residential Unit the sum of £48,925;
- 1.2.2 on the occupation of each subsequent 25th Residential Unit the sum of £48,925 (unless payment has already been made in respect of such units pursuant to paragraph 1.2.4 below)
- 1.2.3 in the event that the final number of Residential Units built pursuant to the Planning Permission is not divisible by 25 the sum of £1957 in respect of each Residential Unit in excess of the last Residential Unit in respect of which a payment was made under paragraph 1.2.2 to be paid within 14 days of the completion of construction of all the Residential Units to be built pursuant to the Planning Permission.
- 1.2.4 If a Residential Unit is occupied and payment is not made under the terms of either paragraph 1.2.2 or 1.2.3 within six months of such occupation the sum of £1957.
- 1.3 Payments made in accordance with paragraph 1 hereof shall be increased by the percentage increase in the Education Index from the date of the last publication prior to this Agreement up to the date of the last publication before the payment in each case.
- 1.4 In this paragraph "n<sup>th</sup> Residential Unit" means n<sup>th</sup> Residential Unit to be occupied
- 1.5 The DETR covenants with the County that it will prior to Implementation of any phase of the Development on the Residential Land procure that a company or person ("the Bondsman") approved by the County (which shall not unreasonably withhold or delay its approval) shall have entered into an Education Contribution Bond in relation to that phase substantively in the form set out in Schedule 10.
- 1.5.1 the amount of the Education Contribution Bond shall be the amount calculated in accordance with the provisions of paragraphs 1.2 and 1.3 of this Schedule 3 payable in the event that all the Residential Units to be built as part of the phase of the Development to be Implemented are occupied within six months of the date of Implementation.
- 1.5.2 The County hereby agrees with DETR that upon receipt of a written request to do so the Director of Education shall review the amount of the said Education Contribution Bond and may thereafter notify DETR and the Bondsman of any reduction in the sum as he may in his absolute discretion think fit provided always that a written request may only be made if a reasonable amount of the payments to be paid pursuant to paragraphs 1.2 and 1.3 have been paid

- 1.5.3 No bond shall be required for as long as the Secretary of State for the Environment Transport and the Regions (as original covenantor under this Deed, but not any successor in title or person deriving title under him) has not been released from liability for payment of the sums to be bonded pursuant to Clause 2.2.

## **SCHEDULE 4**

### **Council Covenants**

#### **1. REPAYMENT OF FUNDS IN DEFAULT OF DUE APPLICATION**

- 1.1 Where the Council receives sums or amounts from DETR pursuant to any obligation set out in Schedule 1 to this Deed but the Council has not within a period of two years from receipt either applied such sums and amounts for the purposes respectively for which the same were paid or commenced such application in accordance with a programme of work yet to be completed, and the Council is unable to demonstrate to the reasonable satisfaction of DETR and GCHQ that such sums and amounts will in whole or part be applied for the purposes respectively for which the same were paid as provided for in this Deed, DETR will be entitled to require the repayment to it of such part as has not been applied for the purposes intended within 10 working days following demand therefor.
- 1.2 Subject to the DETR complying with Schedule 1 paragraph 3 the Council will maintain the recreation and play space to be provided pursuant to Schedule 1 paragraph 3 so as to be safe and attractive to a standard appropriate to the housing in the area surrounding the said space.

## **SCHEDULE 5**

### **County Covenants**

#### **1. REPAYMENT OF FUNDS IN DEFAULT OF DUE APPLICATION**

- 1.1 Subject to paragraph 2.1.1(b) of Schedule 2 where the County receives sums or amounts from DETR pursuant to any obligation set out in Schedule 2 or 3 to this Deed but the County has not within a period of five years from receipt either applied such sums and amounts for the purposes respectively for which the same were paid or commenced such application in accordance with a programme of work yet to be completed, and the County is unable to demonstrate to the reasonable satisfaction of DETR that such sums and amounts will in whole or part be applied for the purposes respectively for which the same were paid as provided for in this Deed, DETR will be entitled to require the repayment to it of such part as has not been applied for the purposes intended within 10 working days following demand therefor.
- 1.2 The County shall place sums or amounts received from DETR and presently unspent in an interest bearing account and apply the interest that may accrue on such sums to the purpose for which the original sum was intended.

#### **2. PRIORS ROAD**

- 2.1 The County as Local Highways Authority covenants that it will;
  - 2.1.1 notify DETR of any proposed modification of the existing Priors Road highway before the Priors Road Access is completed;
  - 2.1.2 agree any necessary changes required by DETR acting reasonably using the procedure set out in paragraph 1.5.1(b) of Schedule 2 to the Priors Road Access as a result of the modification of the Priors Road highway such agreement not to be unreasonably withheld or delayed

SCHEDULE 6

Terms of Transfer for Playspace

DATED \_\_\_\_\_ 199

SECRETARY OF STATE FOR THE ENVIRONMENT  
TRANSPORT AND THE REGIONS

and

[ ]

---

Freehold  
TRANSFER OF PART  
(pursuant to Rule 72 Land Registration Rules ;1925)  
relating to property at  
Oakley, Cheltenham, Gloucester

---

NB (1) THIS TRANSFER WILL REQUIRE  
AMENDMENT IF TITLE IS REGISTERED  
AT THE TIME OF TRANSFER.

(2) THIS TRANSFER WILL REQUIRE  
AMENDMENT TO CONFORM WITH  
THE LAND REGISTRY RULES IN FORCE  
AT THE RELEVANT TIME.

**Herbert Smith**  
Exchange House  
Primrose Street  
London EC2A 2HS  
Tel: 0171-374 8000  
Fax: 0171-374 0888  
Ref: 50/P402/30631410

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H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 to 1988

County and District : Gloucestershire, Cheltenham  
(or London Borough)  
Title Number :  
Property : [ ] hectares at Oakley Cheltenham  
Gloucestershire

THIS DEED OF TRANSFER is made the day of 199

BETWEEN:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT TRANSPORT AND  
THE REGIONS of (the "Transferor") and  
(2) whose registered office is  
at/of (the "Transferee")

1. DEFINITIONS

In this deed unless the context otherwise indicates (and subject to any particular interpretation required by clause 2:

"1994 Act" means the Law of Property (Miscellaneous Provisions) Act 1994;

"Acknowledged Deeds" means the deeds short particulars of which are listed in schedule 8;

"Appurtenant Rights" mean the rights and easements set out in schedule 3;

"Conducting Media" means drains sewers conduits flues gutters gullies channels ducts soakaways watercourses pipes cables fibres and wires and mains and any of them;

"Deeds" means the deeds short particulars of which are listed in Schedule 7;

"Development" means the development on the Residential Land in accordance with the planning permission ref: CB11954/43;

"New Positive Covenant" means the positive covenant set out in schedule 6;

"New Restrictive Covenant" means the restrictive covenant set out in schedule 5;

"Perpetuity Period" means 80 years from the date of this Transfer;

"Plan" means the plan annexed hereto;

"Property" means the property described in schedule 1;

"Reserved Rights" mean the rights and easements set out in schedule 4;



**"Retained Land"** means the land described in schedule 2;

**"Residential Land"** means the area marked "Residential Development" on the Plan;<sup>1</sup>

## **2. INTERPRETATION**

In this deed:

- 2.1 words importing the singular include the plural and vice versa and words importing one gender include both other genders;
- 2.2 where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations;
- 2.3 any clause sub-clause schedule or paragraph is a reference to the relevant clause sub-clause schedule or paragraph of this deed and clause and schedule headings shall not affect the construction of this deed;
- 2.4 a specific enactment includes every statutory modification consolidation and re-enactment and statutory extension of it for the time being in force.

## **3. TRANSFER**

The Transferor with full title guarantee hereby transfers the Property to the Transferee Provided always that Section 2(1)(b) of the 1994 Act shall apply as if the words "will at the cost of the person to whom the disposition is made" were substituted for the words "will at its own cost".

## **4. RIGHTS TRANSFERRED**

The Property is transferred with the benefit of the Appurtenant Rights.

## **5. RIGHTS RESERVED**

The Transferor reserves the Reserved Rights out of the Property in fee simple for the benefit of the Retained Land and each and every part of it.

## **6. TRANSFEREE'S COVENANTS**

So as to bind the Property and every part of it and for the benefit of the Retained Land and every part of it the Transferee covenants with the Transferor that the Transferee and its successors in title will observe and perform:

- 6.1 the New Restrictive Covenant;
- 6.2 the New Positive Covenant and the Transferee further covenants with the Transferor that the Transferee will not transfer or grant a lease of the Property (or any part of it) except to a person who has first executed and delivered unconditionally a deed expressed to be made in favour of the Transferor or the Transferor's successors in title to the Retained Land by which that person covenants in the terms of this clause 6.2 and will not charge the whole or any part of the Property except to a person who covenants with the Transferor or the Transferor's successors in title to the Retained

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<sup>1</sup> The Plan is that attached to the S106 Agreement.

Land that no transfer will be made or lease granted under any power of sale or of leasing arising by virtue of the charge except to a person who has executed a deed in the terms set out in this clause 6.2;

- 6.3 the covenants and conditions in the Deeds and will indemnify and keep indemnified the Transferor against all actions costs claims demands losses and the proceedings in respect of any non-observance or non-performance thereof;
- 6.4 the obligations contained in the S106 Agreement in so far as they affect the Property and will indemnify and keep indemnified the Transferor against all actions costs claims demands and losses and proceedings in respect of any non-observance thereof.

## **7. DECLARATIONS**

- 7.1 It is agreed and declared that the Transferee and the owners and occupiers for the time being of the Property are not and shall not be or become entitled to any easement or right of light and air or either of them over or in respect of the Retained Land and the access and user of light and air to and for the Property and for every building for the time being erected thereon from and over the Retained Land is and shall be enjoyed under the express consent of the Transferor and the owners for the time being of the Retained Land or of any part of the Retained Land who may from time to time and at any time interfere with or destroy the access of light and air or either of them.
- 7.2 Save for the Appurtenant Rights this transfer does not include the benefit of any covenant or any easement or right of water way air light drainage (or any other easements or right and Section 62 Law of Property Act 1925 shall not apply to this transfer).

## **8. APPLICATION TO CHIEF LAND REGISTRAR**

The parties apply to the Chief Land Registrar:

- 8.1 for the terms of this transfer to be noted upon the title to be opened in respect of the Property;
- 8.2 for entry of a restriction upon the title to be opened in respect of the Property that except under an order of the Registrar no transfer or lease or disposition by the proprietor of the Property is to be registered unless there is furnished a certificate by the solicitor for the transferee or lessee or disponee as the case may be that the transferee or lessee or disponee has complied with the provisions of clause 6.2 of this transfer.

## **9. ACKNOWLEDGEMENT FOR PRODUCTION**

The Transferor acknowledges the right of the Transferee to production of the Acknowledged Deeds and to delivery of copies of them.

**IN WITNESS** whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

## **SCHEDULE 1**

### **(Property)**

All that freehold land edged red on the plan annexed hereto being part of the land known as Oakley Cheltenham Gloucestershire.

## **SCHEDULE 2**

### **(Retained Land)**

All that freehold land edged green on the plan annexed hereto being part of the land known as Oakley Cheltenham Gloucestershire.

## **SCHEDULE 3**

### **(Appurtenant Rights)**

The rights for the Transferee and all persons authorised by the Transferee and owners of any part of the Property (where appropriate in common with the Transferor):

1. to the free and uninterrupted passage of water, soil, gas and electricity and telephone and other communications from and to any part of the Property through the Conducting Media which now are or may at any time within the Perpetuity Period be laid under the Retained Land;
2. to install and connect to the Conducting Media in or on the Retained Land to serve the Property and to enter onto the Retained Land for the purpose of repairing maintaining renewing replacing installing or connecting into all such Conducting Media;
3. to deal as it may think fit with the Property and to erect or permit to be erected upon it buildings or structures provided that the light or air which may now or at any time be enjoyed in respect of the Retained Land is not materially affected.
4. A right of access (if necessary) to the public highway along such route as the owner of the Retained Land may designate from time to time.

## **SCHEDULE 4**

### **(Reserved Rights)**

The right for the Transferor and all persons authorised by the Transferor (including where appropriate the drainage authority and service companies responsible for the supply of water, gas, electricity and telephone and other communications services) and owners of any parts of the Retained Land (where appropriate in common with the Transferee):

1. To deal as it may think fit with the Retained Land and to erect or permit to be erected upon it any buildings or structures even if they affect or diminish the light or air which may now or at any time be enjoyed in respect of the Property;
2. To the free and uninterrupted passage of water, soil, gas and electricity and telephone and other communications services from and to any part of the Retained Land through the Conducting Media which now are or may at any time with the Perpetuity Period be laid under the Property;

3. To install and connect to the Conducting Media in or on the Property Conducting Media to serve the Retained Land and to enter upon the Property for the purpose of repairing maintaining renewing replacing installing or connection into all such Conducting Media; and
4. [Other, including any rights of access].

**SCHEDULE 5**

**(New Restrictive Covenant)**

Not to use the Property other than for the provision of recreational and play space.

**SCHEDULE 6**

**(New Positive Covenant)**

To maintain the Property so as to be safe and attractive and to a standard appropriate to the housing in the area surrounding the Property.

**SCHEDULE 7**

**(Deeds)<sup>2</sup>**

<b>Date</b>	<b>Description</b>	<b>Parties</b>
08.11.39	Conveyance	Barbara Frances Nash (1) The Commissioners of His Majesty's Works and Public Buildings (2)
07.08.52	Instrument of Dedication	The Minister of Works (1) The Alderman and Burgesses of the Borough of Cheltenham (2)
28.03.57	Conveyance	The Minister of Works (1) Mobil Oil Company Limited (2)
13.09.66	Deed of Grant	The Minister of Public Building and Works (1) Mayor Alderman and Burgesses of Borough of Cheltenham (2)
09.02.65	Deed of Modification	The Minister of Public Building and Works (1) Mobil Oil Company Limited (2)
10.11.67	Deed of Grant	The Minister of Public Building and Works (1) The North West Gloucestershire Water Board (2)

---

<sup>2</sup> Delete as appropriate according to the area transferred.

<b>Date</b>	<b>Description</b>	<b>Parties</b>
12.03.69	Deed of Grant	The Minister of Public Building and Works (1) The North West Gloucestershire Water Board (2)
01.04.77	Deed of Grant	The Secretary of State for the Environment (1) The Severn-Trent Water Authority (2)
04.07.78	Deed of Grant	The Secretary of State for the Environment (1) The Severn-Trent Water Authority (2)

### SCHEDULE 8

#### (Acknowledged Deeds)<sup>3</sup>

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04.07.78	Deed of Grant	The Secretary of State for the Environment (1) The Severn-Trent Water Authority (2)

**THE COMMON SEAL** of the Transferor    )  
was hereunto affixed in the presence of:    )

Director

Secretary

**THE COMMON SEAL** of the Transferee    )  
was hereunto affixed in the presence of:    )

Director

Secretary

SCHEDULE 7

Terms of Transfer for Affordable Housing

DATED \_\_\_\_\_

199

SECRETARY OF STATE FOR THE ENVIRONMENT  
TRANSPORT AND THE REGIONS

and

[ ]

---

AGREEMENT

for the sale and purchase of  
freehold property at  
Oakley, Cheltenham, Gloucester

---

(1) THIS TRANSFER WILL REQUIRE  
AMENDMENT TO CONFORM WITH  
THE LAND REGISTRY RULES IN  
FORCE AT THE RELEVANT TIME

**Herbert Smith**  
Exchange House  
Primrose Street  
London EC2A 2HS  
Tel: 0171-374 8000  
Fax: 0171-374 0888  
Ref: 50/P402/30631410

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## 2. STANDARD CONDITIONS OF SALE

The Standard Conditions are incorporated in this agreement insofar as they are not inconsistent with the other conditions of this agreement (including this condition) and are amended as follows:

### 2.1 In the construction of the Standard Conditions:

2.1.1 "seller" and "buyer" mean "Seller" and "Buyer" respectively;

2.1.2 "property" means "Property";

### 2.2 Standard Conditions 3.3 4.3.2 4.5.2 4.5.4(b) 5.1 5.2.2(e) 5.2.2(g) 5.2.3 and 5.2.7 shall not apply.

### 2.3 There shall be added the following further definitions in Standard Condition 1.1.1:

(o) "Seller's Solicitors" means Herbert Smith of Exchange House Primrose Street London EC2A 2HS reference 50/P402 or such other person or firm as the Seller shall notify in writing to the other party or parties to this agreement;

(p) "Buyer's Solicitors" means [ ] of [ ] reference [ ] or such other person or firm as the Buyer shall notify in writing to the other party or parties to this agreement;

### 2.4 Standard Condition 1.3 - Notices and documents

#### 2.4.1 In Standard Condition 1.3.1 the following further provision shall be added:

"and must be served on the relevant party (or its solicitors) at the address given for that party or that party's solicitors in this agreement and in the case of service on a party's solicitors quoting the reference set out in this agreement".

#### 2.4.2 The wording in Standard Condition 1.3.3 shall be deleted and there shall be substituted therefor the following words:

"Transmission by fax or telex is a valid means of giving a notice or delivering the draft of a document or a copy of a document where the recipient is entitled to a plain copy only".

#### 2.4.3 In Standard Condition 1.3.5 the reference to 4.00pm shall be deemed to be a reference to 5.00pm.

#### 2.4.4 In Standard Condition 1.3.6 the following further provisions shall be added:

"(d) by fax or by telex: on the day of transmission if sent before 5.00pm or otherwise on the next working day;

(e) by hand: on delivery".

#### 2.4.5 In Standard Condition 1.3 references to times in relation to the giving and delivery of notices and documents shall be construed by reference to the time local to the person giving or receiving the notice or document as appropriate.

- 2.4.6 The presumptions as to delivery referred to in Standard Condition 1.3 may be rebutted by proof beyond reasonable doubt that the notice or document was not delivered at the presumed time.
- 2.5 **Standard Condition 3.3 - Leases affecting the Property**
- 2.5.1 Standard Condition 3.3 shall apply to all Tenancy Documents.
- 2.5.2 In relation to any Tenancy Document where the Buyer requires the Seller in accordance with Standard Condition 3.3.2 to take or refrain from taking any particular action (and the Seller so agrees where the Seller cannot be so compelled) the Buyer will indemnify the Seller against all actions costs claims demands expenses losses and proceedings arising therefrom except arising from the negligence or wilful default of the Seller.
- 2.6 **Standard Conditions 3.1 and 4 - title**
- 2.6.1 In Standard Condition 3.1.2 the following further provision shall be added:
- "(f) if the title to the property is registered, overriding interests".
- 2.6.2 Standard Condition 4.1.1 shall not apply nor shall any reference to it in any other Standard Condition.
- 2.6.3 Standard Condition 4.5.5 shall not apply where the Seller does not have the original of the relevant document of title.
- 2.7 **Standard Condition 5.2 - Occupation by Buyer**
- 2.7.1 In Standard Condition 5.2.2(h) the words "except when the licence ends on completion" shall be inserted after the word "ends".
- 2.7.2 Neither the Seller nor the Buyer shall be entitled to serve notice on the other pursuant to Standard Condition 5.2.5 except in the case of breach of this agreement.
- 2.8 **Standard Condition 6 - Completion**
- 2.8.1 Standard Condition 6.3 shall not apply to non-domestic rates council tax or water rates.
- 2.8.2 In Standard Condition 6.4 the words "as amended by this agreement" shall be inserted immediately after the words "Condition 6.3".
- 2.8.3 At the end of Standard Condition 6.5.1 there shall be added the words "and has performed every other obligation under the contract which the buyer is to perform on or prior to actual completion".
- 2.9 **Standard Condition 7 - Remedies**
- 2.9.1 In Standard Condition 7.1.1 the words "in the negotiations leading to it" shall be deleted and there shall be substituted therefor the words "a written reply by the Seller's Solicitors to a written enquiry by the Buyer's Solicitors".

- 2.9.2 In Standard Condition 7.1.2 the words "or value" shall be deleted.
- 2.9.3 In Standard Condition 7.3.4 the words "the buyer holds the Property as tenant of the seller and" shall be deleted.
- 2.9.4 In the last sentence of Standard Condition 7.3.4 the word "can" shall be substituted for the word "cannot".
- 2.9.5 In Standard Condition 7.5.2 the remedies are concurrent and not mutually exclusive.

### **3. INTERPRETATION**

In this agreement or in the Standard Conditions:

- 3.1 Words importing the singular include the plural and vice versa and words importing one gender include both other genders.
- 3.2 Where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations.
- 3.3 Reference to a clause sub-clause schedule or paragraph is a reference to the relevant clause sub-clause schedule or paragraph of this agreement and clause and schedule headings shall not affect the construction of this agreement.
- 3.4 Reference to a specific enactment includes every statutory modification consolidation and re-enactment and statutory extension for the time being in force.

### **4. COVENANTS FOR TITLE**

The Seller shall transfer the freehold estate in the Property with full title guarantee Provided always that Section 2(1)(b) of the 1994 Act shall apply as if the words "will at the cost of the person to whom the disposition is made" were substituted for the words "will at its own cost" and the Transfer shall expressly provide.

### **5. MATTERS SUBJECT TO WHICH THE PROPERTY IS SOLD**

The Property is sold and will be transferred subject to and where appropriate with the benefit of:

- 5.1 all local land charges and other matters whensoever registered or registrable (whether registered or not) by any local or other authority and to every charge notice direction order restriction agreement resolution proposal condition and other matter of whatsoever nature affecting the Property capable of discovery by search or enquiry of any local or other authority or statutory undertaker and the Buyer shall be deemed to purchase with full knowledge thereof whether or not any search or enquiry has been made; and
- 5.2 all matters affecting the Property which are capable of discovery by an inspection of the Property and/or by any search or enquiry which a prudent Buyer would make on the acquisition of the Property or which would be made on its behalf;
- 5.3 the Appurtenant Rights and the Reserved Rights;

- 5.4 the New Positive Covenant and the New Restrictive Covenant;
- 5.5 the Deeds; [and
- 5.6 the Lease]<sup>5</sup>.

## 6. DISCLOSURE AND INSPECTION

- 6.1 The Buyer is deemed to have inspected the Property whether or not the Buyer has in fact done so.
- 6.2 Title shall commence with Conveyance dated 8th November 1939 made between Barbara Frances Nash (1) and The Commissioners of His Majesty's Works and Public Buildings (2).
- 6.3 Title having been deduced and copies of the Deeds having been supplied to the Buyer the Buyer shall be deemed to purchase with full knowledge of the contents thereof and shall raise no requisition thereon or objection thereto.

## 7. USER

The Buyer shall be deemed to buy with full knowledge in all respects of the authorised use of the Property for the purposes of legislation relating to town and country planning.

## 8. PASSING OF RISK

The Property shall from the date of this agreement be at the risk of the Buyer and save to the extent that the same is directly attributable to the Seller's wilful acts or omission after the date of this agreement no loss or damage occasioned to the Property nor any deterioration in the state of repair or condition of the Property nor any possession or occupation of the Property being taken by any third party shall be the responsibility of the Seller or annul the sale or give rise to any claim to compensation or damages or entitle the Buyer to rescind.

## 9. SUB-SALES

The Seller shall not be required to transfer the Property or any part of the Property other than to the Buyer named in this agreement.

## 10. COMPLETION DATE

The completion date shall be the      day of      19 **PROVIDED THAT** the same is a working day and if not then on the next following working day.

## 11. COMPLETION ARRANGEMENTS

- 11.1 Completion shall take place before 12.30 p.m. on the completion date and for the purposes of calculating any interest due from the Buyer to the Seller where completion takes place later than 12.30 p.m. on any day it shall be treated as having taken place on the next working day.

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<sup>5</sup> Delete if appropriate according to the extent of land to be transferred.

- 11.2 Notwithstanding completion of the sale and purchase anything contained in this agreement to which effect has not been given by the conveyance to the Buyer shall remain in full force and effect.
- 11.3 Any sum remitted by or on behalf of the Buyer in order to discharge the Buyer's obligation to pay money due on completion shall be paid by a direct credit to a bank account nominated by the Seller's Solicitors and the Buyer's obligation to make that payment shall be discharged when it is received in the said account.
- 11.4 The sale is subject as specified in clause 5 with vacant possession of the Property on the date of actual completion.

## **12. TRANSFER AND OTHER DOCUMENTS**

- 12.1 The transfer of the Property to the Buyer shall be in the form of the Transfer.
- 12.2 The Buyer shall execute the Transfer of the Property in duplicate and deliver the duplicate of the Transfer to the Seller on completion.
- 12.3 The Buyer shall within 30 days after the date of actual completion procure the stamping of the duplicate Transfer and return the same to the Seller's Solicitors.

## **13. [APPORTIONMENTS OF INCOME DUE TO SELLER**

The principal rent reserved by the Lease shall be apportioned on completion in accordance with standard condition 6.3 as hereby amended].

## **14. ENTIRE AGREEMENT AND REPRESENTATIONS**

The Seller and the Buyer respectively acknowledge that this agreement shall constitute and form the entire agreement between the Seller and the Buyer to the exclusion of any antecedent statement or representation whether oral written or implied or whether contained in any advertisement particulars or other matters issued or in any correspondence entered into by the Seller or its servants or agents and the Buyer hereby acknowledges that it has not entered into this agreement in reliance upon any such statement or representation other than those which have been given by the Seller's solicitors in a written reply to an enquiry made by the Buyer's Solicitors prior to the date of this agreement.

## **15. CONFIDENTIALITY**

Neither party (including its their agents employees or representatives) shall disclose or permit or suffer to be disclosed any of the contents or the existence of this agreement except and to the extent that disclosure may be required by law or by the requirements of the London Stock Exchange Limited.

**SCHEDULE 1  
(the Property)**

The property at Oakley Cheltenham Gloucestershire as the same is more particularly shown on the Plan and thereon edged red<sup>6</sup>

**SCHEDULE 2**

**Part I<sup>7</sup>**

**(Deeds subject to which the Property is sold)**

<b>Date</b>	<b>Description</b>	<b>Parties</b>
08.11.39	Conveyance	Barbara Frances Nash (1) The Commissioners of His Majesty's Works and Public Buildings (2)
07.08.52	Instrument of Dedication	The Minister of Works (1) The Alderman and Burgesses of the Borough of Cheltenham (2)
28.03.57	Conveyance	The Minister of Works (1) Mobil Oil Company Limited (2)
13.09.66	Deed of Grant	The Minister of Public Building and Works (1) Mayor Alderman and Burgesses of Borough of Cheltenham (2)
09.02.65	Deed of Modification	The Minister of Public Building and Works (1) Mobil Oil Company Limited (2)
10.11.67	Deed of Grant	The Minister of Public Building and Works (1) The North West Gloucestershire Water Board (2)
12.03.69	Deed of Grant	The Minister of Public Building and Works (1) The North West Gloucestershire Water Board (2)
01.04.77	Deed of Grant	The Secretary of State for the Environment (1) The Severn-Trent Water Authority (2)

<sup>6</sup> To be Affordable Housing Plot as identified pursuant to Schedule 1 of the Transfer

<sup>7</sup> Delete as appropriate depending on the area and extent of land to be transferred.

<b>Date</b>	<b>Description</b>	<b>Parties</b>
04.07.78	Deed of Grant	The Secretary of State for the Environment (1) The Severn-Trent Water Authority (2)

**Part II<sup>8</sup>**

<b>Date</b>	<b>Description</b>	<b>Parties</b>
06.08.91	Lease	The Secretary of State for the Environment (1) Midlands Electricity PLC (2)

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<sup>8</sup> Delete as appropriate depending on the area and extent of land to be transferred.



SECRETARY OF STATE FOR THE ENVIRONMENT  
TRANSPORT AND THE REGIONS

and

[ ]

---

Freehold  
**TRANSFER OF PART**  
(pursuant to Rule 72 Land Registration Rules ;1925)  
relating to property at  
**Oakley, Cheltenham, Gloucester**

---

- NB (1) **THIS TRANSFER WILL REQUIRE AMENDMENT IF TITLE IS REGISTERED AT THE TIME OF TRANSFER.**
- (2) THIS TRANSFER WILL REQUIRE AMENDMENT TO CONFORM WITH THE LAND REGISTRY RULES IN FORCE AT THE RELEVANT TIME

[REDACTED]

**Herbert Smith**  
Exchange House  
Primrose Street  
London EC2A 2HS  
Tel: 0171-374 8000  
Fax: 0171-374 0888  
Ref: 50/P402/30631410

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H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 to 1988

County and District : Gloucestershire, Cheltenham  
(or London Borough)  
Title Number :  
Property : [ ] hectares at Oakley Cheltenham  
Gloucestershire

THIS DEED OF TRANSFER is made the day of 199

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT TRANSPORT AND THE REGIONS** of (the "Transferor") and  
(2) whose registered office is at/of (the "Transferee")

**1. DEFINITIONS**

In this deed unless the context otherwise indicates (and subject to any particular interpretation required by clause 2):

"1994 Act" means the Law of Property (Miscellaneous Provisions) Act 1994;

"Acknowledged Deeds" means the deeds short particulars of which are listed in schedule 8;

"Affordable Housing" means housing for rent or for shared equity sale by an Approved Organisation;

"Approved Organisation" means a provider of social housing to be first approved in writing by the Transferor or Cheltenham Borough Council;

"Appurtenant Rights" mean the rights and easements set out in schedule 3;

"Conducting Media" means drains sewers conduits flues gutters gullies channels ducts soakaways watercourses pipes cables fibres and wires and mains and any of them;

"Deeds" means the deeds short particulars of which are listed in Part 1 of Schedule 7;

"Development" means the development on the Residential Land in accordance with the planning permission ref: CB11954/43;

["Lease" means the Lease short particulars of which are listed in Part II of Schedule 7;]<sup>9</sup>

"New Positive Covenant" means the positive covenant set out in schedule 6;

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<sup>9</sup> If applicable.

**"New Restrictive Covenant"** means the restrictive covenant set out in schedule 5;

**"Perpetuity Period"** means 80 years from the date of this Transfer;

**"Plan"** means the plan annexed hereto;

**"Property"** means the property described in schedule 1;

**"Reserved Rights"** mean the rights and easements set out in schedule 4;

**"Retained Land"** means the land described in schedule 2;

**"Residential Land"** means the area marked "Residential Development" on the Plan;<sup>10</sup>

## 2. INTERPRETATION

In this deed:

- 2.1 words importing the singular include the plural and vice versa and words importing one gender include both other genders;
- 2.2 where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations;
- 2.3 any clause sub-clause schedule or paragraph is a reference to the relevant clause sub-clause schedule or paragraph of this deed and clause and schedule headings shall not affect the construction of this deed;
- 2.4 a specific enactment includes every statutory modification consolidation and re-enactment and statutory extension of it for the time being in force.

## 3. TRANSFER

The Transferor with full title guarantee hereby transfers the Property to the Transferee Provided always that Section 2(1)(b) of the 1994 Act shall apply as if the words "will at the cost of the person to whom the disposition is made" were substituted for the words "will at its own cost".

## 4. RIGHTS TRANSFERRED

The Property is transferred with the benefit of the Appurtenant Rights.

## 5. RIGHTS RESERVED

The Transferor reserves the Reserved Rights out of the Property in fee simple for the benefit of the Retained Land and each and every part of it.

## 6. TRANSFEREE'S COVENANTS

So as to bind the Property and every part of it and for the benefit of the Retained Land and every part of it the Transferee covenants with the Transferor that the Transferee and its successors in title will observe and perform:

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<sup>10</sup> The Plan is that attached to the S106 Agreement.

- 6.1 the New Restrictive Covenant;
- 6.2 the New Positive Covenant and the Transferee further covenants with the Transferor that the Transferee will not transfer or grant a lease of the Property (or any part of it) except to a person who has first executed and delivered unconditionally a deed expressed to be made in favour of the Transferor or the Transferor's successors in title to the Retained Land by which that person covenants in the terms of this clause 6(2) and will not charge the whole or any part of the Property except to a person who covenants with the Transferor or the Transferor's successors in title to the Retained Land that no transfer will be made or lease granted under any power of sale or of leasing arising by virtue of the charge except to a person who has executed a deed in the terms set out in this clause 6.2;
- 6.3 the covenants and conditions in the Deeds [and on the part of the Landlord contained or referred to in the Lease] and will indemnify and keep indemnified the Transferor against all actions costs claims demands losses and the proceedings in respect of any non-observance or non-performance thereof;
- 6.4 the obligations contained in the S106 Agreement in so far as they affect the Property and will indemnify and keep indemnified the Transferor against all actions costs claims demands and losses and proceedings in respect of any non-observance thereof.

## **7. DECLARATIONS**

- 7.1 It is agreed and declared that the Transferee and the owners and occupiers for the time being of the Property are not and shall not be or become entitled to any easement or right of light and air or either of them over or in respect of the Retained Land and the access and user of light and air to and for the Property and for every building for the time being erected thereon from and over the Retained Land is and shall be enjoyed under the express consent of the Transferor and the owners for the time being of the Retained Land or of any part of the Retained Land who may from time to time and at any time interfere with or destroy the access of light and air or either of them.
- 7.2 Save for the Appurtenant Rights this transfer does not include the benefit of any covenant or any easement or right of water way air light drainage (or any other easements or right and Section 62 Law of Property Act 1925 shall not apply to this transfer).

## **8. APPLICATION TO CHIEF LAND REGISTRAR**

The parties apply to the Chief Land Registrar:

- 8.1 for the terms of this transfer to be noted upon the title to be opened in respect of the Property;
- 8.2 for entry of a restriction upon the title to be opened in respect of the Property that except under an order of the Registrar no transfer or lease or disposition by the proprietor of the Property is to be registered unless there is furnished a certificate by the solicitor for the transferee or lessee or disponent as the case may be that the transferee or lessee or disponent has complied with the provisions of clause 6.2 of this transfer.

## **9. ACKNOWLEDGEMENT FOR PRODUCTION**

The Transferor acknowledges the right of the Transferee to production of the Acknowledged Deeds and to delivery of copies of them.

**IN WITNESS** whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

### **SCHEDULE 1**

#### **(Property)**

All that freehold land edged red on the plan annexed hereto being part of the land known as Oakley Cheltenham Gloucestershire.

### **SCHEDULE 2**

#### **(Retained Land)**

All that freehold land edged green on the plan annexed hereto being part of the land known as Oakley Cheltenham Gloucestershire.

### **SCHEDULE 3**

#### **(Appurtenant Rights)**

The rights for the Transferee and all persons authorised by the Transferee and owners of any part of the Property (where appropriate in common with the Transferor):

10. to the free and uninterrupted passage of water, soil, gas and electricity and telephone and other communications from and to any part of the Property through the Conducting Media which now are or may at any time within the Perpetuity Period be laid under the Retained Land;
11. to install and connect to the Conducting Media in or on the Retained Land to serve the Property and to enter onto the Retained Land for the purpose of repairing maintaining renewing replacing installing or connecting into all such Conducting Media;
12. to deal as it may think fit with the Property and to erect or permit to be erected upon it buildings or structures provided that the light or air which may now or at any time be enjoyed in respect of the Retained Land is not materially affected.
13. A right of access (if necessary) to the public highway along such route as the owner of the Retained Land may designate from time to time.

### **SCHEDULE 4**

#### **(Reserved Rights)**

The right for the Transferor and all persons authorised by the Transferor (including where appropriate the drainage authority and service companies responsible for the supply of water, gas, electricity and telephone and other communications services) and owners of any parts of the Retained Land (where appropriate in common with the Transferee):

1. To deal as it may think fit with the Retained Land and to erect or permit to be erected upon it any buildings or structures even if they affect or diminish the light or air which may now or at any time be enjoyed in respect of the Property;
2. To the free and uninterrupted passage of water, soil, gas and electricity and telephone and other communications services from and to any part of the Retained Land through the Conducting Media which now are or may at any time with the Perpetuity Period be laid under the Property;
3. To install and connect to the Conducting Media in or on the Property Conducting Media to serve the Retained Land and to enter upon the Property for the purpose of repairing maintaining renewing replacing installing or connection into all such Conducting Media; and
4. [Other, including any rights of access].

#### **SCHEDULE 5**

##### **(New Restrictive Covenant)**

Not to use the Property other than for the purpose of Affordable Housing access thereto and related amenity space.

#### **SCHEDULE 6**

##### **(New Positive Covenant)**

To complete the construction of Affordable Housing prior to the completion of the remainder of the Development.

#### **SCHEDULE 7**

##### **Part I**

##### **(Deeds)**

**[INSERT FROM CLAUSE 6 AND SCHEDULE 2 OF THE AGREEMENT TO THIS TRANSFER AS APPROPRIATE.]**

##### **[Part II**

<b>Date</b>	<b>Description</b>	<b>Parties</b>
06.08.91	Lease	The Secretary of State for the Environment (1) Midlands Electricity PLC (2)] <sup>11</sup>

#### **SCHEDULE 8**

##### **(Acknowledged Deeds)**

**[INSERT FROM CLAUSE 6 AND SCHEDULE 2 OF THE AGREEMENT TO THIS TRANSFER AS APPROPRIATE.]**

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<sup>11</sup> Delete as appropriate depending on the area and extent of land to be transferred.

**THE COMMON SEAL** of the Transferor )  
was hereunto affixed in the presence of: )

Director

Secretary

**THE COMMON SEAL** of the Transferee )  
was hereunto affixed in the presence of: )

Director

Secretary

**SCHEDULE 8**

**Highways Works Bond**

**DATED**

**1998**

[ ]

and

**GLOUCESTERSHIRE COUNTY COUNCIL**

---

**HIGHWAYS WORKS BOND**  
in respect of Land at  
Cheltenham Gloucestershire

---

**R.I.M. Wotherspoon**  
Quayside House  
Quay Street  
Gloucester  
GL1 2TZ  
County Solicitor

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- 2.2 the variable factor shall be the percentage increase of the Index as defined in the Agreement (the "**Index**") from the date of last publication prior to the date of the Agreement up to the date of last publication before the Certificate of Default;
- 2.3 if during the currency of this Agreement the Index shall be related to some commencing date other than 1990 then an appropriate adjustment will be made to the calculation to allow the new index to be used;
- 2.4 upon receipt of a written request so to do the Director of Environment for the time being of the Council (the "**Director**") shall review the sum payable under the terms of this Agreement and may thereafter notify the Bondsman of any reduction in such sum as he may acting reasonably determine **PROVIDED** that a written request may only be made if a reasonable amount of the liabilities of the Developer under paragraphs 1.1.1, 1.3 - 1.10 of Schedule 2 of the Agreement have been discharged since the previous review if any;
- 2.5 in the event of the sum payable under the terms of Clause 2.1 hereof being reduced in accordance with sub-clause 2.4 of this Clause then for the purposes of this Clause from the date of such notification the reduced sum specified shall be substituted for the Basic Sum and the date of notification shall be substituted for the date of this Agreement specified in sub-clause 2.2 of this Clause.
3. Any demand shall be accepted by the Bondsman as conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council for the purpose of this Agreement.
4. If there shall be any bona fide dispute difference or question between the Council and the Bondsman as to the amount payable hereunder or with respect to the construction or effect of the provisions of this Agreement or if the Index shall cease to be published as aforesaid or if any event shall happen whereby it becomes impossible or impracticable to implement the provisions for calculating the amount payable hereinbefore contained then and in any such case such dispute difference or question as the case may be as to the amount payable shall be referred for determination by a single arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory enactment in that behalf for the time being in force.
5. Any notice to the Bondsman under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post to its registered office and any notice to the Council under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Director of Environment Gloucestershire County Council Shire Hall Gloucester.
6. It is hereby agreed by the parties hereto that failure by the Council or the Director of Environment at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Developer of any of the conditions covenants agreements or obligations of the Agreement or any failure or delay by the Council or the Director of Environment to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of the Agreement or any part thereof or the right of the Council to enforce any provision and any variation

of the Agreement agreed between the Developer and the Council which does not affect the liability of the Bondsman shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed.

7. This Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

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

**THE COMMON SEAL** of )  
was hereunto )  
affixed in the presence of: )

Director

Secretary

**THE COMMON SEAL** of )  
**GLOUCESTERSHIRE COUNTY** )  
**COUNCIL** was hereunto affixed in the )  
presence of: )

County Solicitor

**SCHEDULE 9**

**Highways Contributions Bond**

**DATED**

**1998**

[ ]

and

**GLOUCESTERSHIRE COUNTY COUNCIL**

---

**HIGHWAYS CONTRIBUTIONS BOND**

in respect of Land at  
Cheltenham Gloucestershire

---

**R.I.M. Wotherspoon**

Quayside House

Quay Street

Gloucester

GL1 2TZ

County Solicitor

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2. The Council hereby agrees with the Bondsman that:
  - 2.1 the total sum payable by the Bondsman shall not exceed the greater of either the sum of one million and ninety three thousand pounds (£1,093,000) (the "**Contribution Basic Sum**") or such other sum as may be equal to £170,000 + (£923,000 x the Contribution Variable Factor as hereinafter defined) for the payment of which sum to the Council the Bondsman hereby binds itself;
  - 2.2 the "Contribution Variable Factor" means the percentage increase in the All Prices Retail Index from the date twelve months from the date of this Agreement until the date of payment
  - 2.3 upon receipt of a written request so to do the Director of Environment for the time being of the Council (the "**Director**") shall review the sum payable under the terms of this Agreement and may thereafter notify the Bondsman of any reduction in such sum as he may acting reasonably determine **PROVIDED** that a written request may only be made if a reasonable amount of the liabilities of the Developer under paragraph 2 of Schedule 2 of the Agreement have been discharged since the previous review if any;
  - 2.4 in the event of the sum payable under the terms of Clause 2.1 hereof being reduced in accordance with sub-clause 2.3 of this Clause then for the purposes of this Clause from the date of such notification the reduced sum specified shall be substituted for e Basic Sum and the date of notification shall be substituted for the date of this Agreement specified in sub-clause 2.2 of this Clause [if the notification relates to any part of the Contribution Basic sum payable other than pursuant to paragraph 2.1.1 of Schedule 2 of the Agreement]<sup>14</sup>.
3. Any demand shall be accepted by the Bondsman as conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council for the purpose of this Agreement.
4. If there shall be any bona fide dispute difference or question between the Council and the Bondsman as to the amount payable hereunder or with respect to the construction or effect of the provisions of this Agreement or if any event shall happen whereby it becomes impossible or impracticable to implement the provisions for calculating the amount payable hereinbefore contained then and in any such case such dispute difference or question as the case may be as to the amount payable shall be referred for determination by a single arbitrator in

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<sup>14</sup> Insert in relevant bonds - see para 2.4 of the Agreement

accordance with the provisions of the Arbitration Act 1996 or any statutory enactment in that behalf for the time being in force.

5. Any notice to the Bondsman under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post to its registered office and any notice to the Council under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Director of Environment Gloucestershire County Council Shire Hall Gloucester.
6. It is hereby agreed by the parties hereto that failure by the Council or the Director of Environment at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Developer of any of the conditions covenants agreements or obligations of the Agreement or any failure or delay by the Council or the Director of Environment to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of the Agreement or any part thereof or the right of the Council to enforce any provision and any variation of the Agreement agreed between the Developer and the Council which does not affect the liability of the Bondsman shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed.
7. This Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

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

THE COMMON SEAL of )  
was hereunto )  
affixed in the presence of: )

Director

Secretary

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

County Solicitor



**SCHEDULE 10**

**Education Contributions Bond**

**DATED**

**1998**

[ ]

and

**GLOUCESTERSHIRE COUNTY COUNCIL**

---

**EDUCATION CONTRIBUTIONS BOND**  
in respect of Land at  
Cheltenham Gloucestershire

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**R.I.M. Wotherspoon**  
Quayside House  
Quay Street  
Gloucester  
GL1 2TZ  
County Solicitor

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## EDUCATION CONTRIBUTIONS BOND

THIS AGREEMENT is made the                      day of                      1998

### BETWEEN

- (1) [                      ] whose registered office is at [                      ]  
(the "**Bondsman**")
- (2) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall in the City of Gloucester (the "**Council**")

### WHEREAS

1. By an Agreement (the "**Agreement**") dated [                      ] and numbered [2/3/5/7]<sup>15</sup> between THE SECRETARY OF STATE FOR ENVIRONMENT TRANSPORT AND THE REGIONS ("**DETR**") of the first part CHELTENHAM BOROUGH COUNCIL of the second part and the Council of the third part DETR gave certain undertakings to the Council in respect of development of land in Cheltenham Gloucestershire.
2. By the Agreement DETR undertook to procure delivery to the Council of a Bond in the sum of [                      ] POUNDS (£                      ) prior to commencement of the Development as defined in the Agreement (the "**Development**").
3. [                      ] (the "**Developer**") as successor in title to DETR now wishes the Development to commence and the Bondsman having been approved by the Council in accordance with paragraph 1.5 of Schedule 3 of the Agreement is prepared to undertake with the Council as hereinafter mentioned.

### NOW THIS DEED WITNESSETH as follows:

1. The Bondsman hereby covenants with the Council that if at any time DETR or their successors in title fail to carry out or observe any of the terms conditions and obligations on their part contained in Schedule 3 of the Agreement (such failure being sufficiently proved for the purposes of this Clause upon the issue of a Certificate of Default to that effect) it will on demand pay the sums due to the Council in accordance with the provisions of the Agreement.
2. The Council hereby agrees with the Bondsman that:
  - 2.1 the total sum payable by the Bondsman shall not exceed the greater of either the sum of [                      ] POUNDS (£                      ) (the "**Basic Sum**") or such other sum as may be equal to the Basic Sum multiplied by the variable factor as hereinafter defined for the payment of which sum to the Council the Bondsman hereby binds itself;
  - 2.2 the variable factor shall be the percentage increase of the Education Index as defined in the Agreement (the "**Index**") from the date of last publication prior to the date of the Agreement up to the date of last publication before the Certificate of Default;

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<sup>15</sup> Delete inapplicable numbers.

- 2.3 if during the currency of this Agreement the Index shall be related to some commencing date other than 1995 then an appropriate adjustment will be made to the calculation to allow the new index to be used;
- 2.4 upon receipt of a written request so to do the Director of Education for the time being of the Council (the "**Director**") shall review the sum payable under the terms of this Agreement and may thereafter notify the Bondsman of any reduction in such sum as he may acting reasonably determine **PROVIDED** that a written request may only be made if a reasonable amount of the liabilities of the Developer under Schedule 3 of the Agreement have been discharged since the previous review if any;
- 2.5 in the event of the sum payable under the terms of Clause 2.1 hereof being reduced in accordance with sub-clause 2.4 of this Clause then for the purposes of this Clause from the date of such notification the reduced sum specified shall be substituted for the Basic Sum and the date of notification shall be substituted for the date of this Agreement specified in sub-clause 2.2 of this Clause.
3. Any demand shall be accepted by the Bondsman as conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council for the purpose of this Agreement.
4. If there shall be any bona fide dispute difference or question between the Council and the Bondsman as to the amount payable hereunder or with respect to the construction or effect of the provisions of this Agreement or if the Index shall cease to be published as aforesaid or if any event shall happen whereby it becomes impossible or impracticable to implement the provisions for calculating the amount payable hereinbefore contained then and in any such case such dispute difference or question as the case may be as to the amount payable shall be referred for determination by a single arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory enactment in that behalf for the time being in force.
5. Any notice to the Bondsman under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post to its registered office and any notice to the Council under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Director of Education Gloucestershire County Council Shire Hall Gloucester.
6. It is hereby agreed by the parties hereto that failure by the Council or the Director of Education at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Developer of any of the conditions covenants agreements or obligations of the Agreement or any failure or delay by the Council or the Director of Education to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of the Agreement or any part thereof or the right of the Council to enforce any provision and any variation of the Agreement agreed between the Developer and the Council which does not affect the liability of the Bondsman shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed.

7. This Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

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

THE COMMON SEAL of )  
was hereunto )  
affixed in the presence of: )

Director

Secretary

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

County Solicitor





TOWN AND COUNTRY PLANNING ACT 1990

# DRAFT

TO GOVERNMENT COMMUNICATIONS HEADQUARTERS

APPLICATION NO CBI1954/43

C/O CHESTERTON PLC  
EMBASSY HOUSE  
QUEENS AVENUE  
CLIFTON  
BRISTOL  
BS8 1SB

DATE REGISTERED 03 OCT 97

DATE DECISION

In pursuance of its powers under the above mentioned Act Cheltenham Borough Council, as the Local Planning Authority, hereby GRANTS OUTLINE PLANNING PERMISSION for the following development:-

OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT (19 HA)  
AND PROVISION OF DISTRICT CENTRE, INCORPORATING FOOD  
SUPERSTORE (2.85 HA) (GCHQ REF: OAK2A)

AT GCHQ OAKLEY

in accordance with the accompanying plans subject to the conditions listed on the attached pages 2 to 6.

The reason for the Council making each condition is also included.

GRAHAME LEWIS  
HEAD OF DEVELOPMENT SERVICES

Page 1

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years

from the date of this permission.

(b) The development to which this permission relates must be begun not later than whichever is the later of the following dates:

- (1) the expiration of five years from the date on which this permission is granted; or
- (2) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

**Reason:** (a) the reserved matters referred to in paragraph 1(a) and not already included as part of this application will need consideration by the Local Planning Authority and to safeguard the amenities of the area and or the occupiers or users of the development proposed.

(b) circumstances may change in the future and if detailed plans are not submitted or if the development is not commenced within the period specified the Local Planning Authority wish to review the matter.

2. No development of any description shall take place on any part of the site prior to the carrying out of an archaeological field evaluation of that part of the site.

**Reason:** to ensure that the archaeological potential of the site is fully explored.

3. Subject to the interests of national security and to the findings of the archaeological field evaluation referred to in the preceding condition, any artefacts or below-ground evidence revealed shall be preserved and/or recorded either in-situ or elsewhere in accordance with the requirements of the Gloucestershire County Archaeological Officer. The reserved matters submissions shall comply with those requirements.

**Reason:** to ensure the proper recording of items of archaeological interest.

4. Subject to the interests of national security the developer shall afford access at all reasonable times to any archaeologist nominated by the Local Planning Authority, and shall allow him to observe the excavations and record items of interest and finds.

**Reason:** to assist in compiling the archaeological record of the site.

5. No development approved by this permission shall be commenced on any part of the site until a scheme for the provision and implementation of a surface water regulation system for that part of the site, and for any surface water infrastructure that is required on that part of the site to service the whole development site, has been approved in writing by the



Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**Reason:** to prevent the increased risk of flooding.

6. A strip of land 6 metres wide adjacent to the top of both banks of all watercourses on the site must be kept clear of all new buildings and structures (including gates, walls and fences) unless agreed otherwise in writing with the Local Planning Authority in consultation with the Environment Agency. Ground levels must not be raised within this area.

**Reason:** to maintain access to the watercourse for maintenance or improvements.

7. There must be no development over or within 3 metres of each side of any culverted watercourses on site.

**Reason:** to maintain access to the culverted watercourses for the future maintenance or improvement works.

8. No development approved by this permission shall be commenced on any part of the site until a scheme for the provision and implementation of foul drainage works for that part of the site, and for any main foul sewers that are required on that part of the site to service the whole of the development site, has been approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**Reason:** to prevent pollution of the water environment.

9. All run-off from roads shall be via trapped gullies. Any fuel or oil stores shall be bunded and run-off from fuelling areas, etc. shall be via fuel interceptors.

**Reason:** to avoid pollution of watercourses.

10. The reserved matters application(s) shall include a comprehensive scheme detailing the method of demolition, the re-use of existing materials and resources, the disposal of waste material within the site and the protection of adjoining properties from disturbance by noise, vibration, lighting and dust during demolition and construction.

**Reason:** to minimise disturbance to adjoining occupiers during building operations.

11. All topsoil removed during demolition or construction works shall be stockpiled on site and re-used as appropriate in landscaping the completed development unless alternative arrangements have been agreed by the Local Planning Authority prior to the implementation of this permission.

**Reason:** to minimise disturbance to adjoining occupiers during building operations.

12. No development shall take place on any part of the site until full details of both hard and soft landscape works in relation to that part of the site have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas and hard surfacing materials.

**Reason:** in order to provide a satisfactory setting for the development.

13. Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate, and an implementation programme.

**Reason:** in order to provide a satisfactory setting for the development.

14. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out in accordance with a programme agreed with the Local Planning Authority.

**Reason:** in order to provide a satisfactory setting for the development.

15. Prior to the occupation of any part of the development, a landscape management plan for that part of the development, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas within the part, other than small, privately owned, domestic gardens, shall be submitted to and approved by the Local Planning Authority. The landscape management plan for that part shall be carried out as approved.

**Reason:** to secure the future maintenance of the landscape proposals.

16. No development shall take place on any part of the site until a schedule of landscape maintenance for that part of the site for a minimum period of 7 years from the date of first occupation of the building(s) has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

**Reason:** to secure the future maintenance of the landscape proposals.

17. The reserved matters submission(s) shall include specifications for the retention of and protection of existing trees on that part of the site, where appropriate. No trees on that part of the site shall be felled prior to the approval of the reserved matters, including such specifications.

**Reason:** to ensure the retention of trees on site which make a contribution to the appearance of the area.

18. A survey to establish a base level for noise within any part of the site at certain specified points agreed by the Local Planning Authority shall be carried out to the satisfaction of the Local Planning Authority before details of any of the reserved matters for that part of the site are submitted. The layout, orientation and design of the buildings shall be such as to provide sound insulation/attenuation against generated noise within certain specified tolerances of those levels identified in the base noise level survey to the satisfaction of the Borough Council's Environmental Health Officer.

**Reason:** to provide an appropriate standard of attenuation of noise generated on site.

19. No more than 40 houses shall be served by the access onto Harp Hill at the east end of the site.

**Reason:** the road network in the locality is not capable of accommodating the traffic associated with more than this number of houses.

20. No development shall take place within the Area of Outstanding Natural Beauty, except where development has already taken place.

**Reason:** to preserve the AONB.

21. The reserved matters application in respect of any part of the site shall incorporate the findings of a detailed site survey of that part of the site of the extent, nature and level of contaminants present within the soil and underlying geology. Any contamination revealed shall be dealt with in accordance with a scheme of remedial measures, to be included in the application.

**Reason:** to ensure appropriate treatment of any contamination of the site.

22. No residential development shall take place prior to the Local Planning Authority's approval of a scheme of phasing of house construction and development shall be carried out in accordance with that scheme.

**Reason:** to ensure conformity with the Structure Plan.

## Information

1. Any culverting of a watercourse requires the EA's prior written consent under the Water Resources Act 1991 (Main River) or the Land Drainage Act 1991 (ordinary watercourse). There is a general presumption against culverting on grounds of detriment to the water environment and flood defence, and consent will normally be withheld. Exceptions may be made if overall environmental improvement results from the culverting, and in some cases where there is a balance of environmental factors. The applicant is requested to contact Mr R. Bishop at Riversmeet House (Tel. 01684 850951).

2. A separate consent is required from the Environment Agency under the terms of the Water Resources Act 1991 for any proposed sewage or trade effluent discharge to a watercourse or other controlled waters, and may be required for discharge to a soakaway. (Controlled waters include rivers, streams, underground waters, reservoirs, estuaries, and coastal waters).
3. The Local Planning Authority will expect the detailed proposals and to be of especially high quality, in view of Cheltenham's status as an historic town and of the location of the site at the edge of the built-up area. The developer should take note of the opportunities for mitigation and enhancement as set out in the Environmental Assessment prepared by Land Use Consultants.
4. The Local Planning Authority will expect the detailed proposals to pay regard to the proximity of residential property and for appropriate design measures to be employed to mitigate the effect of this development.
5. A marginal strip of land approximately 6 metres wide should be provided between the development and the watercourse (Wymans Brook) as part of the river corridor, to permit conservation, access, and recreation uses, and to preserve visual amenity.
6. Surface water balancing may be achieved by using wet retention ponds with fragmites (reeds) to assist in filtering out urban pollutants.
7. For this application, an appropriate method of source control would be porous block paving for car parking areas.
8. The applicant will be required to pay regard to the effects of development on the adjacent Cotswolds Area of Outstanding Natural Beauty, including views into, out of and through the development site.
9. The Council expects that the existing access to Oakley Farm will be retained in its existing form and used solely for agricultural purposes.
10. The development should make provision for facilities for public transport and cycling, to help reduce travel by the private car in accordance with Government policy on sustainable development.
11. Consideration should be given during design to aspect, solar gain, and opportunities for enhancing shelter and enclosure, to minimise the impact on local micro-climate of wind movement, frost and shading and to accord with Government policy on sustainable development.

THE CORPORATE SEAL )  
OF THE SECRETARY OF STATE )  
FOR THE ENVIRONMENT )  
TRANSPORT AND THE REGIONS )  
hereunto affixed is authenticated by: )



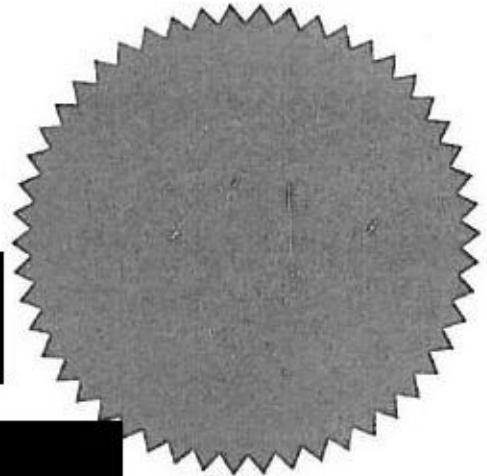
Authorised by the Secretary of State



THE COMMON SEAL of )  
CHELTENHAM BOROUGH COUNCIL )  
affixed hereto is authenticated by the )  
under mentioned persons authorised by the )  
Council to act for that purpose: )



CHIEF EXECUTIVE

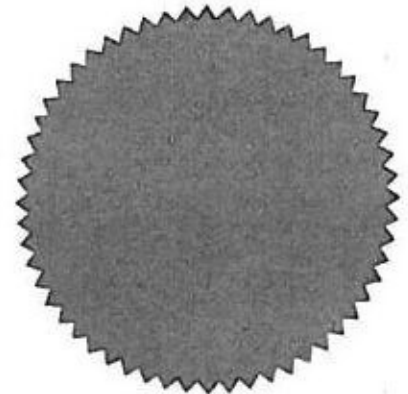


THE COMMON SEAL of )  
GLOUCESTERSHIRE COUNTY COUNCIL )  
was hereunto affixed in the presence of: )

2459

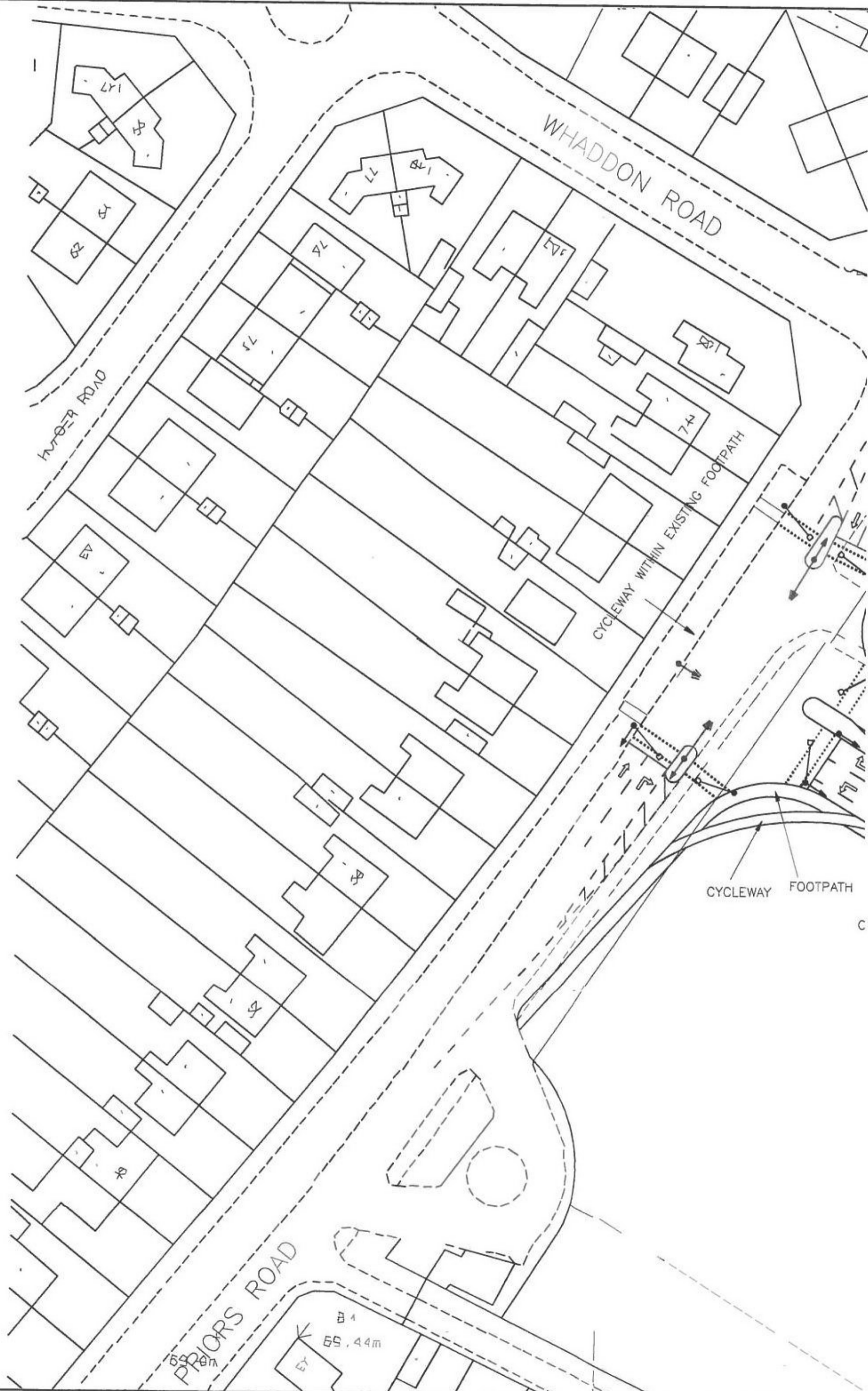


County Solicitor



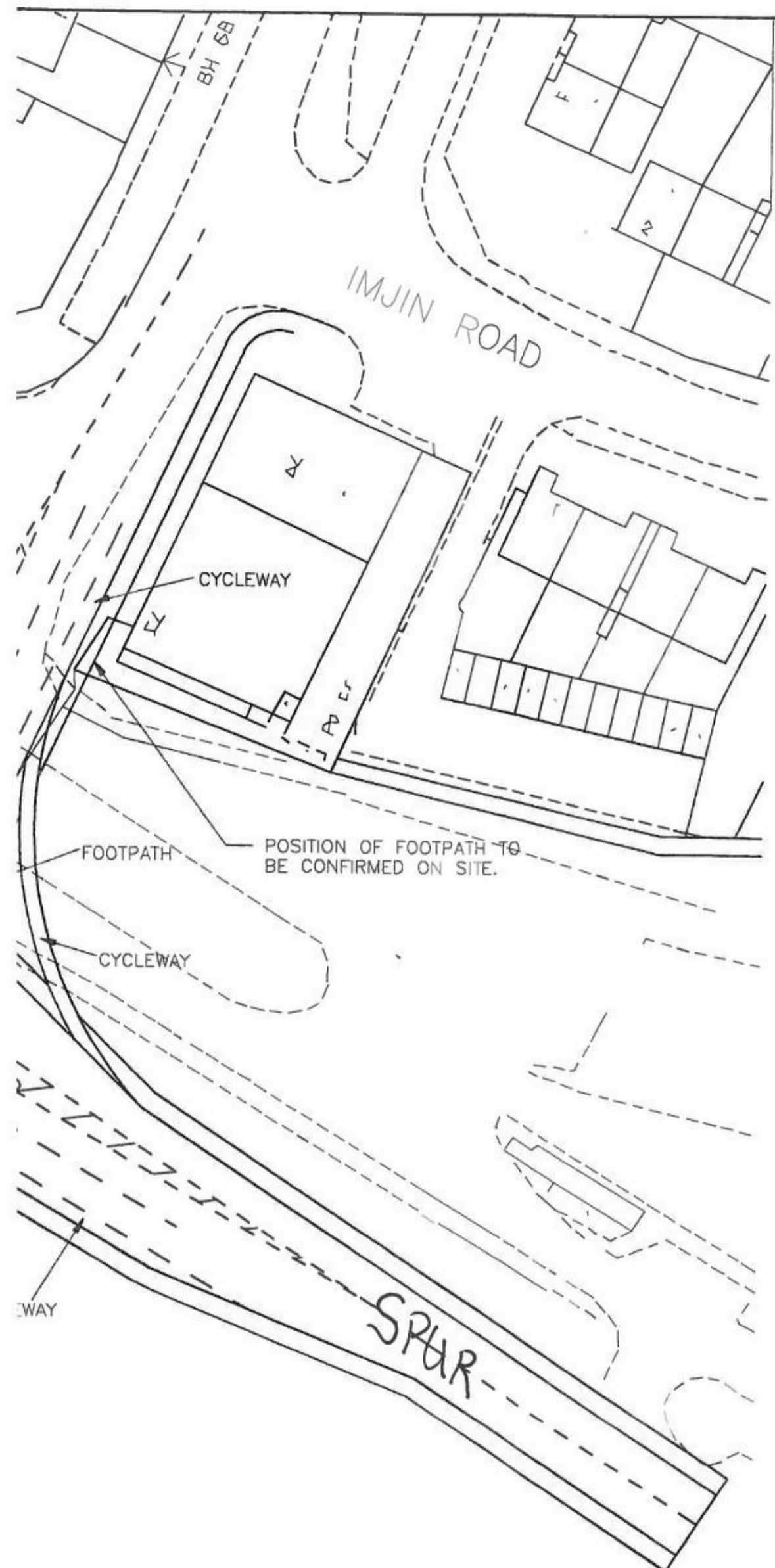
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DO NOT SCALE



CYCLEWAY FOOTPATH

C



NOTES



Authorised by the  
Secretary of State



B	CYCLE LANE INTRODUCED, CARRAGEWAY WIDENED AND KERB LINE REVISED TO ACCOMMODATE JUNCTION POSITION REVISED TO SUIT	SNP	MM	1/9/98
A	ACCESS ROAD SHOWN 100m INTO SITE	SNP	MS	20/7/98
DESCRIPTION		DRWN	APPRD	DATE

STATUS  
**FOR INFORMATION**  
CONSULTING ENGINEERS  
**THORBURN COLQUHOUN**  
COMPANY HOUSE, TOWER HILL, BRISTOL BS2 0EQ.  
TEL 0117-9221763 FAX 0117-9221393

CLIENT  
MINISTRY OF DEFENCE

PROJECT  
G.C.H.Q.

DRAWING TITLE  
ACCESS JUNCTION - OAKLEY

DRAWN JB	TRACED JB	CHECKED JMS	APPROVED	DATE 10/08/98
SCALE 1:500	DRG No. 30163/013	REV. B		

ORIGINAL DRAWING A2



**PROPOSED REDEVELOPMENT - OAKLEY**  
**Residential (19 ha) and District Centre (2.85 ha)**

Scale  
**1:2500**

Plan Date **Sep-97** Plan No

This plan is reproduced from the  
 Ordnance Survey Map with the sanction  
 of the Controller of H.M. Stationery Office

This map is for identification purposes  
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 accuracy

REF: CB 11954/43



1:2500