

Dated 2021

WEST BERKSHIRE DISTRICT COUNCIL (1)

TO

[REDACTED]

AND

SKILLDRAW LIMITED (3)

AND

BLOOR HOMES LIMITED (4)

DEED OF COVENANT

Sandleford Park, Newbury

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DATE

2021

THIS DEED OF COVENANT is given by

- (1) **WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury, Berkshire RG14 5LD (the "**Council**")

TO

- (2) [REDACTED] (the "**Partnership**")
- (3) **SKILLDRAW LIMITED** (company number 04010455) whose registered office is situated at c/o Cooke & Arkwright, 10 Bridgend Business Centre, Bennett Street, Bridgend, Wales, CF31 3SH ("**Skilldraw**")

the Partnership and Skilldraw together being "**the Owners**" and

- (4) **BLOOR HOMES LIMITED** (company number 02162561) whose registered office is situated at Ashby Road, Measham, Swadlincote, Derbyshire DE12 7JP (the "**Developer**")

1 INTRODUCTION

- 1.1 This Deed is supplemental to the Unilateral Undertaking.
- 1.2 The obligations given by the Owners and the Developer in the Unilateral Undertaking are conditional upon the Council giving the commitments in this Deed.
- 1.3 This Deed is entered into by the Council in favour of the Owners and the Developer.

2 DEFINITIONS

In this Deed the following expressions shall have the following meanings:

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Act	means the Town and Country Planning Act 1990;
Appeal	means the appeal reference number APP/W0340/W/20/3265460 submitted to the Secretary of State by the Developer and the Partnership against the refusal of the Application by the Council;
Application	means the application for planning permission submitted to the Council and allocated reference 20/01238/OUTMAJ 48/00764/OUTMAJ ;
Commencement	has the meaning given to it by clause [3.7] of the Unilateral Undertaking;
the Contributions	means the contributions required to be paid to the Council pursuant to the Unilateral Undertaking;
Planning Permission	means the planning permission granted pursuant to the Appeal and including any variation pursuant to Section 73 of the Act Section 73A of the Act and non-material amendment to such planning permission under Section 96A of the Act;
Unilateral Undertaking	mean the undertaking by deed dated [] 2021 given by the Owners and the Developer to the Council to secure the planning obligations set out in therein.

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3 INTERPRETATION

- 3.1 Terms used in this Deed which are not defined shall have the same meaning as that defined in the Unilateral Undertaking.
- 3.2 Save where this Deed specifies otherwise or where the context so requires the singular includes the plural and vice versa and references in this Deed to the Owners and the Developer shall include the successors in title to that party's interest in the Site or part thereof.
- 3.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 3.4 Where in this Deed reference is made to any clause, paragraph, schedule, plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital in this Deed or (in the case of the plan) attached to this Deed.
- 3.5 The titles and headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 3.6 Where in this Deed any party covenants not to act such covenant shall include an obligation not to permit or suffer such an act by another person.
- 3.7 All references in this Deed to statutes, statutory instruments, regulations and other legislation shall include their successor amended or replacement provision.
- 3.8 All references in this Deed to a particular title of offices or posts at the Council shall include successor or replacement offices or posts.

4 LEGAL BASIS

- 4.1 This Deed is made pursuant to section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972.

5 CONDITIONALITY

- 5.1 This Deed shall have effect on the date hereof.

6 THE COUNCIL'S COVENANTS

Contributions

- 6.1 The Council covenants with the Owners and the Developer that:

8.1 upon receipt of any of the Contributions payable pursuant to the Unilateral Undertaking, the Council shall only use and apply the same for the purposes set out in the Unilateral Undertaking or pass it to a third party to spend on its behalf provided that such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution.

- (a) ;
- (b) on receipt of each Contribution, the Council shall pay the same into an interest bearing bank account;
- (c) within 28 days of receipt of written request from the Owners or the Developer, the Council shall provide to the Owners and the Developer a written statement setting out the amount of each Contribution which has been expended or committed as at the date of the written request;
- (d) if, after a period of 240 years from the date of payment of each Contribution or ~~where the contribution is paid in instalments the last instalment part thereof,~~ the Council has not spent or entered into a binding commitment to spend that Contribution for the purpose specified in the Unilateral Undertaking, the Council shall ~~repay the unexpended balance of the relevant Contribution plus accrued interest to the party who paid it within 28 days of receiving a written request to do so repay the unexpended part of that relevant contribution or the part of that relevant contribution which has not been contractually committed to the person from whom it was received along with the interest accrued from time to time at the Bank of England base rate thereon following the expiry of the said twenty year period~~

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Agreements, approvals and consents

- 6.2 The Council covenants with the Owners and the Developer not to unreasonably withhold or delay any agreement, approval or consent required to be given by it pursuant to the Unilateral Undertaking.

Disputes

- 6.3 ~~The Council covenants with the Owners and the Developer that in the event of any dispute relating to any matter arising from the Unilateral Undertaking clause [18] shall apply.~~

Commented [SA1]: The Council does not wish to fetter its discretion to take action through the Courts

7 MISCELLANEOUS

- 7.1 Insofar as any clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity legality or enforceability of the remaining provisions of this Deed.
- 7.2 This Deed shall cease to have effect (except insofar only as it has already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to Commencement.
- 7.3 No waiver (whether express or implied) by the Owners and/or the Developer (whether together or individually) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Owners and/or the Developer (or any of them) from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default.
- 7.4 Nothing in this Deed shall prejudice the exercise of any statutory power duty or discretion by the Council.

8 JURISDICTION

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

9 DELIVERY

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

10 EXPERT DETERMINATION

- 10.1 ~~In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed (other than the sum of any Contribution) such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties to the dispute or difference and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.~~

~~10.2— In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision in respect of such appointment, suitability or appropriateness as the case may be shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.~~

~~10.3— Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 days after the conclusion of the hearing that takes place or 28 days after he has received any file or written representation.~~

~~10.4— The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting materials and the other party will be entitled to make a written counter submission within a further ten days.~~

IN WITNESS WHEREOF the Council has executed this Deed as a deed the day and year before written

EXECUTED AS A DEED by

WEST BERKSHIRE DISTRICT COUNCIL

acting by:

Authorised Signatory:

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