

Appendix 2: Draft s106 Agreement

DATED _____ **2016**

OXFORD CITY COUNCIL (1)

and

BMW (UK) MANUFACTURING LIMITED (2)

DEED OF AGREEMENT

**Pursuant to Section 106 of the Town and County
Planning Act 1990 and other related powers in relation
to Land adjacent to Horspath Road, Oxford**

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THIS AGREEMENT is made as a Deed the day of 2016

BETWEEN

- (1) **OXFORD CITY COUNCIL** of St Aldate's Chambers St Aldate's Oxford OX1 1DSW (the **Council**)
- (2) **BMW (UK) MANUFACTURING LIMITED** (company registration number 03950868) whose registered office is situated at Summit One Summit Avenue Farnborough Hampshire GU14 0FB (the **Owner**)

RECITALS

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) (**the Act**) for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is the registered freehold proprietor of the Site which is registered with Title Absolute under Title Number ON53223 at the Land Registry free from encumbrances (subject to those matters listed in the Charges Register).
- (C) Oxford Sports and Social Club operated sporting facilities on part of the Site pursuant to the Lease.
- (D) The obligations contained in this Deed are planning obligations for the purposes of Section 106 of The Town and Country Planning Act 1990 as amended.
- (E) The Owner has a requirement to create long-term strategic expansion land for its neighbouring manufacturing facilities and acknowledges that Policy SP49 of the Council's Sites and Housing Plan (adopted February 2013) (**Policy SP49**) is applicable to the Site. That policy requires the re-provision of the sports facilities on the Site.
- (F) The Owner wishes to enter into this Deed to provide funds to the Council for the provision of the Sports Fields in order that when an application by the Owner to develop the Site is considered the Sports Fields will already have been provided (or arrangements put in place to effect that such provision) in a manner which would allow the Council to conclude that such provision is qualitatively and quantitatively equivalent or better than that required by the relevant requirement of Policy SP49. The provision of the Sports Fields will be in accordance with Schedule 2 and 3 of this Deed.
- (G) The Council acknowledges that the obligations in this Deed will be a material consideration in any future planning application submitted by the Owner on the Site in its consideration as to whether or not the above mentioned policy requirement is met.
- (H) The Owner in agreement with the Council has therefore entered into this Deed to deliver the obligations contained herein in advance of the Planning Application to develop the Site. The Council acknowledges that there is a benefit to the Council in receiving and utilising the Sportsfield Reprovision Contribution in advance of the possible future Planning Application as it supports the Council to deliver improved sporting facilities in the City.
- (I) The Council is satisfied that if it was determining an application for manufacturing planning permission to develop the Site in the manner stated by Policy SP49, the restrictions and provisions contained in this Deed will be necessary to develop the Site by the Owner pursuant to the Planning Application are acceptable in planning terms and are directly related to the Site and fairly and reasonably related in scale and kind to the Site. The provisions contained in this Deed would have allowed the Council to conclude that the Sportsfield Reprovision Contribution as described above being in planning terms a net benefit over re-provision as required by Policy SP49 would have allowed planning permission to be granted for a manufacturing application notwithstanding not

all existing facilities on the Site being re-provided. This is the view of the Council at the time of entry into this agreement.

- (J) At the point of determining the Planning Application the Council will determine that application in accordance with the development plan and any other material considerations.

NOW THIS AGREEMENT WITNESSES as follows:

1. **DEFINITIONS**

City	means the administrative area of Oxford City Council
City Planner	means the Council's Director of Planning and Regulatory Services for the time being or such other duly authorised officer of the Council as may have managerial and budgetary responsibility for the functions of the Council under Part III of the Act
Council	means Oxford City Council
Deed	means this Deed of agreement
Lease	means the lease dated [] between Oxford Sports and Social Club and the Owner
Legal Challenge	means an application by judicial review of the Deed or the Planning Permission
Longstop Date	means 30 June 2017
Parties	means the signatories and any successor in title to this Deed
Plan A	means the plan marked "Plan A" attached to Schedule 1 to this Deed
Planning Application	means the planning application made by the Owner for the development of the Site for manufacturing purposes pursuant to recitals E and F of this Deed
Planning Permission	means the planning permission pursuant to the Sports Fields Planning Application
Site	means the land shown for the purposes of identification only outlined in red on Plan A
Sports Fields	means sports provision qualitatively and quantitatively equivalent or better than those on the Site as at the date of adoption of Policy SP49 to be delivered by the Council on land within its ownership to the east of the Site as identified marked cross hatched green for identification purposes on Plan A or an alternative location to be agreed between the Parties

Sports Fields Operator	means the operator of the Sports Fields as appointed by the Council
Sports Fields Planning Application	means a detailed planning application for the provision of new sports fields submitted by the Council as the applicant or as joint applicants with the Sports Fields Operator
Sportsfield Reprovision Contribution	means the sum of £4,900,000.00 (Four Million Nine Hundred Thousand Pounds) to be used as a contribution to deliver the Sports Fields as set out in schedule 2 to this Deed and for no other purpose
Target Date	means 1 October 2016
Working Days	means Monday to Friday inclusive but excluding days which are Public Holidays

2. INTERPRETATION

- 2.1 Reference in this Deed to a clause paragraph or recital means a clause or paragraph of or recital to this Deed
- 2.2 Headings in this Deed are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Deed
- 2.3 In this Deed where the context so admits:
- 2.3.1 words importing one gender shall include all other genders and
- 2.3.2 words importing the singular shall include the plural and vice versa
- 2.4 Any references to any particular statute or regulation (except for the Use Classes Order) include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it
- 2.5 Where under this Deed any notice, consideration, confirmation, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, consideration, confirmation, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed and in writing
- 2.6 Wherever there is more than one person as a party to this Deed and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to:
- 3.1.1 Section 106 of the Act and in respect of any provision of this Deed which does not constitute a planning obligation under Section 106 of the Act; and
- 3.1.2 Section 111 of the Local Government Act 1972

3.2 The obligations (howsoever expressed) of the Owner are planning obligations for the purposes of Section 106 of the Act , they relate to the interest of the Owner in the Site and are entered into by the Owner as such and, subject to clauses 3.3 and 3.4 shall be enforceable by the Council:

3.2.1 in its capacity as local planning authority;

3.2.2 subject to clause 8, without limit of time; and

3.2.3 not only against the Owner but also against its successors in title and any person corporate or otherwise claiming through or under them an interest in the Site or any part of it as if that person had also been an original covenanting party in respect of such of the obligations, covenants and restrictions which relate to the freehold or leasehold or other such interest or estate for the time being held by that person

3.3 This Deed shall not be enforceable against any tenant pursuant to the Lease on the Site

3.4 This Deed shall not be enforceable against any statutory undertaker or utilities provider holding an interest in the Site

4. **CONDITIONALITY**

This Deed shall come into effect upon delivery hereof

5. **GENERAL PROVISIONS**

5.1 It is hereby agreed and declared that:

5.1.1 nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions and the rights, powers, duties and obligations of the Council under private or public statutes, bye-laws, orders and regulations may be as fully and effectively exercised as if it were not a party to this Deed; and

5.1.2 no waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

5.2 Nothing in this Deed shall prohibit or limit the Owner's right to develop any part of the Site in accordance with a planning permission

6. **OWNER COVENANTS AND COUNCIL COVENANTS**

6.1 The Owner covenants with the Council to observe and carry out its obligations, covenants and restrictions contained within this Deed and Schedule 3

6.2 The Council covenants with the Owner to observe and carry out its obligations, covenants and restrictions contained within this Deed and Schedule 2

6.3 In the event that the Planning Permission is not secured by the Longstop Date then either Party may terminate this Deed or if both Parties agree then the Longstop Date may be extended to the agreement of both Parties which may be entered into either before or after the Longstop Date

6.4 If the Deed is terminated pursuant to clause 6.3, 6.5 or 6.6 of this Deed then the Owner will reimburse the Council within 30 Working Days of the termination of the Deed the reasonable costs incurred in relation to the design and planning fees of the Sports

Fields Planning Application and the costs of pre planning site preparation (including the clearing and removing of vegetation and site testing) up to a cap of £100,000 provided that the costs are submitted and agreed in writing by the Owner AND the Council will reimburse any other funds that it may have received hereunder

6.5 The Parties agree that in the event of a Legal Challenge to either the Deed or the Planning Permission then either Party may by notice terminate the Deed within 28 Working Days of notification to that Party of the Legal Challenge

6.6 In the event that the Council concludes that the costs of delivering the Sports Fields will exceed the Sportsfield Reprovision Contribution and provides evidence substantiating that to the Owner it may terminate the Deed by notice to the Owner no later than 30 days after grant of the Planning Permission

7. DETERMINATION OF DISPUTES

7.1 In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

7.1.1 The parties to this Deed and their successors in title will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Deed and if the matter is not resolved by negotiation the parties shall refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution procedures;

7.1.2 Notwithstanding the provision of clause 7.1.1 the parties to this Deed and their successors in title shall reserve all their respective rights in the event that no agreed resolution shall be reached in the mediation and no party shall be deemed to be precluded from taking such interim formal steps as may be considered necessary to protect such party's position while the mediation or other procedure is pending or continuing.

8. LIMIT OF LIABILITY

The Owner shall not be liable for any breaches of the obligations or other covenants contained in this Deed after it has parted with any relevant interest in the Site or the relevant part of it but without prejudice to the liability of the Owner or for any breach subsisting prior to parting with such interest provided that the release contained in this clause shall not become effective in favour of any such person

9. SERVICE OF NOTICES

9.1 Any notice, letter, approval, consent, certificate or other document given or served under the terms of this Deed shall be:

9.1.1 in writing and

9.1.2 sufficiently served if sent by pre-paid recorded delivery or registered post addressed in the case of the Council at the address shown in this Deed to the City Planner or in the case of service on the Owner at the address shown in this Deed

9.2 Any notice consent or approval given pursuant to this Deed shall be deemed to have been validly served:

9.2.1 if personally delivered at the time it is handed over; and

9.2.2 if sent by recorded delivery at the time it is recorded as having been delivered

10. **REGISTRATION AND MEMORANDA**

10.1 The Owner consents hereby to apply to register a notice of the terms of this Deed on the Charges Register of the Land Registry against Title Numbers ON53223 within 28 Working Days of completion of this Deed and will inform the Council's solicitors as soon as such registration has been notified by the Land Registry and will supply the Council's solicitors at no expense to the Council or its solicitors with office copies of such registration as soon as reasonably practicable of the completion of the said registration

10.2 At any time after an obligation in this Deed has been discharged or performed the Owner may request in writing for the Council to provide a notice of compliance with such obligation and within 10 Working Days of receipt of such request Council shall issue such notice

11. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not named in this Deed (other than successors in title to the parties to this Deed) does not have any right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999

12. **VALUE ADDED TAX**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and at any time that value added tax is or becomes chargeable in respect of any consideration paid in accordance with the terms of this Deed and to the extent that such value added tax has not been previously charged and/or paid the person making the supply shall issue a value added tax notice to the person to whom the supply was made and the value added tax shall be paid accordingly

13. **COSTS**

The Owner covenants that on or before completion of this Deed it shall pay to the Council its reasonable and proper legal costs and disbursements of preparing and completing this Deed up to a maximum of £2,000 (Two Thousand Pounds)

14. **JURISDICTION**

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

SCHEDULE 1

Plans

Plan A – redline boundary of the Site

SCHEDULE 2

Council Covenants

1. The Council covenants with the Owner to:
 - 1.1 use reasonable endeavours to submit the Sports Fields Planning Application by the Target Date
 - 1.2 as applicant for planning permission to use reasonable endeavours to secure the Planning Permission by 31 January 2017
 - 1.3 to give written notice (to include an invoice for the Sportsfield Reversion Contribution) to the Owner within 30 days of the grant of Planning Permission that it has entered into a valid contract with the Sports Field Operator for delivery of the Sports Fields and that it will proceed with the delivery of the Sports Fields and will accept the Sportsfield Reversion Contribution from the Owner
 - 1.4 not to use the Sportsfield Reversion Contribution other than for the purposes specified in this Deed
 - 1.5 on receipt of the Sportsfield Reversion Contribution pursuant to Paragraph 1 of Schedule 3 of this Deed it will acknowledge receipt of the Sportsfield Reversion Contribution and place the Sportsfield Reversion Contribution into an escrow account operated by the Council for the purpose of holding the Sportsfield Reversion Contribution
 - 1.6 use the Sportsfield Reversion Contribution to facilitate the delivery of the Sports Fields
 - 1.7 use reasonable endeavours to complete the Sports Fields by January 2018 or as otherwise agreed with the Parties

SCHEDULE 3

Payments for Sportsfield Re provision

1. The Owner will pay the Sportsfield Re provision Contribution to the Council
 - 1.1 six weeks and one day following publication of the decision notice of the Planning Permission pursuant to the Sports Fields Planning Application or
 - 1.2 30 days after receipt by the Owner of the written notice by the Council pursuant to paragraph 1.3 of Schedule 2 to this Deedwhichever is the later to occur

2. The Owner agrees that it will give the Council written notice of any change in ownership of its respective legal and equitable interests in the Site

The **COMMON SEAL** of
OXFORD CITY COUNCIL

was affixed hereunto

in the presence of:

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SIGNED AS A DEED

by **BMW (UK) MANUFACTURING LIMITED**

acting by:

Signature of Company Secretary

.....

Print name of Company Secretary

.....

Signature of Director

.....

Print name of Director

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