DATED 20th SEPTEMBER 2013

MORRIS HOMES (MIDLANDS) LIMITED

- and -

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

LEICESTERSHIRE COUNTY COUNCIL

DEED OF VARIATION

of an agreement and planning obligation made under

Section 106 of the Town & Country Planning Act 1990 (as amended)

relating to

the residential development on land at Stoke Road, Hinckley

NewsomeVaughan LLP
SOLICITORS

THIS DEED is made the 20th day of SEPTEMBER 2013

BETWEEN:

(1) **MORRIS HOMES (MIDLANDS) LIMITED** (Company No. 00184652) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire SK9 5NW (the **"Owner"**)

(2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Council Offices, Argents Mead, Hinckley LE10 1BZ (the **"Borough Council"**); and

(3) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester LE3 8RA (the **"County Council"**).

AGREED TERMS

1 **DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation set out in this Clause apply to this deed.

"The Application Land" shall have the same meaning as in the Section 106 Agreement

"Deed" this deed

"Section 106 Agreement" the agreement dated 3rd September 2012 and made in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") between (1) the Owner and (2) The Borough Council and (3) the County Council

1.2 Where the context so requires:

1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporate sole or aggregate;

1.2.2 references to any parties shall include the successors in title of that party;

1.2.3 where a party includes more than one person any obligations of that party shall be joint and several;

1.2.4 any covenant by the Developer not to do any act or thing shall be deemed to include a covenant not to cause, permit or suffer the doing of that act or thing;

1.2.5 references to clauses, paragraphs and schedules are references to Clauses, Paragraphs and Schedules to this Deed and are for reference only and shall not affect the construction of this Deed.

2 **RECITALS**

2.1 The Borough Council and the County Council are both local planning authorities for the purposes of the Act for the area within which the Application Land is situated and obligations hereby created are enforceable by either or both as appropriate

2.2 This Deed is supplemental to the Section 106 Agreement.

2.3 The Owner is the registered proprietor of the Application Land under title reference LT449949

2.4 The Borough Council and the County Council have agreed with the Owner that the Section 106 Agreement shall be varied as set out in Clause 3 below.

2.5 The Owner has agreed to enter into this Deed so as to create planning obligations in favour of the Borough Council and the County Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements, conditions and stipulations hereinafter contained.

3 **OPERATIVE PROVISIONS**

3.1 This Deed is made pursuant to Section 106 A of the Act and all other powers so enabling and is a planning obligation for the purposes thereof and the covenants contained herein shall bind the Application Land

3.2 The parties to this Deed agree that the Section 106 Agreement will be varied as follows:

3.2.1 Clause 3.3.3 shall be deleted and replaced with the following clause:

"that the Affordable Dwellings shall remain available as Social Rented Dwellings or Intermediate Affordable Dwellings as appropriate provided that this provisions shall not be binding on:

(a) *any present or future mortgagee or chargee or receiver appointed by such mortgagee or chargee of the Affordable Dwellings*

(b) *any person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire*

(c) *a lessee of Shared Ownership Accommodation or a mortgagee or chargee or receiver appointed by such a mortgagee*

(d) *a person who has staircased under a lease of Shared Ownership Accommodation to acquire the freehold or the mortgagee or a chargee or receiver appointed by such a mortgagee or chargee of such an Affordable Dwelling*

(e) *any person deriving title from any such person mentioned in (a) to (d) above"*

3.2.2 Clause 3.5 shall be amended so that the words "*subject to clause 3.3.3 above*" shall be inserted at the beginning of the clause

3.2.3 Clause 3.5 shall be further amended so that the words "*in accordance with the current Nominations Agreement in place between the Affordable Housing Provider and the Borough Council*" are inserted after the words "*Leicestershire Choice Based Letting Scheme*" in the third line of the clause

4 It is hereby agreed and declared as follows:

4.1 This Deed shall be construed as one within the Section 106 Agreement.

4.2 The provisions of the Section 106 Agreement shall continue to be enforceable by the Borough Council and/or the County Council as appropriate and to bind the Application Site in all respects save as varied by this Deed

4.3 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this Clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.

4.4 The planning obligations hereby created by this Deed shall be registered as a local land charge by the Borough Council.

4.5 The Owner shall on the signing of this Deed pay the Borough Council's costs of Three Hundred Pounds (£300) and the County Council's costs of One Hundred and Fifty Pounds (£150) in connection with the agreement to and conclusion of this Deed

IN WITNESS whereof the parties have executed this document as a Deed the day and year first before written.

EXECUTED as a **DEED** by

MORRIS HOMES (MIDLANDS) LIMITED acting by its Director and a Director/Secretary:

[redacted]

Director:

Director/Secretary

EXECUTED AS A DEED by affixing the Common Seal of **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** in the presence of:

[redacted]

11332

Authorised Signature:

Name (in block capitals)

Position

30550

EXECUTED AS A DEED by affixing the Common Seal of **LEICESTERSHIRE COUNTY COUNCIL** in the presence of:

[redacted]

Authorised Signature:

Name (in block capitals)

Position