

DATED

5 April

2024

JELSON LIMITED (1)

and

KEITH WILLIAM BAILEY, DAVID JOHN BAILEY and LEONARD COOPER BAILEY (2)

and

FE DOWNES (HOMES) LIMITED (3)

and

HANA GROVE (4)

and

HINCKLEY AND BOSWORTH BOROUGH COUNCIL (5)

and

LEICESTERSHIRE COUNTY COUNCIL (6)

PLANNING AGREEMENT

Section 106 of the Town and Country Planning Act 1990

relating to Land opposite and south of pumping station, Aston Flamville Road, Burbage,
Leicestershire

Planning Application Reference: 23/00673/OUT



CAMBRIDGE • LEICESTER • MANCHESTER
MILTON KEYNES • NORTHAMPTON • NORWICH

Ref: PDH/229369

THIS AGREEMENT is made the *5* day of *April*
Twenty Four

Two Thousand and

BETWEEN:

1. **JELSON LIMITED** (Company Number 00571641) whose registered office is at 370 Loughborough Road, Leicester, LE4 5PR ("the First Owner")
2. **KEITH WILLIAM BAILEY** of Manor Farm, Church Street, Burbage, Hinckley, Leicestershire LE10 2DE, **DAVID JOHN BAILEY** of Cottage Farm, Lychgate Lane, Burbage, Hinckley Leicestershire LE103AQ and **LEONARD COOPER BAILEY** of Manor Farm, Coventry Road, Pailton, Rugby, Warwickshire CV23 0QA ("the Second Owner")
3. **FE DOWNES (HOMES) LIMITED** (Company number 1884913) whose registered office is situated at Stockwell Road, Hinckley, Leicestershire, LE10 1JQ (the First Chargee")
4. **HANA GROVE** of Rye House, Catesby Lane, Lapworth, Solihull, B94 5QY "the Second Chargee")
5. **HINCKLEY & BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley LE10 0FR ("the Borough Council")
6. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester, LE3 8RA ("the County Council")

RECITALS:

- A. By means of the Planning Application submitted by the First Owner planning permission was sought from the Borough Council to carry out the Development on the Application Land
- B. The Borough Council is the Local Planning Authority for the purposes of the Act for the Borough of Hinckley and Bosworth within which the Application Land is situated
- C. The Borough Council and the County Council are both Principal Councils within the meaning of the Local Government Act 1972 (as amended)
- D. The County Council is responsible for the provision of library, education and civic amenity facilities and is the Highways Authority for the area in which the Application Land is situated and is a local planning authority
- E. The First Owner is the freehold owner of that part of the Application Land registered at the Land Registry under title number LT212346 ("the First Owner's Land")

- F. The Second Owner is the freehold owner of the unregistered remainder of the Application Land which is the subject of a caution against first registration in favour of the First Owner pursuant to an option to purchase dated 27th March 2017 and which is registered at the Land Registry under title number LT490326 which Application Land is shown edged red on the Plan
- G. The First Chargee and the Second Chargee ("the Chargees") have the benefit of legal charges over the First Owner's Land dated 26th March 1996 and registered against title number LT212346
- H. The Borough Council has resolved to grant planning permission pursuant to the Application subject to the obligations contained in this Agreement and the Parties have agreed to enter into this Agreement in order to secure the planning obligations contained herein in the event that the Planning Permission is granted

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following expressions shall have the following meanings:

"Act"	means the Town & Country Planning Act 1990 (as amended)
"Accessible Natural Green Spaces"	means accessible woodlands and/or urban forestry and/or scrub grasslands (including downlands and/or commons and/or meadows and/or wet lands and/or open and running water and/or wastelands) to be provided on the Application Land to accord with the Borough Council's current policy requirements amounting to at least 40 square metres per Dwelling.
"Additional First Homes Contribution"	means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9, and 8 of the Third Schedule the lower of the following two amounts

	a) 30% of the proceeds of sale, and b) The proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Owner in connection with the sale of the First Home and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Home Owner as a result of the disposal of the First Home other than as a First Home.
“Affordable Dwelling(s)”	means 20% of the total number of Dwellings to be constructed on the Application Land which shall be constructed as Affordable Housing and provided in accordance with the provisions of clause 3 below and to comprise 50% Affordable Housing for Rent 25% Shared Ownership Dwellings and 25% First Homes
“Affordable Housing”	has the meaning given to it in Annex 2 of the NPPF or any other forms of Affordable Housing as may be recognised by HM Government from time to time

“Affordable Housing Provider”	means either: i) a provider of Affordable Housing who is registered with Homes England under the Housing and Regeneration Act 2008 or such successor authority; or ii) any other housing provider approved in writing by the Borough Council (such approval not to be unreasonably withheld or delayed); or iii) any other company or body approved in writing by the Borough Council (such approval not to be unreasonably withheld or delayed)
“Affordable Housing for Rent”	has the same meaning as the definition set out in Annex 2 of the NPPF so far as it relates to Affordable Rent at a discount of 20% below local market rents and an Affordable Dwelling for Rent shall be construed accordingly
“Affordable Housing Scheme”	means the scheme(s) for the provision of the Affordable Dwellings within the Application Land in accordance with the provisions of clause 3 and shall contain details of the following: i) details of the Affordable Housing Provider if known; and ii) the location of the Affordable Dwellings; iii) the size and tenure of the Affordable Dwellings;

	iv) timing of the construction of the Affordable Dwellings
“AHP Affordable Dwelling/s	means those Affordable Dwellings which are to be transferred to an Affordable Housing Provider being the Affordable Housing for Rent and the Shared Ownership Dwellings
“Application”	means the application made to the Borough Council for outline planning permission for the residential development of up to 343 dwellings (Class C3), including provision of public open space, associated infrastructure and all matters (access only) (re-submission of 22/01037/OUT) reserved except access and allocated planning reference: 23/00673/OUT
“Application Land”	means the land bound by the obligations contained within this Agreement and shown edged red on the Plan attached hereto
“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or in part by their service
“Borough Council Monitoring Costs Contribution”	means £628 per obligation £219 “Site Inspection” fee per visit

	£327 "Approval of document"
"Borough Council's Housing Register"	means a waiting list of housing applicants which the Borough Council maintains in order to deliver their statutory allocation functions
"Bus Pass(es)"	means a bus pass entitling the holder of the bus pass to travel free of charge on local bus services for a period of six (6) months from the date of issue (up to two (2) passes to be provided to each Dwelling) as required by clause 8.2 below to encourage new residents to use local bus services as an alternative to the private car to establish changes in travel behaviour
"Bus Pass Contribution"	means the sum of FOUR HUNDRED AND FIFTEEN POUNDS (£415.00) per Bus Pass (equating to a maximum of EIGHT HUNDRED AND THIRTY POUNDS (£830.00) per Dwelling) (adjusted in accordance with the indexation provisions in the First Schedule hereto) to enable the County Council to issue the Bus Pass(es) subject to a maximum sum of TWO HUNDRED AND EIGHTY FOUR THOUSAND POUNDS SIX HUNDRED AND NINETY POUNDS (£284,690.00) prior to indexation
"Civic Amenity Contribution"	means the sum of FORTY NINE POUNDS AND FIFTY THREE PENCE (£49.53) per Dwelling (adjusted in accordance with the indexation provisions of the First Schedule hereto) to be paid by the Owner to the County Council for site reconfiguration and/or development of waste infrastructure

	to increase the capacity at the Barwell Household Waste Site Recycling Centre (HWRC) or any other HWRC likely to be directly impacted by the Development subject to a maximum sum of SIXTEEN THOUSAND NINE HUNDRED AND EIGHTY EIGHT POUNDS AND SEVENTY NINE PENCE (£16,988.79) prior to indexation
“Commencement of Development”	means the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun on the Application Land save that irrespective of the provisions of Section 56 (4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development i. trial holes or other operations to establish the ground conditions of the Application Land, site survey work, or works of remediation ii. archaeological investigations on the Application Land iii. any works of demolition or site clearance iv. any structural planting or landscaping works v. ecological or nature conservation works and surveys associated with the Development vi. construction of boundary fencing or hoardings or any temporary means

	of enclosure site compounds or cabins including a sales cabin vii. temporary display of site notices or advertisements viii. any other preparatory works agreed in writing with the Borough Council and "Commence" and Commenced" shall be construed accordingly
"Compliance Certificate"	means a certificate issued by the Borough Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National)
"Contributions"	means the collective reference to the contributions payable to the Borough Council and the County Council referred to in this Agreement which contributions shall be adjusted in accordance with the Indexation provisions in the First Schedule (with the exception of the County Council Monitoring Costs Contribution)
"County Council Monitoring Costs Contribution"	means the sum of THREE HUNDRED POUNDS (£300.00) or 0.5% (whichever is greater) per financial obligation in favour of the County Council payable by the Owner to the County Council pursuant to clause 12 towards the County Council's costs of monitoring compliance with the Civic Amenity Contribution, the Education Contribution, the Library Contribution, the MOVA Re-validation Contribution, the TRO Contribution, the Travel Pack Contribution and the Bus Pass Contribution

“Default Interest Rate”	means a rate of 4% above the Bank of England base rate
“Development”	means the development described in the Application and to be carried out pursuant to the Planning Permission
“Discount Market Price”	means a sum which is the Market Value discounted by at least 30%
“Disposal”	means the transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than a) a letting or sub-letting in accordance with paragraph 7 of The Third Schedule b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner c) an exempt disposal and “Disposed” and “Disposing” shall be construed accordingly
“Dwelling/s”	means any dwelling built pursuant to the Planning Permission and whether an Affordable Dwelling or otherwise and whether a house bungalow or apartment
“Education Contribution”	means collectively the Primary Education Contribution, the Secondary Education

	Contribution, the Post-16 Education Contribution, the Primary SEND Contribution and the Secondary SEND Contribution
"Eligibility Criteria (National)"	means criteria which are met in respect of a First Home if: (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer), and (b) the purchaser's annual gross income (or in the case of a joint purchasers' the joint annual gross income) does not exceed the Income Cap (National)
"Exempt Disposal"	means the Disposal of a First Home in one of the following circumstances: (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

	(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt the Third Schedule paragraph 8 Mortgagee Exclusion shall apply to such sale) Provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of the Third Schedule paragraph 7 – Use.
“Equipped Open Space”	means the area of open space to be provided with play equipment on the Application Land in accordance with the On Site Open Space Area Scheme and to accord with the Borough Council’s current policy requirements amounting to at least 3.6 square metres per Dwelling
“First Home(s)”	means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at a Discount Market Price and which on its first Disposal does not exceed the Price Cap
“First Homes Owner”	means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than: (a) the Developer (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home

	is made available and is disposed of for occupation as a First Home a tenant or sub-tenant of a permitted letting under paragraph 7 of the Third Schedule
“First Time Buyer”	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
“Health Care Body”	means The Leicester, Leicestershire and Rutland Integrated Care Board or any successor body
“Healthcare Contribution”	means the contribution calculated using one of the following: $A \times B \times C = D$ A = Proposed population (no of Dwellings on the Application Land x 2.42) B = Standard area m²/person (0.08) C = Cost of extension including fees £/m² (£4,000.00) D = Total cost adjusted in accordance with the indexation provisions of the First Schedule to be paid by the Owner to the Borough Council towards increasing capacity at the Burbage Surgery or Station View Health Centre subject to a maximum sum of TWO HUNDRED AND SIXTY FIVE THOUSAND SIX HUNDRED AND NINETEEN POUNDS AND TWENTY PENCE (£265,619.20) prior to indexation

“Hinckley and Bosworth Borough Council Choice Based Lettings Scheme”	means a housing scheme utilised by the Borough Council to advertise vacancies in order to assist persons on the Borough Council’s Housing Register to search for suitable Affordable Housing for rent
“Homes England”	means the statutory successor to the Homes and Communities Agency whose statutory objects are set out in the Housing and Regeneration Act 2008 (and any successor to its functions)
“Housing Allocations Policy (“HAP”)	means the mechanism by which the Borough Council determines priorities and defines the procedures to be followed in allocating housing accommodation for rent
“Income Cap (National)”	means in the case of a First Home located within the administrative area of Hinckley and Bosworth Borough Council the sum of Eighty Thousand Pounds (£80,000.00) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home
“Informal Open Space”	means the informal open space areas which form part of the Development which will include a Local Area of Play (LAP) to accord with the Borough Council’s current policy requirements amounting to at least 16.8 sqm per Dwelling
“Key Worker”	means a person employed or with a confirmed job offer in one of the categories of employment as may be published by the Borough Council from time to time as the

	"First Home Key Worker Criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal
"Library Contribution"	"Library Contribution" means the sum calculated in accordance with the following formula: $(A \times 1.157 \times 8.70 \times 3) + (B \times 1.157 \times 8.70 \times 1.5) + (C \times 1.157 \times 8.70 \times 1) = D$ Where: A = total number of Dwellings which comprise two or more bedrooms (excluding Dwellings occupied as student accommodation) B = total number of Dwellings which comprise one bedroom (excluding Dwellings occupied as student accommodation) C = total number of Dwellings to be occupied as student accommodation D = total contribution payable (adjusted in accordance with the indexation provisions of the First Schedule hereto) to be paid by the Owner to the County Council towards the provision of improvement to Burbage Library and its facilities including but not limited to, books, materials or associated equipment or to reconfigure the internal or external library space subject to

	a maximum sum of TEN THOUSAND THREE HUNDRED AND FIFTY SEVEN POUNDS AND EIGHTY ONE PENCE (£10,357.81) prior to indexation
“Local Connection”	means the parish and or village connection or such other geographic location to be determined within the local connections criteria as agreed in the HAP
“Local Connection Criteria (First Homes)”	means such local connection criteria applicable to First Homes as may be published by the Borough Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall apply to that disposal.
“Market Dwelling/s”	means any dwelling constructed as part of the Development for sale in arm’s length transactions on the open market which is not an Affordable Dwelling
“Market Value”	means open market value as assessed by a Valuer of a Dwelling as confirmed to the Borough Council by the First Homes Owner and assessed in accordance with the RICS Valuation Global Standards 2021 including the UK National Supplement (November 2018) (or any such replacement guidance issued by the RICS) and for the avoidance of doubt shall not

	take into account the 30% discount in the valuation
“Mortgagee”	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari`ah compliant finance for the purposes of acquiring a First Home
“ MOVA Re-validation Contribution”	means the sum of FIVE THOUSAND POUNDS (£5,000.00) (adjusted in accordance with the indexation provisions of the First Schedule hereto) to be paid by the Owner to the County Council for the purpose of funding the re-validation of Microprocessor Optimised Vehicle Actuation (MOVA) at the Brookside/ Burbage Road/ Elm Tree Drive junction
“NPPF”	means the National Planning Policy Framework December 2023 or any successor policy or legislative provisions
“Occupation”	means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include i. daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or ii. the use of any dwelling house(s) for the marketing of the Development; or

	iii. the storage of plant and materials and "Occupy" and "Occupied" shall be constructed accordingly
"Off Site Sports Contribution"	means a sum payable by the Owner in lieu of on-site sports provision whether in the form of outdoor sports pitches, sports facilities and infrastructure to the Borough Council and calculated in accordance with the formula $(A \times B) - C \times D = \text{Off-Site Outdoor Sports Provision Contribution (Provision Sum)}$; and less $(A \times B) - C \times E = \text{Off-Site Outdoor Sports Provision Maintenance Contribution (Maintenance Sum)}$ A = 38.4 sqm per Dwelling B = No. Dwellings C = the total area in sqm of on-site sports provision D = £9.05 per sqm E = £4.30 per sqm and adjusted in accordance with the indexation provisions of The First Schedule towards the provision and/or improvement and maintenance of sports facilities within Burbage including but not limited to the Britannia Road and Hinckley Road recreation grounds or such other sports facilities that will serve the occupiers of the Development
"On Site Open Space Area(s) "	means together the Accessible Natural Green Spaces the Equipped Open Space

	the Informal Open Space and all other areas of landscaping and accessible green space which will not be comprised within residential curtilages and which will be in accordance with the Borough Councils policy requirements herein specified
“On Site Open Space Area Maintenance Scheme”	means the Scheme for the future maintenance and management of the On Site Open Space Area to be submitted to the Borough Council by the Owner in accordance with the provisions of paragraph 1.1.6 of the Second Schedule
“On Site Open Space Area Scheme”	means the Scheme for the provision and laying out of the On Site Open Space Area to be submitted to the Borough Council by the Owner in accordance with the provisions of paragraph 1.1.1 of the Second Schedule
“Owner”	means both the First Owner and the Second Owner unless expressly stated to the contrary
“Parish Council”	means Burbage Parish Council
“Plan”	means the plan attached hereto
“Planning Permission”	means the outline planning permission to be granted pursuant to the Application
“Post 16 Education Contribution”	means the contribution calculated in accordance with the following: $A + B \times C = D$ A = No of houses with 2 or more bedrooms x 0.033

	B = No of flats with 2 or more bedrooms x 0.0053 C = Cost per pupil place (£19,327.00) D = Total cost payable by the Owner to the County Council (adjusted in accordance with the indexation provisions of the First Schedule hereto AND FOR THE AVOIDANCE OF DOUBT using the Base Index Date applying to the Education Contribution) towards the improvement, remodelling or enhancement of existing facilities at the Hinckley School or other successor educational facility or any other secondary school which will accommodate pupils from this Development subject to a maximum sum of TWO HUNDRED AND EIGHTEEN THOUSAND SEVEN HUNDRED AND SIXTY TWO POUNDS AND THIRTY ONE PENCE (£218,762.31) prior to indexation
“Price Cap”	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
“Primary Education Contribution”	means the contribution using the following: $(A + B) - C \times D = E$ A = No of houses with 2 or more bedrooms x 0.3 B = No of flats with 2 or more bedrooms x 0.043

NOTES

The map is a copy of the original map and is not a substitute for the original map. The map is a copy of the original map and is not a substitute for the original map. The map is a copy of the original map and is not a substitute for the original map.



KEY



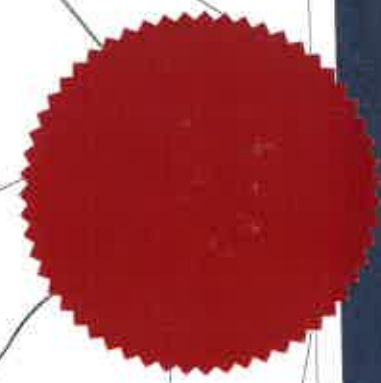
Site Boundary

16.00 Ha

K.W. Barts
L.B. Bailey
O.T. Bailey

H.O. Bailey

L. Bailey
R. Bailey



12546

LOCATION PLAN

Jelson Homes Ltd
Land South of Sapcote Road
Burage

1:2500 @ A1
07 February 2024 TCM / MSH
7162-L-01 - B

1:2500 @ A1
07 February 2024 TCM / MSH
7162-L-01 - B

	C = 41.9 being the number of surplus spaces in the primary sector (infant and junior) that may serve the Development D = Cost per pupil place (£18,356.00) E = Total cost payable by the Owner to the County Council (adjusted in accordance with the indexation provisions of the First Schedule hereto AND FOR THE AVOIDANCE OF DOUBT using the Base Index Date applying to the Education Contribution) towards the improvement modelling or enhancement of facilities at Burbage Church of England Infant and Junior School or any successor education facility that will accommodate pupil growth from the Development subject to a maximum sum of ONE MILLION ONE HUNDRED AND NINETEEN THOUSAND SEVEN HUNDRED AND SIXTEEN POUNDS (£1,119,716.00) prior to indexation
"Primary SEND Contribution"	means the sum calculated by multiplying the total number of houses with two or more bedrooms to be erected by 0.00363 and the total number of flats with two or more bedrooms by 0.00052 to produce the number of child places required and then multiplying the total by £65,664.00 adjusted in accordance with the indexation provisions of the First Schedule AND FOR THE AVOIDANCE OF DOUBT using the Base Index Date applying to the Education Contribution to be paid by the Owner to the County Council towards the improvement remodelling or enhancement of

	educational facilities at Dorothy Goodman School or any successor school as will provide additional primary SEND education places to accommodate pupil growth from the Development subject to a maximum sum of EIGHTY ONE THOUSAND SEVEN HUNDRED AND FIFTY SEVEN POUNDS AND FIFTY NINE PENCE (£81,757.59) prior to indexation.
“Secondary Education Contribution”	means the contribution calculated using the following: $(A + B) - C \times D = E$ A = No of houses with 2 or more bedrooms x 0.167 B = No of flats with 2 or more bedrooms x 0.0267 C = 15.281 being the number of surplus spaces in the secondary sector that may serve the Development D = Cost per pupil place £17,876.00 E = Total cost payable by the Owner to the County Council (adjusted in accordance with the indexation provisions of the First Schedule hereto AND FOR THE AVOIDANCE OF DOUBT using the Base Index Date applying to the Education Contribution) towards the improvement, remodelling or enhancement of existing facilities at Hastings High School or other successor educational facility as will provide additional secondary education places to accommodate pupil growth from the

	Development subject to a maximum sum of SEVEN HUNDRED AND FIFTY THOUSAND SEVEN HUNDRED AND NINETY TWO POUNDS (£750,792.00) prior to indexation
“Secondary SEND Contribution”	means the sum calculated by multiplying the total number of houses with two or more bedrooms to be erected by 0.004 and the total number of flats with two or more bedrooms by 0.00064 to produce the number of child places required and then multiplying the total by £81,531.00 (adjusted in accordance with the indexation provisions of the First Schedule hereto AND FOR THE AVOIDANCE OF DOUBT using the Base Index Date applying to the Education Contribution) to be paid by the Owner to the County Council towards the improvement remodelling or enhancement of educational facilities at Dorothy Goodman School or any successor school as will provide additional secondary SEND education places to accommodate pupil growth from the Development subject to a maximum sum of ONE HUNDRED AND ELEVEN THOUSAND EIGHT HUNDRED AND SIXTY POUNDS AND FIFTY THREE PENCE (£111,860.53) prior to indexation
“Shared Ownership Dwellings”	means dwellings purchased on a shared equity basis whereby not more than 75% and not less than 10% of the equity initially sold to the purchaser by the Affordable Housing Provider with flexibility to increase their degree of ownership if they so wish

“TRO Contribution”	means the sum of TWELVE THOUSAND NINE HUNDRED AND NINETY FIVE POUNDS (£12,995.00) to be paid by the Owner to the County Council (adjusted in accordance with the indexation provisions of the First Schedule hereto) towards the County Council’s costs of seeking a traffic regulation order (TRO) for the reduction and/or relocation of the existing speed limit in order to facilitate the site access arrangements as indicatively shown on Drawing No. A109159-TTE-00-ZZ-DR-H-0004-P07
“Travel Pack”	means a pack of information supplied by the County Council upon payment of the Travel Pack Contribution containing details of local walking and cycling routes, local bus services/stops/timetables, Bus Pass application forms, shops and other local amenities and details of any community transport, car sharing or car club scheme operating in the vicinity of the Application Land
“Travel Pack Contribution”	means the sum of FIFTY TWO POUNDS AND EIGHTY FIVE PENCE (£52.85) per Travel Pack (adjusted in accordance with the indexation provisions of the First Schedule hereto) payable by the Owner to the County Council to enable the County Council to issue a Travel Pack to the first Occupier of each Dwelling subject to a maximum sum of EIGHTEEN THOUSAND ONE HUNDRED AND TWENTY SEVEN

	AND FIFTY FIVE POUNDS prior to indexation
“Travel Plan”	means the travel plan submitted as part of the Application and to be approved as part of the grant of the Planning Permission
“Travel Plan Monitoring Contribution”	means the sum of SIX THOUSAND POUNDS (£6,000.00) payable by the Owner to the County Council towards monitoring the provisions of the Travel Plan
“Valuer”	means a Member or Fellow of Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

- 1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa
- 1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force
- 1.5 Where in this Agreement reference is made to a Clause or Schedule such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of this Agreement
- 1.6 Obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally
- 1.7 Covenants made hereunder:
- 1.7.1 on the part of the Borough Council shall be enforceable against the Borough Council and any statutory successor to it as Local Planning Authority

1.7.2 on the part of the County Council shall be enforceable against the County Council and any statutory successor to it as County Council

1.8 The expressions "the Owner" "the Borough Council" and "the County Council" shall where the context so admits include their respective successors and assigns.

2 GENERAL PROVISIONS

Statutory Authority

2.1 This Agreement and the covenants within it are made pursuant to section 106 of the Act to the extent that they fall within the terms of section 106 of the Act. The obligations contained in this Agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Borough Council and (where the covenant is expressly given to the County Council) by the County Council against the Owner.

2.2 To the extent that any of the obligations in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 (as amended), section 1 of the Localism Act 2011 (as amended) and all other enabling powers.

2.3 The covenants by the Owner contained herein shall be enforceable by the Borough Council as Local Planning Authority and where the covenant is expressly given to the County Council it shall also be enforceable by that authority.

Liability

2.4 The covenants given by the Owner contained herein are made with the intent that the covenants will bind their interest in the Application Land and be binding on and enforceable against their successors in title or assigns and subject to clause 2.5 those deriving title under the Owner PROVIDED THAT without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development where they no longer hold any interest in the Application Land or that part of the Application Land in respect of which the breach occurs save in respect of any prior subsisting breach

2.5 Save in respect of the occupancy and sale restrictions (as appropriate) contained in clauses 3.1, 3.3 and the Third Schedule the covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees (or their mortgagees) of Dwellings on the Application Land constructed pursuant to the Planning Permission having a roof, windows and doors and being in a state of readiness for occupation or against statutory undertakers in relation to any parts of

the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations or any other land acquired for the purpose of their statutory functions or against anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant nor against owners of the On Site Open Space Area (save in respect of the Second Schedule) once transferred to the Borough Council or the Parish Council or to the Management Company pursuant to the provisions of the Second Schedule nor against all those deriving title from any of the aforesaid

- 2.6 In the event that the Owner disposes of its interest in the Application Land or any part thereof (other than a disposal to a purchaser of an individual Dwelling or a disposal to the Borough Council or to an Affordable Housing Provider or to the Parish Council) it shall within twenty-eight (28) days of such disposal give written notice of the name and address of his successors in title (other than those specified in clause 2.5) to the Borough Council and the County Council together with sufficient details of the land included in the disposal to allow its identification
- 2.7 The Chargees hereby consent to the First Owner entering into this Agreement and acknowledge that their interests in the First Owner's Land are bound by the terms hereof PROVIDED THAT the Chargees shall otherwise have no liability for the obligations in this Agreement unless they take possession of any part of the First Owner's Land and continue to allow or permit others to continue with the Development whilst in possession and PROVIDED ALWAYS that the Chargees shall not be liable for any breach of the obligations in this Agreement unless committed at a time when the Chargees are in possession of the First Owner's Land (or any part thereof) to which such obligation(s) relate or for any pre-existing breaches
- 2.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply

Application of this Agreement

- 2.9 In the event that the Borough Council shall at any time hereafter grant a planning permission pursuant to an application under Section 73 of the Act in respect of the conditions relating to the Planning Permission (and for no other purpose whatsoever) references in this Agreement to the Application Planning Permission and the Development shall be deemed to include any such subsequent planning applications

and planning permissions granted as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly so that the planning obligations in this Agreement shall apply to development carried out pursuant to such subsequent planning permissions save where the Borough Council in its consideration of such an application for the new planning permission indicates that consequential amendments are required to this Agreement to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106A of the Act will be required to secure relevant planning obligations relating to the new planning permission

Contingencies

- 2.10 Save for the provisions of clause 2.12 (Commencement of Development) 2.18 (Exclusion of Third Party Rights) clause 2.23 (Jurisdiction) clause 6 (Borough Council legal costs) and clause 11 (County Council legal costs) the obligations contained in this Agreement are dependent on the grant of Planning Permission and the Commencement of Development pursuant thereto
- 2.11 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission prior to the Commencement of Development the obligations under this Agreement shall cease absolutely and the Borough Council shall upon written request to do so procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith

Commencement of Development

- 2.12 The Owner shall give the Head of Planning of the Borough Council fourteen (14) days' notice in advance of the Commencement of Development and shall send a copy of such notice to the Team Manager, Planning Obligations and Systems Team, Planning Historic and Natural Environment Department at the County Council PROVIDED THAT default in giving notice shall not mean that Commencement of Development is deemed not to have occurred for the purposes of this Agreement

Determination by Expert

- 2.13 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner the Borough Council or the County Council (or any of them) concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may

agree or (in default of agreement within twenty (20) working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms

- 2.13.1 The person to be appointed pursuant to this Clause 2.13 shall if possible be a person having ten (10) years or more relevant post qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute
- 2.13.2 The reference to the expert shall be on terms that:
- 2.13.3 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
- 2.13.4 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
- 2.13.5 the expert shall be bound to have regard to the said submissions and representations;
- 2.13.6 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
- 2.13.7 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
- 2.13.8 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner the Borough Council and the County Council save that the parties retain the right to refer to the Courts on a matter of law

Time Periods

- 2.14 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owner and the Borough Council and/or the County Council (as the case may be) SAVE THAT any party to this Agreement who requires time to be of the essence in any period extended shall serve notice on any other relevant party stating that time is of the essence in relation to any time period so extended

Approvals

- 2.15 For the purposes of this Agreement where a party is required to make a request give confirmation approval or consent express satisfaction with agree to vary or to give notice of any matter such request confirmation approval consent expression of satisfaction agreement to vary or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed

Notices

- 2.16 Unless expressed otherwise in this Agreement, the service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing
- 2.17 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting

Exclusion of the Contracts (Rights of Third Parties) Act 1999

- 2.18 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 (as amended) and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein

Void Provisions

- 2.19 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties

No Fetter of Discretion

- 2.20 Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Borough Council and the County Council in their respective rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the Borough Council and/or the County Council were not a party to this Agreement

Effect of any Waiver

- 2.21 No waiver (whether express or implied) by the Borough Council and/or the County Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Borough Council and/or the County Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

General Requirement to Co-operate

- 2.22 Without prejudice to its statutory duties or clause 2.20 the Borough Council the County Council and the Owner shall all act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified

Jurisdiction

- 2.23 This Agreement is governed by and interpreted in accordance with the laws of England

Registration of the Agreement

- 2.24 This Agreement shall be registered as a deed and Local Land Charge in the Register of Local Land Charges by the Borough Council

Certificate of Satisfaction

- 2.25 Any party to this Agreement may make application to the Borough Council and /or County Council for written confirmation to the effect that any of the provisions of this Agreement have been completed and/or satisfied

Mortgagees

- 2.26 No mortgagee of the Application Land (or any part) shall be bound by the obligations in or be liable under this Agreement except as mortgagee in possession and whilst it remains a mortgagee in possession of the Application Land (or any part).

Interest on late payment

- 2.27 If any sum or amount is not paid to the Borough Council or to the County Council by the date it is due the Owner shall pay to the Borough Council or to the County Council as applicable the interest on that amount at the Default Interest Rate such interest shall accrue on a daily basis for the period from the due date to and including the day of payment

THE OWNER'S PLANNING OBLIGATIONS WITH THE BOROUGH COUNCIL

AHP Affordable Dwellings

- 3 The Owner hereby covenants with the Borough Council as follows:

- 3.1 That no Development shall Commence unless and until the Owner shall have submitted in writing to the Borough Council and obtained the written approval of the Borough Council to the Affordable Housing Scheme for the provision of the Affordable Dwellings on the Development

- 3.1.1 To provide the Affordable Dwellings in accordance with the Affordable Housing Scheme or any variations thereto approved in advance in writing by the Borough Council

- 3.1.2 Not to Occupy or to permit the Occupation of more than 60% of the Market Dwellings until the AHP Affordable Dwellings have been constructed ready for Occupation and the freehold interest in them has been transferred to an Affordable Housing Provider

- 3.1.3 Subject to the provisions of this Agreement no Affordable Housing for Rent shall be used for any purpose other than the provision of affordable housing for rent under the Hinckley and Bosworth Choice-Based Lettings Scheme and in accordance with the objectives of the Borough Council's Housing Allocations Policy ("HAP") in force from time to time to persons in need of affordable housing within the borough of Hinckley and Bosworth and being such persons as who satisfy the District connection within the Local Connections criteria as defined in the HAP.

- 3.1.4 PROVIDED THAT if within 56 days of the Affordable Housing Provider notifying the Borough Council in writing of a dwelling becoming vacant no such qualifying person/s can be found to occupy the dwelling the Affordable Housing Provider may let the dwelling to any person/s who satisfy their normal letting criteria

- 3.1.5 Any transfers of Affordable Dwellings shall contain the following provisions:
- a) the grant and reservation by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Dwellings and the remainder of the dwellings constructed or to be constructed as part of the Development
 - b) the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Dwellings within the Development
- 3.1.6 Any transfers of the AHP Affordable Dwellings shall contain provisions to ensure that the AHP Affordable Dwellings shall remain available as Affordable Housing provided that this provision shall not be binding on:
- a) any present or future mortgagee or chargee or manager or receiver of any of the AHP Affordable Dwellings provided they shall have first complied with the Chargee's duty at 3.2
 - b) any person acquiring an interest in an AHP Affordable Dwelling under a statutory right to buy or acquire the said AHP Affordable Dwelling
 - c) a person who has staircased under a shared ownership lease (where appropriate) of an AHP Affordable Dwelling to acquire the freehold of the said AHP Affordable Dwelling or a mortgagee or chargee (or receiver appointed by them) of such an AHP Affordable Dwelling
 - d) any person who is a tenant or leaseholder who has subsequently purchased all the remaining equitable shares in an AHP Dwelling so that the said tenant or leaseholder owns the entire AHP Affordable Dwelling
 - e) any person deriving title from any such person as is mentioned in (a) to (d) (inclusive) above.

3.2 Chargee's Duty

- 3.2.1 The affordable housing provisions in this Agreement shall not be binding on a mortgagee or chargee of the Affordable Housing Provider (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the AHP Affordable Dwellings or any person

deriving such title through such mortgagee or chargee or Receiver
PROVIDED THAT:

- a) such mortgagee chargee or Receiver shall first give written notice to the Borough Council of its intention to dispose of the AHP Affordable Dwellings and shall have used reasonable endeavours over a period of not less than three months from the date of the written notice to complete a disposal of the AHP Affordable Dwellings to another Affordable Housing Provider or to the Borough Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including accrued principal monies, interest and costs and expenses; and
- b) if a binding contract for sale has not been entered into within the 3 month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the AHP Affordable Dwellings free from the provisions of clauses 3.1.3 to 3.1.6 which provisions shall determine absolutely in regard to the relevant AHP Affordable Dwellings

3.3 First Homes

The Owner covenants with the Borough Council to provide the First Homes as set out in the Third Schedule hereof

4 On Site Open Space and Off-Site Sports Provision

4.1 To comply with the provisions of the Second Schedule in respect of the On Site Open Space Areas

4.2 The Owner covenants with the Borough Council to pay the Off Site Sports Contribution as follows:

4.2.1 not to Occupy or to permit the Occupation of any Dwelling until the Owner shall have paid to the Borough Council the Provision Sum referred to in the definition of Off Site Sports Contribution herein

4.2.2 not to Occupy or to permit the Occupation of 75% of the Dwelling until the Owner has paid to the Borough Council the Maintenance Sum referred to in the definition of Off Site Sports Contribution herein

5 Healthcare Contribution

To pay to the Borough Council the Healthcare Contribution prior to the Commencement of Development

6 Legal Costs and Monitoring Fees

- 6.1 The First Owner will pay the Borough Council's legal costs of Two Thousand Two Hundred Pounds (£2,200.00) in respect of the preparation of this Agreement on its execution
- 6.2 The Owner will pay the Borough Council the Borough Council Monitoring Costs Contribution prior to the Commencement of Development and any Site Inspection fee or Approval of document fee at the time of seeking an inspection or submitting a document for approval.

THE OWNER'S PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

The Owner covenants with the County Council:

7 Education Contribution

To pay the Education Contribution to the County Council in the following instalments:

- The first 10% prior to the first Occupation of the first Dwelling; and
- 45% prior to the first Occupation of 50% of the Dwellings
- The remaining 45% prior to the first Occupation of 75% of the Dwellings

8 Highway and Transport Contributions

- 8.1 To pay to the County Council the Travel Pack Contribution prior to the first Occupation of the first Dwelling
- 8.2 Subject to the provisions of paragraph 8.3 below to pay 25% of the Bus Pass Contribution prior to the first Occupation of the first Dwelling and subject to the first payment having been spent or is about to be spent to pay a further 25% prior to the Occupation of 25% of the Dwellings with the remaining 50% of the Buss Pass Contributions to be paid prior to the Occupation of 50% of the Dwellings EXCEPT THAT the County Council and the Owner may by agreement defer the payment of all or part of the remaining 50% to a later date and will do where it is clear that the first and second payment (if paid) will not be spent on the intended purpose SAVE THAT the obligation to make the Bus Pass Contribution shall apply up until nine (9) months after the first Occupation of the final Dwelling at which point the Owner shall no longer be obligated to comply with the provisions of this clause 8.2.
- 8.3 The Owner and the Borough Council in consultation with the County Council are to agree the terms of a public transport strategy that will determine public transport

measures to be implemented to serve the Development and reduce reliance on the use of private cars. The terms of the public transport strategy may impact directly on bus services that will serve the Development and the feasibility or suitability of providing bus passes to residents of the Development. In light of the agreed public transport strategy the parties may agree alternative measures that may replace or reduce the Bus Pass Contribution.

8.4 To pay 50% of the MOVA Re-validation Contribution to the County Council prior to first Occupation of the first Dwelling and the remaining 50% of the MOVA Re-validation Contribution prior to first Occupation of the final Dwelling

8.5 To pay the Travel Plan Monitoring Contribution to the County Council prior to first Occupation of the first Dwelling.

8.6 To pay the TRO Contribution to the County Council prior to first Occupation of the first Dwelling

9 Civic Amenity Contribution

To pay to the County Council the Civic Amenity Contribution prior to first Occupation of 25% of the Dwellings

10 Library Contribution

To pay to the County Council the Library Contribution prior to first Occupation of 25% of the Dwellings

11 County Council Legal Fees

The First Owner will pay the County Council's reasonable legal costs in respect of the preparation of this Agreement on its execution in the sum of ONE THOUSAND NINE HUNDRED POUNDS (£1,900.00)

12 County Council Monitoring Costs Contribution

To pay the County Council Monitoring Costs Contribution prior to the first Occupation of the first Dwelling

BOROUGH COUNCIL COVENANTS

13 Health Care Contribution

The Borough Council covenants as follows;

The Borough Council covenants with the Owner to pay the Healthcare Contribution to the Health Care Body upon receipt of the contribution from the Owner but on condition that they have first obtained a document from the Health Care Body (addressed and supplied to both the Borough Council and the Owner) confirming that it will apply the Healthcare Contribution for the purposes of providing additional health care services and/or facilities at Burbage Surgery or Station View Health Centre and for no other purposes whatsoever and that should it not spend the Healthcare Contribution within 5 years of receipt of the contribution by the Borough Council or fail to provide evidence of such expenditure to the Owner when requested at the end of the 5 year period then it shall repay to the Owner the Healthcare Contribution or so much of it as remains unspent for the purposes specified at the end of the 5 year period) together with any interest that has accrued thereon PROVIDED ALWAYS that the Borough Council shall be under no obligation to the Owner to ensure that the Healthcare Contribution is so applied by the Health Care Body and shall be deemed to have discharged its obligation under this Agreement to the Owner in respect of the Healthcare Contribution upon payment of the Healthcare Contribution to the Health Care Body and receipt by both the Owner and the Borough Council of the document herein specified save that the Borough Council will be obliged to return the Healthcare Contribution to the Owner immediately on the expiry of the period of 5 years if the Health Care Body has not sought payment of the Healthcare Contribution or has failed to supply the document herein specified if a request has been made.

14 Off Site Sports Contribution

The Borough Council covenants with the Owner as follows:

- i. to apply the Off Site Sports Contribution solely towards the stated purpose and for no other purpose whatsoever and
- ii. If the Provision Sum has not been expended for the specified purposes within the period of five years from the date of payment of the same to the Borough Council to repay to the person who paid the Provision Sum on written demand thereafter such part of the Provision Sum as has not been so expended and
- iii. if the Maintenance Sum has not been expended for the specified purposes within fifteen years from the date of payment of the same to the Borough Council to repay to the person who paid the Maintenance Sum on written demand thereafter such part of the Maintenance Sum as has not been so expended

15 Information regarding Expenditure

The Borough Council will provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the Borough Council under this Agreement for the purposes herein specified.

16 COUNTY COUNCIL COVENANTS

- 16.1 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree and in the case of the Travel Pack Contribution and the Bus Pass Contribution the same shall be spent on Travel Packs and Bus Passes respectively which may only be supplied on the same basis as the Owner would have been required to supply the same
- 16.2 The County Council covenants with the Owner that upon the receipt of a written request from the Owner or whoever shall have paid the monies it will repay to the Owner such amount of any payment made to the County Council under this Agreement which has not been expended or contractually committed for expenditure in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the County Council of such payment (or in the case of payments being staged the date shall only run from the receipt of the final staged payment) together with interest (if any has accrued) in the period from the date of receipt to the date of repayment **SAVE FOR** the Bus Pass Contribution (if applicable) whereby at the end of a period of nine (9) months after the notification of the first Occupation of the final Dwelling to be constructed pursuant to the Planning Permission the County Council will repay to the Owner or whoever shall have paid the monies together with interest (if any has accrued) such remaining balance of the Bus Pass Contribution
- 16.3 The County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Agreement for the purposes herein specified

THE FIRST SCHEDULE

Indexation Provisions

1. In this Schedule:-

"Index" means	the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an arbitrator appointed by the President of the RICS the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate most closely with the Index as specified herein
"Base Index Date"	means the date of the grant of the Planning Permission except in relation to the Education Contribution in respect of which it shall mean 1 July 2021.
"Base Index Figure"	means the figure published in respect of the Index immediately prior to the Base Index Date
"Final Index Figure"	means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the Contribution/s are/is paid

2. The Contribution/s shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Varied Sum} = \frac{A \times C}{B}$$

B

Where:

"A" equals the Contribution/s or part due where payable in instalments

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any increase in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the

Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

THE SECOND SCHEDULE

OPEN SPACE LAND

On Site Open Space Area

- 1.1 The Owner covenants with the Borough Council in respect of the On Site Open Space Area as follows:
 - 1.1.1 To submit the On Site Open Space Area Scheme to the Borough Council for written approval prior to the Commencement of Development
 - 1.1.2 Not more than 75% of the Dwellings shall be Occupied or permitted to be Occupied on any phase until the On Site Open Space Area for that phase has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Area Scheme
 - 1.1.3 Following the laying out of the On Site Open Space Area for any phase in accordance with the On Site Open Space Area Scheme the Owner shall serve written notice of practical completion of the On Site Open Space Area for that phase on the Borough Council ("the Notice of Practical Completion")
 - 1.1.4 To maintain the On Site Open Space Area within any phase for a period of 12 months after Notice of Practical Completion of the On Site Open Space Area for that phase is served on the Borough Council in accordance with the provisions of the approved On Site Open Space Scheme and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the Borough Council
 - 1.1.5 At the end of the maintenance period referred to in clause 1.1.4 to serve written notice on the Borough Council confirming whether the Owner wishes to maintain the On Site Open Space Area or whether the Owner intends to transfer the On Site Open Space Area to a management company
 - 1.1.6 The Owner shall within 56 days of the service of the notice pursuant to clause 1.1.5 hereof submit the On Site Open Space Area Maintenance Scheme to the Borough Council for approval (such approval not to be unreasonably withheld or delayed) and shall maintain the On Site Open Space Area in accordance

with the On Site Open Space Area Maintenance Scheme

1.1.7

In the event that the Owner elects to transfer the On Site Open Space Area to a management company the Owner shall within 56 days of the service of the notice pursuant to clause 1.1.5 hereof submit to the Borough Council for approval (such approval not to be unreasonably withheld or delayed) proposals for the management company which is to take a transfer of the on Site Open Space Area and shall continue to maintain the On Site Open Space area in accordance with the On Site Open Space Area Maintenance Scheme until such time that the Borough Council is satisfied that:

- a) the management company has been incorporated and is functioning and there is an obligation on the management company to maintain the On Site Open Space Area in accordance with the maintenance provisions of the On Site Open Space Maintenance Scheme, and
- b) the On Site Open Space Area has been transferred to the management company on the terms set out in the Second Schedule hereto

THE THIRD SCHEDULE

FIRST HOMES

1 OBLIGATIONS

Unless otherwise agreed in writing by the Borough Council, the First Owner and the Second Owner for and on behalf of themselves and their successors in title to the Application Land with the intention that the following provisions shall bind the Application Land and every part of it into whosoever's hands it may come covenant with the Borough Council as below save that

- 1.1 paragraphs 2, 3, 4 and 5 shall not apply to a First Homes Owner;
- 1.2 paragraphs 6 and 7 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
- 1.3 Paragraph 8 applies as set out therein.

2 QUANTUM OF FIRST HOMES

25% of the Affordable Dwellings on the Application Land (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3 APPEARANCE AND SPECIFICATION

- 3.1 The First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance;
- 3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

4. TYPE AND DISTRIBUTION

The mix of First Homes provided within the Application Land shall be in accordance with the Affordable Housing Scheme

5 DEVELOPMENT STANDARD

All First Homes shall be constructed to no less than the standard applied to the Market Dwellings.

6. DELIVERY MECHANISM

6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting the Eligibility Criteria (National));

6.2 Subject to paragraphs 6.5 to 6.9, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

6.3 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.3.1 The Borough Council has been provided with evidence that:

6.3.1.1 the intended purchaser meets the Eligibility Criteria (National)

6.3.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.3.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Hinckley and Bosworth Borough Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clause 3.1.12 and the Third Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the First Owner (2) the Second Owner (3) the Borough Council (4) the County Council and (5) the Developer

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

6.3.2 The Borough Council has issued the Compliance Certificate and the Borough Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.2 and 6.3.1 have been met

6.4 On the first Disposal of each and every First Home to apply to the Chief Land Registrar and to contemporaneously send a copy of the application to the Borough Council pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

6.5 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the Borough Council to Dispose of it other than as a First Home on the grounds that either:

6.5.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraphs 6.1 of this Schedule and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3; or

6.5.2 requires the First Homes Owner to undertake active marketing for the period specified in paragraph 6.5.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

6.6 Upon receipt of an application served in accordance with paragraph 6.5 the Borough Council shall have the right (but shall not be required) to direct that the relevant

Dwelling is disposed of to it at the Discount Market Price subject to completion of the transfer to the Borough Council being completed within 4 calendar months

- 6.7 If the Borough Council is satisfied that either of the grounds in paragraph 6.5 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.5 that the relevant Dwelling may be Disposed of:

6.7.1 to the Borough Council at the Discount Market Price; or

6.7.2 (if the Borough Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.9 which shall cease to apply on receipt of payment by the Borough Council where the relevant Dwelling is disposed of other than as a First Home

- 6.8 If the Borough Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.5 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.5 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Borough Council in accordance with paragraph 6.5 following which the Borough Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

- 6.9 Where a Dwelling is Disposed of other than as a First Home or to the Borough Council at the Discount Market Price in accordance with paragraphs 6.7 or 6.8 above the Owner of the First Home shall pay to the Borough Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

- 6.10 Upon receipt of the Additional First Homes Contribution the Borough Council shall:

6.10.1 within 14 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.4 where such restriction has previously been registered against the relevant title

6.10.2 apply all monies received towards the provision of Affordable Housing

- 6.11 Any person who purchases a First Home free of the restrictions in the Third Schedule of this Agreement pursuant to the provisions in paragraphs 6.8 and 6.9 shall not be liable to pay the Additional First Homes Contribution to the Borough Council.

7 USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement save in respect of an Exempt Disposal PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

- 7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Borough Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Borough Council and the Borough Council consents in writing to the proposed letting or sub-letting. The Borough Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

- 7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

8 MORTGAGEE EXCLUSION

The obligations in paragraphs 1-7 of this Schedule in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 8.1 such Mortgagee or Receiver shall first give written notice to the Borough Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Borough Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3
- 8.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Borough Council the Additional First Homes Contribution within twenty eight (28) days of such Disposal
- 8.4 following receipt of notification of the Disposal of the relevant First Home the Borough Council shall:
- 8.4.1 within 14 days issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
- 8.4.2 apply all such monies received towards the provision of Affordable Housing

9 EXEMPT DISPOSALS

For the avoidance of doubt the restrictions on the use, occupation and sale of the First Homes contained in this Schedule shall not apply to any person who has acquired a First Home pursuant to an Exempt Disposal.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the date first above written

THE COMMON SEAL OF JELSON LIMITED

was hereunto affixed in the presence of:

Director

[Signature]

Director/Secretary

[Signature]



EXECUTED as a DEED by

KEITH WILLIAM BAILEY

K. W. Bailey

in the presence of:

Witness

[Signature]

Name

RAULF

Address

12 MAIN STREET - BARTON IN THE DEAN

Occupation

CHARTERED SURVEYOR

EXECUTED as a DEED by

DAVID JOHN BAILEY

D. J. Bailey

in the presence of:

Witness

[Signature]

Name

RAULF

Address

12 MAIN STREET - BARTON IN THE DEAN

Occupation

CHARTERED SURVEYOR

EXECUTED as a DEED by

LEONARD COOPER BAILEY



in the presence of:

Witness 

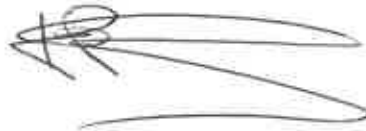
Name **R NEWBY**

Address **12 MAIN STREET - BARTON IN THE ROAD**

Occupation **CHARTERED SURVEYOR.**

EXECUTED as a DEED by

FE DOWNES (HOMES) LIMITED



Acting by a Director in the presence of:

Witness 

Name **JASON H. STEANS**

Address **8 BURDALE RD, HINCKLEY, LE10 2TP**

Occupation **MORTGAGE BROKER**

EXECUTED as a DEED by

HANA GROVE



in the presence of:

Witness 

Name **Joshua Sinnott**

Address **Hollybush, Alveston, CV377QZ**

Occupation **Managing Director, Rainier Developments Ltd**

THE COMMON SEAL OF HINCKLEY & BOSWORTH

BOROUGH COUNCIL was hereunto affixed in the presence of:

Unstayed

Authorised Signatory



12896.

THE COMMON SEAL of LEICESTERSHIRE COUNTY

COUNCIL was hereunto affixed in the presence of:

M. J. O'Malley

Authorised Signatory



41508(a)