

DATED _____ **2025**

(1) DAVIDSONS DEVELOPMENTS LIMITED

and

(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL

and

(3) LEICESTERSHIRE COUNTY COUNCIL

PLANNING AGREEMENT

Section 106 of the Town and Country Planning Act 1990
relating to proposed residential development on Land north of
Deepdale Farm, Lutterworth Road, Burbage

(Application number: 24/00139/FUL)

THIS AGREEMENT by way of Deed is made the day of Two
Thousand and Twenty Five

BETWEEN:

1. **DAVIDSONS DEVELOPMENTS LIMITED** (Co. Reg. No 04346861)
whose registered office is situated at Unit R, Ivanhoe Park Way,
Ashby-De-La-Zouch, LE65 2AB ("the Owner")
2. **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of The Hub,
Hawley Road, Hinckley, LE10 0FR ("the Borough Council")
3. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield,
Leicester, LE3 8RA ("the County Council")

RECITALS:

- A. 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
- B. The Borough Council and the County Council are both Principal
Councils within the meaning of the Local Government Act 1972 (as
amended) and the obligations contained herein are enforceable by the
Borough Council and the County Council in respect of obligations given
to each of them
- C. The County Council is the Local Highway Authority and is responsible
for the provision of education, waste management facilities and library
services for the area in which the Application Land is situated
- D. The Owner is the freehold owner of the Application Land which forms
part of land registered at HM Land Registry with title absolute under title
number LT539424
- E. The Borough Council has resolved to grant the Planning Permission
subject to conditions and the Owner entering into this Agreement to
secure the planning obligations contained herein

OPERATIVE PROVISIONS:

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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)
"Affordable Dwellings"	means 5 of the Dwellings to be constructed as part of the Development on the Application Land and provided in accordance with the provisions of this Deed and shall comprise 2 x 1 bedroom house; 2 x 2 bedroom house and 1 x 3 bedroom house save unless otherwise expressly agreed by the Council
"Affordable Housing Contribution"	means a contribution of Two Hundred and Fifteen Thousand Eight Hundred and Forty Two Pounds (£215,842.00) adjusted in accordance with the provisions contained in the Schedule payable by the Owner to the Council paid by the Owner to the Council in lieu of the provision of Affordable Housing on the Application Land for use by the Borough Council within its administrative area for purposes including; a. The construction of new affordable housing units by the Borough Council b. The acquisition of existing buildings which satisfy the definition of affordable housing

	c. For increasing the provision of affordable housing on an alternative scheme d. For supporting schemes where affordable housing would not otherwise be viable e. For increasing the number of family units for affordable housing in a scheme f. For regeneration projects which include affordable housing and which will contribute to the creation of mixed communities
"Affordable Housing"	has the meaning given to it in Annex 2 of the NPPF or any successor provisions which may be introduced from time to time including for the avoidance of doubt changes in policy or legislative changes
"Affordable Housing Plan"	means the drawing appended hereto titled "HA Tenure Plan" with drawing reference number BURB_150 showing the Affordable Housing which are Affordable Housing Rent and which are Shared Ownership Dwelling unless such alternative plan is agreed between in writing between the Borough Council and the Owner
"Affordable Housing Provider"	means either:

	i) a provider of Affordable Housing who is registered with the 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 Rented Dwellings" and "Affordable Housing for Rent"	has the same meaning as the definition as Affordable housing for rent set out in Annex 2 of the NPPF
"Application Land"	means the land edged red on the Plan and forming part of title number LT539424
"Biodiversity Gain Scheme"	means a scheme to be submitted to and approved in writing by the Borough Council that sets out the proposals whether on or off the Application Land or and taking whatever form the Owner and the Borough Council shall reasonably agree for the purpose of providing biodiversity gains to off-set the biodiversity impact of the Development including (but not limited to) details of long-term habitat management and maintenance of informal open space on the Application Land together with areas

	beyond the Application Land (including translocation sites) that will be used for agreed biodiversity offsetting in order to achieve the biodiversity net gain agreed and (and may include the purchasing of credits)
"Borough Council Monitoring Costs Contribution"	means a contribution in the sum of £419 per contribution / obligation Index Linked towards the costs of monitoring the contributions and obligations as detailed within the legal agreement
"Bus Pass(es)"	means up to two (2) adult bus passes per Dwelling entitling the holder of each bus pass to travel free of charge on local bus services over a period of six (6) months from the date of issue
"Bus Pass Contribution"	means the sum of Twenty Three Thousand Four Hundred and Sixty Pounds (£23,460) (representing the sum of One Thousand and Twenty Pounds (£1,020) per Dwelling for two (2) Bus Passes (at a cost of Five Hundred and Ten Pounds (£510) per Bus Pass)) adjusted in accordance with the provisions contained in the Schedule payable by the Owner to the County Council towards the provision of Bus Passes

"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 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 associated with the Development vi. construction of site compounds boundary fencing or hoardings vii. construction of access or highway works or provision of services (including drainage and media)
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	viii. any other preparatory works agreed in writing with the Borough Council
"County Council Monitoring Costs Contribution"	means the sum of Three Hundred Pounds (£300.00) or 0.5% of the value of the contribution (whichever is the greater) in respect of each contribution payable to the County Council towards its costs of monitoring compliance with the obligations contained in this Agreement
"Development"	means the development described in the Planning Application and to be carried out pursuant to the Planning Permission
"Dwelling"	means a dwelling built pursuant to the Planning Permission
Document Review Fee	means £327 per document submitted for approval of a Management Company document and/or a Management and Maintenance Schedule for the Chateaux open spaces
"Health Care Provider"	means NHS Leicester, Leicestershire and Rutland Integrated Care Board
"Health Facilities Contribution"	means the sum of Seventeen Thousand Eight and Eleven Pounds and Twenty Pence (£17,811.20) adjusted in accordance with the Schedule to be paid by the Owner to the Borough Council towards the improvement of facilities at

	Burbage Surgery and/or Station View Health Centre.
"Hinckley and Bosworth Housing Allocations Policy" (HAP)	means the Policy used by Hinckley and Bosworth Borough Council to assess a local connection as set out in the Policy
"Library Contribution"	means the sum of Six Hundred and Sixty Four Pounds and Thirty Five Pence (£664.35) adjusted in accordance with the provisions contained in the Schedule to be paid by the Owner to the County Council towards the provision of improvements 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 to account for additional usage of the venue arising from an increase in members to the library as a result of the Development
"Market Dwelling"	means any Dwelling constructed as part of the Development for sale in arms length transactions on the open market which is not an Affordable Dwelling
"NPPF"	means the National Planning Policy Framework (December 2024) or any successor document thereto

"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 Dwellings for the marketing of the Development; or (iii) the storage of plant and materials and "Occupy" "Occupier(s)" and "Occupied" shall be construed accordingly
"Off-site Outdoor Sports Maintenance Contribution"	means the sum of Three Thousand Seven Hundred and Ninety Seven Pounds and Seventy Six Pence (£3,797.76) payable by the Owner to the Borough Council and adjusted in accordance with the provisions of the Schedule hereto towards the maintenance of the Outdoor Sports Facilities
"Off-site Outdoor Sports Provision Contribution"	means the sum of Seven Thousand Nine Hundred and Ninety Two Pounds and Ninety Six Pence (£7,992.96) payable by the Owner to the Borough Council and adjusted in accordance with the provisions of the Schedule hereto towards the provision and/or improvement of outdoor sports facilities within 1 kilometre

	of the Application Land ("the Outdoor Sports Facilities")
"Open Space"	means the area of open space that falls within the Application Land (or such other area of open space as may be submitted to and approved in writing by the Borough Council)
"Open Space Plan"	means the plan attached to this Agreement as drawing number 1186_POS and marked POS Breakdown or such other drawing as may be submitted to and approved in writing by the Borough Council
Open Space Scheme	means the scheme for the provision and laying out of the Open Space to be submitted by the Owner to the Borough Council
"Plan"	means the plan attached to this Agreement which shows the Application Land edged red
"Planning Application"	means the Planning Application submitted to the Borough Council and allocated reference number 24/00139/FUL for the erection of 23 dwellings and associated infrastructure on land north of Deepdale Farm, Lutterworth Road, Burbage, Leicestershire

"Planning Permission"	means the full planning permission to be granted by the Borough Council pursuant to the Planning Application
<u>"Play Space Scheme"</u>	<u>means a scheme to secure the provision of play space consisting of a minimum value of play equipment of Fifteen Thousand and Sixty Three Pounds and Eighty Pence (£15,063.80) (and the Owner shall not be obliged to provide play equipment in excess of this sum) within one of the areas shown hatched as the equipped children's play space on the Open Space Plan (or such other area as may be submitted to and approved in writing by the Borough Council)</u>
"Post 16 Education Contribution"	means the sum of Thirteen Thousand Three Hundred and Ninety Three Pounds and Sixty One Pence (£13,393.61) adjusted in accordance with the provisions contained in the Schedule to be paid by the Owner to the County Council towards the improvement, remodelling or enhancement of educational facilities at the Hinckley School or any successor school or any other school within the locality of the Development, including the construction of a new school, as will provide additional post 16 education

	places to accommodate pupil growth from the Development
"Primary Education Contribution"	means the sum of Sixty Five Thousand Nine Hundred and Sixteen Pounds and Forty Pence (£65,916.40) adjusted in accordance with the provisions contained in the Schedule to be paid by the Owner to the County Council towards the improvement, remodelling or enhancement of educational facilities at Burbage Junior School or any successor school or any other school within the locality of the Development, including the construction of a new school, as will provide additional primary places to accommodate pupil growth from the Development
"Secondary Education Contribution"	means the sum of Sixty Two Thousand Six Hundred and Ninety One Pounds and Thirteen Pence (£62,691.13) adjusted in accordance with the provisions contained in the Schedule to be paid by the Owner to the County Council towards the improvement, remodelling or enhancement of educational facilities at Hastings High School or any successor school or any other school within the

	locality of the Development, including the construction of a new school, as will provide additional secondary places to accommodate pupil growth from the Development
"Shared Ownership Dwellings"	means dwellings purchased on a shared equity basis whereby not more than 75% and not less than 25% 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
Site Inspection Fee	means a £219 per pre-arranged inspection for onsite open space areas within the Application Land.
"Travel Pack"	means a pack of information provided/approved by the County Council to be supplied to each Dwelling by the Owner (or by the County Council if the Owner elects to pay the Travel Pack Contribution) containing Bus Pass application forms, and details of walking, cycling and public transport, local amenities, shops and details of any community transport or car sharing or car club schemes operating in the vicinity of the Application Land and for the

	avoidance of doubt a Travel Pack will only be provided to the first Occupier of any Dwelling and does not relate to subsequent Occupiers of any Dwelling
"Travel Pack Contribution"	means the sum of One Thousand Two Hundred and Fifteen Pounds and Fifty Five Pence (£1,215.55) (representing a cost of Fifty Two Pounds and Eighty Five Pence (£52.85) per Dwelling) adjusted in accordance with the provisions contained in the Schedule to be paid by the Owner to the County Council towards the provision of Travel Packs
"Waste Management Contribution"	means the sum of One Thousand One Hundred and Thirty Nine Pounds and Nineteen Pence (£1,139.19) adjusted in accordance with the Schedule to be paid by the Owner to the County Council towards site reconfiguration and/or development of waste infrastructure to increase the capacity for the Barwell Household Waste Recycling Centre ("HWRC") or any other HWRC directly impacted by the Development
"Working Day"	means any day except any Saturday or Sunday or any other day on which banks in the City of London are not open to the general public and "Working Days" shall be construed accordingly

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, Schedule or Plan such reference (unless the context otherwise requires) is a reference to a Clause, Schedule of this Agreement or in the case of a Plan is the plan attached to 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 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 expression "the Owner" shall where the context so admits include their respective successors and assigns

2. GENERAL PROVISIONS

Statutory Authority

2.1 This Agreement and each of the covenants given by the Owner contained herein is a planning obligation and is made pursuant to Section 106 of the Act

2.2 The covenants by the Owner contained herein shall be enforceable by either or both the County Council and the Borough Council except

where the obligation is expressed as a covenant made solely with the County Council or the Borough Council in which case such obligation shall be enforceable only by that authority

- 2.3 This Agreement is a local land charge and shall be registered as such by the Borough Council

Liability

- 2.4 The covenants given by the Owner contained herein are made with the intent that the covenants will bind the Application Land and be enforceable against its successors in title or assignees and subject to clause 2.6 those deriving title respectively 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 on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach
- 2.5 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) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply
- 2.6 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Application Land 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 against anyone whose only interest in the Land or any part of it is in the nature of the benefit of an easement or covenant
- 2.7 In the event that the Owner disposes of his/her interest in the Application Land or any part thereof (other than a disposal to a

purchaser of a Dwelling or any disposal of any statutory utilities for operational purposes) it shall within twenty-eight (28) days of such disposal give written notice of the name and address of its successors in title to the Borough Council and the County Council together with sufficient details of the land included in the disposal to allow its identification

Contingencies

- 2.8 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
- 2.9 Save for the provisions of this clause and clause 2.12 (Commencement of Development), clause 2.18 (Exclusion of Third Party Rights), clause 2.24 (Jurisdiction), clause 3.6 (Borough Council's legal costs), clause 4.5 (Travel Packs) and clause 4.15 (County Council's legal costs) which shall come into effect on the date hereof this Agreement is conditional upon: a) the grant of the Planning Permission; and b) Commencement of Development
- 2.10 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 immediately upon written demand procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith

Commencement of Development

2.11 The Owner shall give to the Planning Manager at the Borough Council seven (7) 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 and Historic and Natural Environment Department of the County Council and the date on which Commencement of Development has taken place shall be confirmed by the Owner in writing and notified to the Borough Council and the County Council who will confirm by return in writing PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring

Determination by Expert

2.12 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 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:

- 2.13.2.1 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;
- 2.13.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
- 2.13.2.3 the expert shall be bound to have regard to the said submissions and representations;
- 2.13.2.4 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;
- 2.13.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
- 2.13.2.6 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

- 2.13 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 reasonably 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

- 2.14 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

2.15 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 and in the case of the County Council shall be sent to the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment Department

2.16 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 Working Day following the date of posting and in the case of the County Council must be marked for the attention of the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment Department

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

2.17 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 Agreement 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 contained

No Fetter of Discretion

- 2.18 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

- 2.19 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

- 2.20 Without prejudice to its statutory duties 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

Section 73

- 2.21 If the Borough Council agree pursuant to an application under section 73 of the Act to any variation or release of any condition contained in the Planning Permission the covenants and provisions of this Agreement shall be deemed to bind the new permission and to apply in equal terms to the new planning permission. This provision shall not apply however where the Borough Council indicate that 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 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission

Future Chargees

- 2.22 Any future mortgagee or proprietor of a financial charge shall have no liability under this Agreement nor incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Application Land or appoints a receiver or administrative receiver under a security in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

Jurisdiction

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

3. THE OWNER'S PLANNING OBLIGATIONS WITH THE BOROUGH COUNCIL

Affordable Housing

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

~~3.1.1 To construct or procure the construction of the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Plan or any variations thereto approved in advance in writing by the Borough Council~~

~~3.1.2 The Owner shall use reasonable endeavours to enter into a sale and purchase agreement with a Registered Provider for all of the Affordable Dwellings prior to Occupation of 50% of the Market Dwellings and shall provide the Council with details of the Registered Provider~~

~~3.1.3 Not to Occupy or to permit the Occupation of more than 80% of the Market Dwellings until the Affordable Dwellings have been constructed ready for Occupation and the freehold interest in them has been transferred to an Affordable Housing Provider save unless any of the~~

~~Affordable Dwellings may be transferred directly to an individual purchaser when the relevant Affordable Dwelling shall be completed and being actively marketed for sale~~

~~3.1.4 Any transfers under clauses 3.1.2 and 3.1.3 shall contain the following provisions:~~

~~3.1.4.1 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~~

~~3.1.1 3.1.4.2 the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any of the Dwellings within the Development~~

~~3.1.5 Subject to the provisions of this Agreement no Affordable Rented Dwellings 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 shall be agreed between the Borough Council and the Affordable Housing Provider who satisfy the District connection within the Local Connections criteria as defined in the HAP PROVIDED THAT if within 28 days of the Affordable Housing Provider notifying the Borough Council in writing of a dwelling becoming vacant for rent 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~~

~~3.1.6 To ensure that the Affordable Dwellings shall not be used other than for Affordable Housing provided that this Deed shall not be binding on:~~

~~3.1.6.1 A mortgagee or chargee 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~~

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~~(howsoever appointed) including a housing administrator (each a receiver) of the whole or part of the Affordable Dwellings or any person or bodies deriving title through such mortgagee or chargee or receiver
PROVIDED THAT~~

~~3.1.6.1.1 — Such mortgagee or chargee or receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the 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 all accrued principal monies interest and costs and expenses, and~~

~~3.1.6.1.2 — If such disposal is not completed within the three-month period the mortgagee chargee or receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this Agreement which shall determine absolutely.~~

~~3.1.6.2 any person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire the said Affordable Dwelling~~

~~3.1.6.3 a lessee under a shared ownership lease (if any) of an Affordable Dwelling or a mortgagee or chargee of a shared ownership lease granted in respect of an Affordable Dwelling~~

~~3.1.6.4 a person who has staircased under a shared ownership lease (if any) of an Affordable Dwelling to acquire the freehold of the said Affordable Dwelling or a mortgagee or chargee of such an Affordable Dwelling~~

~~3.1.6.5 any person deriving title from any such person as is mentioned in 3.1.6.2 to 3.1.6.5 above~~

~~3.1.7 — In the event that the Owner despite using reasonable endeavours for a period of six weeks (or shorter period if approved in writing by the Council) has been unable to enter into a sale and purchase agreement with a Registered~~

~~Provider for all or any of the Affordable Dwellings then at that point all of the obligations at 3.1.1 — 3.1.6.5 above shall fall away (such that the Affordable Dwellings can be sold as Market Dwellings free from all affordable housing controls) and instead clauses 3.1.8 and 3.1.9 shall apply~~

- 3.1.8 Not to Occupy more than 50% of the Dwellings unless and until 50% of the Affordable Housing Contribution has been paid to the Borough Council.
- 3.1.9 Not to Occupy more than 80% of the Dwellings unless and until the remaining 50% of the Affordable Housing Contribution has been paid to the Borough Council

Off-site Outdoor Sports Provision Contribution and the Off-site Outdoor Sports Maintenance Contribution

- 3.2 Not to Occupy or to permit the Occupation of any Dwelling unless and until the Owner shall have paid to the Borough Council the Off-site Outdoor Sports Provision Contribution and the Off-site Outdoor Sports Maintenance Contribution

Health Facilities Contribution

- 3.3 Not to Occupy or to permit the Occupation of any Dwelling unless and until the Owner shall paid to the Borough Council the Health Facilities Contribution

Biodiversity Gain Scheme

- 3.4 The Owner shall not Occupy or permit the Occupation of any Dwelling until they have submitted to and received written approval from the Borough Council to the Biodiversity Gain Scheme
- 3.5 The Owner will thereafter implement the approved Biodiversity Gain Scheme in accordance with its terms including any timetable for implementation of the same.

Open Space

- 3.6 The Owner shall submit the Open Space Scheme to the Borough Council for written approval and to obtain the written approval of the Borough Council prior to the Commencement of Development
- 3.7 The Owner shall submit the Play Space Scheme to the Borough Council for written approval and shall obtain the written approval of the Borough Council prior to the Occupation of the Development. The approved Play Space Scheme shall be implemented prior to Occupation of 70% of the Dwellings.
- 3.8 Not more than 70% of the Dwellings shall be Occupied or permitted to be Occupied until the Open Space has been laid and made available for use by the residents of the Development in accordance with the Open Space Scheme
- 3.9 The Owner shall within 56 days of Occupation of the first Dwelling 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 Open Space (where known) and shall continue to maintain the Open Space in accordance with the maintenance provisions of the Open Space Maintenance Scheme until such time as the Borough Council is satisfied that:
- 3.9.1 the management company has been incorporated or appointed and is functioning and there is an obligation on the management company to maintain the Open Space in accordance with the maintenance provisions of the Open Space Maintenance Scheme, and
- 3.9.2 the Open Space has been transferred to the management company on the terms set out in Second Schedule hereto

Borough Council's Legal Costs

- 3.10 The Owner covenants to pay the Borough Council's legal costs in the sum of Three Thousand Pounds **£3000.00** on the execution of this Agreement

~~3.11~~ 3.11 The Owner covenants to pay the Borough Council the Borough Council Monitoring Costs Contribution prior to the Commencement of Development and any Site Inspection Fee or Document Review Fee at the time of seeking an inspection or submitting a document for approval.

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4. THE OWNER'S PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

Education Contributions

- 4.1 The Owner covenants with the County Council to pay the Post 16 Education Contribution to the County Council as follows:
- 4.1.1 50% prior to the first Occupation of the first Dwelling; and
- 4.1.2 The remaining 50% prior to the first Occupation of 50% of the Dwellings
- 4.2 The Owner covenants with the County Council to pay the Primary Education Contribution to the County Council as follows:
- 4.2.1 50% prior to the first Occupation of the first Dwelling; and
- 4.2.2 The remaining 50% prior to the first Occupation of 50% of the Dwellings
- 4.3 The Owner covenants with the County Council to pay the Secondary Education Contribution to the County Council as follows:
- 4.3.1 50% prior to the first Occupation of the first Dwelling; and
- 4.3.2 The remaining 50% prior to the first Occupation of 50% of the Dwellings

Library Contribution

- 4.4 The Owner covenants with the County Council to pay the Library Contribution to the County Council prior to the first Occupation of the

first Dwelling

Travel Pack and Bus Pass

- 4.5 The Owner covenants with the County Council that it shall elect in writing to the County Council prior to Commencement of Development to EITHER:
- 4.5.1 Pay the Travel Pack Contribution to the County Council prior to the first Occupation of the first Dwelling AND comply with clause 4.7 OR
- 4.5.2 Deliver one Travel Pack (having submitted it in draft form to the County Council prior to Commencement of Development and had it approved in writing by the County Council accordingly) directly to each Dwelling upon first Occupation AND comply with clauses 4.6 and 4.8
- 4.6 In the event that the Owner elects to provide the Travel Packs itself pursuant to clause 4.5.2 then the Owner covenants with the County Council to submit a sample Travel Pack to the County Council together with the County Council's administration fee of Five Hundred Pounds (£500.00) for approval in writing and not to Occupy any Dwelling until such approval has been given (such approval not to be unreasonably withheld or delayed). The Owner further covenants with the County Council to deliver one Travel Pack directly to each Dwelling upon first Occupation. FOR THE AVOIDANCE OF DOUBT if the County Council has not approved the Travel Pack prior to the first Occupation of the first Dwelling then the Owner shall pay the Travel Pack Contribution to the County Council prior to the first Occupation of the first Dwelling
- 4.7 In the event the Owner so elects in accordance with clause 4.5.1 the Owner covenants with the County Council to pay the Travel Pack Contribution to the County Council prior to the first Occupation of the first Dwelling
- 4.8 In the event that the Owner elects to provide the Travel Packs itself in accordance with clause 4.5.2 then the Owner covenants with the

County Council to notify the County Council in writing every three (3) months (in the period beginning with first Occupation of the first Dwelling and ending with the first Occupation of the last Dwelling) of the number of Travel Packs issued in the previous three (3) month period

4.9 . The Owner covenants with the County Council to EITHER:

4.9.1 provide up to two (2) Bus Passes for each Dwelling who complete and return the application forms provided in the Travel Pack within six (6) months of first Occupation of such Dwelling AND comply with clause 4.11; OR

4.9.2 elect to comply with clause 4.10

4.10 In the event that the Owner elects to pay the Bus Pass Contribution pursuant to clause 4.9.2 then the Owner shall pay to the County Council 20% of the Bus Pass Contribution prior to the first Occupation of the first Dwelling. Thereafter the remaining 80% of the Bus Pass Contribution shall be paid in 20% tranches on submission of evidence by the County Council to the Owner that all preceding payments of the Bus Pass Contribution have been spent or are about to be spent SAVE THAT the obligation to pay the Bus Pass Contribution shall apply up until the expiry of nine (9) months after the Occupation of the final Dwelling at which point the Owner shall no longer be obligated to comply with the provisions of this clause

4.11 In the event that clause 4.9.1 applies the Owner covenants with the County Council to notify the County Council in writing every three (3) months (in the period beginning with first Occupation of the first Dwelling and ending with the first Occupation of the last Dwelling) of the number of Bus Passes issued in the previous three (3) month period

Waste Management Contribution

4.12 The Owner covenants with the County Council to pay the Waste Management Contribution to the County Council prior to the first

Occupation of the first Dwelling

Monitoring costs

- 4.13 The Owner covenants with the County Council to pay the County Council Monitoring Costs Contribution to the County Council prior to the first Occupation of the first Dwelling

Notice of Triggers

- 4.14 The Owner covenants with the County Council to give seven (7) days' notice in advance of the first Occupation of any Dwelling and the first Occupation of 50% of the Dwellings to the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment Department of the County Council

County Council's legal costs

- 4.15 The Owner covenants with the County Council to pay the County Council's costs of [REDACTED] (£ [REDACTED]) on the execution of this Agreement

5. BOROUGH COUNCIL'S COVENANTS TO THE OWNER

Off Site Sports Contribution

- 5.1 The Borough Council covenants with the Owner as follows:

5.1 to apply the Off Site Sports Contribution solely towards the stated purpose and for no other purpose whatsoever and

to release the Off-site Outdoor Sports Maintenance Contribution to the Parish Council to maintain the implemented provision

5.2 In the event that all or any part of the PROVISION shall not have been committed within 5 (five) years of receipt of the final PROVISION Contribution then the Borough Council shall return the unexpended amount to Owner (in this case being the owner of the Site at the date hereof or their heirs or assigns) and;

5.3 In the event that all or any part of the Off-site Outdoor Sports Maintenance Contribution shall not have been RELEASED within 15 (fifteen) years of receipt of the final MAINTENANCE Contribution then the Borough Council shall return the unexpended amount to Owner (in this case being the owner of the Site at the date hereof or their heirs or assigns)

5.4 At the end of the of the period referred to in paragraph iv) on receipt of a written request, to provide the Owner (in this case being the owner of the Site at the date hereof or their heirs or assigns) with a certificate showing all payments made in respect of any PROVISION contributions and the purposes to which they have been applied.

Health Facilities Contribution

5.2 The Borough Council covenants with the Owner to pay the Health Facilities Contribution to the Health Care Provider upon receipt of the Health Facilities Contribution from the Owner and an undertaking from the Health Care Provider within 10 years of receipt of the Health Facilities Contribution by the Borough Council confirming that it will apply the Health Facilities Contribution for the purposes set out herein and for no other purposes whatsoever and that it shall be legally bound to the Owner to repay to the Owner any part of the Health Facilities Contribution that remains unspent 10 years after the date of receipt of the Contribution by the Borough Council regardless of when the same was paid by the Borough Council to the Health Care Provider

5.3 PROVIDED THAT the Borough Council shall be under no obligation to the Owner to ensure that the Health Facilities Contribution is so applied by the Health Care Provider or that the Health Care Provider repays any unspent Contribution to the Owner and shall be deemed to have discharged its obligation under this Agreement to the Owner in respect of the Health Facilities Contribution upon payment of the Health

Facilities Contribution to the Health Care Provider but will repay to the Owner on written demand such amount of the Health Facilities Contribution which has not been paid to the Health Care Provider within 10 years of the date of receipt by the Borough Council

Deed of Release

- 5.4 Upon request where compliance with an obligation in this Agreement has been fulfilled to certify compliance with such obligation and if so requested the Borough Council covenants with the Owner to execute a Deed of Release (or partial release) from the relevant obligation and procure that a note thereof is entered on the Register of Local Land Charges

6. THE COUNTY COUNCIL COVENANTS

Education Contributions

- 6.1 The County Council covenants with the Owner to apply the Post 16 Education Contribution in accordance with the definition hereof and for no other purpose whatsoever
- 6.2 The County Council covenants with the Owner to apply the Primary Education Contribution in accordance with the definition hereof and for no other purpose whatsoever
- 6.3 The County Council covenants with the Owner to apply the Secondary Education Contribution in accordance with the definition hereof and for no other purpose whatsoever

Library Contribution

- 6.4 The County Council covenants with the Owner to apply the Library Contribution in accordance with the definition hereof and for no other purpose whatsoever

Travel Pack Contribution

- 6.5 The County Council covenants with the Owner to apply the Travel Pack Contribution (if paid) in accordance with the definition hereof and for no other purpose whatsoever

Bus Pass Contribution

- 6.6 The County Council covenants with the Owner as follows:
- 6.6.1 To apply the Bus Pass Contribution (if received) in accordance with the definition hereof and for no other purpose whatsoever
- 6.6.2 Upon receipt of a written request to account in writing to the Owner commencing from the payment of the first tranche of the Bus Pass Contribution with full details of the number of Bus Passes issued
- 6.6.3 At the end of a period of nine (9) months after the notification of the Occupation of the final Dwelling to be constructed to repay to the Owner any unexpended portion of the Bus Pass Contribution

Waste Management Contribution

- 6.7 The County Council covenants with the Owner to apply the Waste Management Contribution in accordance with the definition hereof and for no other purpose whatsoever

Repayment

- 6.8 In the event that any monies payable to the County Council under clause 4 (with the exception of the Bus Pass Contribution which is dealt with in clause 6.6.3) are not spent, allocated or committed for expenditure within ten (10) years of the date of receipt or the date of receipt of the final instalment where payable in instalments the County Council covenants with the Owner to refund to the Owner on written demand such unexpended contribution along with any interest accrued
- 6.9 The County Council covenants with the Owner to produce full details of the expenditure of all monies paid pursuant to the provisions of this Agreement which details shall be provided following receipt of a written request for the same from the Owner

Deed of Release

- 6.10 Upon written request where compliance with an obligation in this Agreement has been fulfilled to certify compliance with such obligation and if so requested the County Council covenants with the Owner to

execute a Deed of Release (or partial release) from the relevant obligation

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 compile or 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 for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs

"Base Index Date" means the date of this Agreement save in the case of the Post 16 Education Contribution, the Primary Education Contribution and the Secondary Education Contribution where it means 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 relevant contribution is paid

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

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

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any change 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
4. If any substitution for the said the BCIS, or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the BCIS or any index previously substituted therefore on the other hand

THE SECOND SCHEDULE

TRANSFER OF THE OPEN SPACE

1 GENERAL

The following provisions shall apply to all transfers of the Open Space pursuant to this Agreement

- 1.1 The transfer shall be in accordance with the Law Society's Standard Conditions of Sale (5th Edition) "Standard Conditions" in so far as they are not inconsistent with the terms of this Agreement
- 1.2 Standard Conditions 2.1, 2.2, 2.3, 4.3, 5.2 and 6.1 shall not apply to the transfer
- 1.3 The Transferor granting all reasonable easement and rights to allow the development and use of the land for the purposes specified in this Agreement.

- 1.4 The Transferor making such reservations of rights as are reasonable in favour of the remainder of the development including but not limited to the right to lay new services and build even if the passage of light and air to the land transferred is affected
- 1.5 The inclusion of a nuisance clause providing that the transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the Owner or occupiers of the remainder of the Development
- 1.6 No unduly restrictive or burdensome covenant or clause being imposed upon the transferee in addition to the provisions contained in this Schedule
- 1.7 The land will be transferred subject to:
- a) all local land charges, whether or not registered before the date of this Agreement, and all matters capable of registration as local land charges whether or not actually registered;
 - b) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement
 - c) all actual or proposed orders, directions, notices, charges, restrictions, conditions agreements and other matters arising under any statute affecting the Property
 - d) all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining Owner affecting the Property, and all liability to repair or covenants to repair paths, ways, passages, fences, and other like matters, and
 - e) the interests overriding the title to the land
- 1.8 An indemnity from the transferee to observe and perform the covenants affecting the title to the land as that the date of the Transfer will be included in the Transfer.
- 1.9 The following restrictive covenants will be included in the Transfer for the benefit of the Owner's retained land
- a) restriction preventing use for any purpose other than public open space
 - b) not to be used for a trade or business

- c) not to be used for residential purposes
- d) to keep land in good repair and condition
- e) not to obstruct public highway
- f) to keep and properly maintain the boundaries in good repair and condition
- g) to properly keep and maintain any landscaping
- h) to keep and maintain the land in a clean and tidy condition
- i) not to cause or knowingly permit any nuisance on the land
- j) on any transfer of the land or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner/Owner of the whole or relevant parts of the retained to observe and perform these covenants
- k) not to erect any buildings or other erections except equipment to the purpose for which the land is transferred

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

EXECUTED AS A DEED by
DAVIDSONS DEVELOPMENTS LIMITED
Acting by one Director

.....

Director's signature

.....

Director's full name

in the presence of:

Witness

Witness Name

Address

.....

.....

.....

THE COMMON SEAL OF
THE COUNCIL OF THE BOROUGH OF HINCKLEY AND BOSWORTH
was hereunto affixed in the presence of: -

Authorised signatory

THE COMMON SEAL of **LEICESTERSHIRE**
COUNTY COUNCIL was hereunto
affixed in the presence of: -

Authorised Signatory