

DATED 6 December **2022**

(1) COLIN IBBETSON

and

(2) COLIN IBBETSON and IAN FREDERICK IBBETSON

and

(3) BARWOOD DEVELOPMENT SECURITIES LIMITED

IN FAVOUR OF

(4) HINCKLEY & BOSWORTH BOROUGH COUNCIL

and

(5) LEICESTERSHIRE COUNTY COUNCIL

DEED OF UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act
1990 relating to land off Sketchley Lane Burbage Leicestershire

21/01131/OUT and APP/K2420/W/22/3301735

BIRD WILFORD & SALE SOLICITORS
WE HEREBY CERTIFY THIS TO
BE A TRUE AND EXACT COPY
OF THE ORIGINAL

BWS 9-12-22

THIS DEED is made the 6 day of December Two Thousand and Twenty Two

BY:

(1) COLIN IBBETSON of Sketchley Lodge Sketchley Lane Burbage
Leicestershire LE10 3HU ("The First Owner") and

(2) COLIN IBBETSON and IAN FREDERICK IBBETSON of La Gueriniere
Beaulieu-Sous-La-Roche Vendee 85190 France ("The Second Owner") and

(3) BARWOOD DEVELOPMENT SECURITIES LIMITED (Co. Reg. No.06989575) of
Grovelands Business Park West Haddon Road East Hadden Northampton NN6
8DT ("The Beneficiary")

IN FAVOUR OF

(4) HINCKLEY AND BOSWORTH BOROUGH COUNCIL of Hinckley Hub
Rugby Road Hinckley Leics LE10 0FR ("the Borough Council")

(5) 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 and the obligations contained herein are enforceable by the Borough Council and the County Council in respect of obligations owed to each of them
- C. The County Council is the local highway authority and is responsible for the provision of education library and civic amenity facilities for the area in which the Application Land is situated
- D. The First Owner is the freehold owner of that part of the Application Land registered at HM Land Registry with title absolute under title numbers LT405867 and LT338598 respectively

- E. The Second Owner is the freehold owner of that part of the Application Land registered at HM Land Registry with title absolute under title number LT411155
- F. The Beneficiary has the benefit of a restriction on the Application Land by virtue of an agreement dated 30 October 2018 and enters this deed for the purpose of consenting to the Application Land being bound by the obligations contained in this deed
- G. The Planning Application has been made to the Borough Council by the Beneficiary for outline planning permission for the Development as described in the Planning Application
- H. The Borough Council refused the Planning Application and the Beneficiary has made the Planning Appeal
- I. The Owners have agreed to enter into this Deed with the intent that their respective interests in the Application Land shall be subject to the covenants and obligations entered into by them and with the intention that the covenants and obligations entered into by them should create planning obligations pursuant to Section 106 of the Act in the manner hereinafter appearing.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

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

"The Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	has the same meaning as defined within Annex 2 of the National Planning Policy Framework published in July 2021 by the

Ministry of Housing, Communities and Local Government or such replacement or successor document

"Affordable Dwellings"

means 20% of the units to be constructed as part of the Development as Affordable Housing and comprising within that 20%;

- i. 75% Affordable Rented Dwellings, and
- ii. 25% Shared Ownership Dwellings

"Affordable Rented Dwellings"

means a rented housing unit built pursuant to the Planning Permission provided by a Registered Provider that is outside the national rent regime but is subject to other rent controls that require it to be offered to eligible households at a rent of not more than 80% of local market rents

"Affordable Housing Scheme"

means the scheme for the provision of the Affordable Dwellings as part of the Development to be submitted in accordance with clause **3.1.1** and containing details of the location of the Affordable Dwellings the house types and size and tenure of the Affordable Dwellings and details of the Registered Provider if known.

"Application Land"	means the land edged red on the Plan and comprising the land in title numbers LT405867 LT411155 and LT338598 respectively
"Base Rate"	means the base lending rate from time to time of HSBC Bank PLC or if that base rate ceases to be used or published a comparable commercial lending rate
"Biodiversity and Landscape Management Plan"	means a strategy for protecting and enhancing biodiversity including the detailed design of proposed Amenity and Strategic Green Infrastructure (as shown on Land Budget drawing edp4824_d045) and its subsequent management once the Development is completed. The submitted plan shall be based on the advice of the Ecological Appraisal Report) and include – a) arrangements to secure an Ecological Clerk of Works on site; b) construction method statement including timing of works to avoid periods of work when protected species such as nesting birds could be harmed by disturbance, sensitive working methods during vegetation clearance and protection of retained habitats using protective fences, exclusion barriers and warning signs;

- Site Boundary
- Native Hedgerow Planting
- Retained Vegetation
- Structural Native Woodland Planting and Scattered Trees
- Proposed Street Trees
- Artemis Grass
- Enhanced Species-Rich Grassland
- Biodiverse SuDS Basin including permanent waterbody, marginalia and wet meadow
- Off-Line Wildlife Pond
- Play Space
- Connections to Wider Ecological Network
- Policy 9: Wildlife and Green Corridor
- Hoggin Footpath/Cycleway
- Mown Grass Pathway/Trail



client
Barwood Development Securities Limited

project title
Sketchley Lane, Sketchley

drawing title
Landscape and Ecology Strategy

date
17 AUGUST 2021
drawing number
edp4824_d045n
scale
1:2,500 @ A3

drawn by
JG
checked
PW
QA



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c) survey to establish if badgers would be affected by the proposed development and a mitigation/compensation scheme if required;

d) reptile mitigation strategy;

e) habitat features and refuges for protected species including bird and bat boxes;

f) enhancement of retained habitats, including

- gap planting of existing hedgerows with suitable native species;

- enhancement of existing grassland with native wildflower meadow species; and

- works required for retention of U grade trees;

g) creation and establishment of new habitats, including

- species-rich hedgerows;

- broadleaved woodland (landscape structure planting);

- wildflower meadow habitat; and

- wetland habitats within SuDS.

h) management of retained, enhanced and newly created habitats including SuDS, hedgerows, trees, woodland and species-rich grassland; and

i) timetable for implementation including monitoring and review of management activities; and

j) the funding of the commitments and their future maintenance; and

k) monitoring of the delivery and maintenance of the approved scheme by an independent ecologist at the cost of the Owners who shall report annually to the Borough Council which may include requirements for such remediation measures as may from time to time be necessary to ensure conformity with the approved plan.

l) minimum net gain of 50% habitat units and 10% linear units calculated using the Environment Bank's Biodiversity Impact Calculator (v2, May 2019) (based on the Department for Environment, Food and Rural Affairs (Defra) Biodiversity Metric) as set out in Appendices 3 and 4 of the ecology appraisal (document edp4824_r037a) submitted with the Planning Application

"Bus Pass/es"

means an adult bus pass entitling the holder of each bus pass to travel free of charge on local bus services over a period of six months

"Bus Pass Contribution"

means the sum of £720.00 (seven hundred and twenty pounds) per Dwelling adjusted in accordance with the provisions contained in the First Schedule

	payable by the Owners to the County Council towards the provision of Bus Passes in accordance with the provisions of clause 4.6
"Bus Stop Contribution"	means the sum of £3,790 adjusted in accordance with the provisions of the First Schedule for the provision of a new bus stop/bus stop improvements at Sketchley Manor Lane to include pole, flag, timetable case and raised kerb
"Civic Amenity Contribution"	means the sum £7,430 (Seven Thousand Four Hundred and Thirty Pounds) adjusted in accordance with the provisions contained in the First Schedule payable by the Owners to the County Council for site reconfiguration and development of waste infrastructure to increase the capacity of the Barwell civic amenity site
"Commencement of Development"	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)
- viii. any other preparatory works agreed in writing with the Borough Council

"County Council Monitoring Costs Contribution"

means the sum of £300.00 (three hundred pounds) per planning obligation owed to the County Council herein or 0.5% of the value of any contribution due to the County Council (whichever is greater) in accordance with the provisions of clause 4.13 payable by the

	Owners to the County Council as a contribution towards the costs of the County Council in monitoring compliance with obligations owed to it contained herein
"Default Interest Rate"	Means a rate 4% per annum above Base Rate
"Development"	means the development described in the Planning Permission
"Dwelling"	means a dwelling or apartment built pursuant to the Planning Permission
"Early Years Contribution"	means the sum of £113,564.25 adjusted in accordance with the provisions of the First Schedule payable by the Owners to the County Council to accommodate early years capacity issues created by the proposed Development by improving, remodelling or enhancing existing facilities at Sketchley Hill Primary School or other schools or early learning provision within the locality of the Development
"Health Care Facilities Contribution"	means the sum of £75,946.86 (Seventy Five Thousand Nine Hundred and Forty Six Pounds and Eighty Six Pence) adjusted in accordance with the provisions contained in the First Schedule payable by the Owners to the Borough

Council in accordance with the provisions of clause 4.3 towards addressing capacity issues arising from the Development at The Burbage Surgery to accommodate the increase in the need for such services arising from the Development

"Health Care Body"

means the West Leicestershire Clinical Commissioning Group (and/or any successor in title)

"Highway Improvements Contribution"

means the sum of £192,000.00 (One Hundred and Ninety Two Thousand Pounds) adjusted in accordance with the provisions contained in the First Schedule payable by the Owners to the County Council and to be used towards the improvements of the highway network within Hinckley

"Library Contribution"

means the sum of £4,530 (Four Thousand Five Hundred and Thirty Pounds) adjusted in accordance with the provisions contained in the First Schedule payable by the Owners to the County Council to provide materials such as books, audio books, newspapers, periodicals for loan and reference use, and associated equipment or to

	reconfigure the library space to account for additional usage of the venue for residents to hold meetings, including book reading and activity sessions at Burbage Library
"Market Dwellings"	means any dwelling for sale lease or other disposal on the open market constructed as part of the Development which is not an Affordable Dwelling.
"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" and "Occupied" shall be construed accordingly
"Off Site Open Space Contribution"	means the sum of £52,128 (Fifty Two Thousand One Hundred and Twenty Eight Pounds) plus £24,768 (Twenty Four Thousand Seven Hundred and Sixty Eight Pounds) payable by the Owners to the Borough Council adjusted in accordance with the First Schedule hereof towards

the provision and maintenance of outdoor sports provision at Rugby Road Park or Tilton Road Recreation Parks in lieu of provision on site

"On Site Open Space Area"

means an area within the Development on the Application Land and consisting of a 540 sqm LEAP (local equipped area of play) play area and 2,520sqm of casual (not equipped) informal open space and 6,000sqm of accessible natural green space

"On Site Open Space Area Maintenance Contribution"

means the sums of:

£94,824 in respect of the LEAP Play Area and

£27,216 in respect of the casual informal play space and

£85,200 in respect of the accessible natural green space payable to the Parish Council if it wishes to accept a transfer of any of the On Site Open Space towards the maintenance of any such On Site Open Space in accordance with the provisions of clause **4.2.9** adjusted in accordance with the provisions contained in the First Schedule in relation to the maintenance of any On Site Open Space Area provided on the Application Land

"On Site Open Space Scheme"	means the scheme for the provision and laying out of the On Site Open Space Area to be submitted by the Owners to the Borough Council in accordance with the provisions of clause 4.2.1
"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 by the Owners to the Borough Council in accordance with the provisions of clause 4.2.5
"Planning Application"	means the Planning Application submitted to the Borough Council and allocated reference number 21/01131/OUT applying for development comprising demolition of existing poultry and cattle buildings and residential development of up to 150 dwellings with vehicular access from Sketchley Lane (outline – vehicular access only)
"Planning Appeal"	Means the appeal pursuant to s78 of the Act to the Secretary of State bearing reference number APP/K2420/W/22/3301735
"Planning Permission"	means the planning permission granted pursuant to the Planning Appeal and any variation of that permission pursuant to s73 of the Act

"Registered Provider"

means either:

- i. A provider of Affordable Housing who is registered with the Regulator of Social Housing under the Housing and Regeneration Act 2008 or such successor authority; or
- ii. Any other housing provider approved in writing by the Borough Council; or
- iii. Any other company or body approved in writing by the Borough Council

"SEND Contribution"

means the sum of £84,672.65 adjusted in accordance with the provisions of the First Schedule payable by the Owners to the County Council to accommodate the capacity issues created by the proposed Development by improving, remodelling, or enhancing existing Special Educational Needs and Disabilities (SEND) facilities within the DfE approved planning area serving the Development or any other school within the locality of 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
"Secretary of State"	means the Secretary of State for Levelling Up Housing and Communities or its appointed inspector of the Government Planning Inspectorate
"Travel Pack Contribution"	means the sum of £52.85 (fifty two pounds and eighty five pence) per Dwelling adjusted in accordance with the provisions contained in the First Schedule for a pack produced by the County Council for the first Occupant of each Dwelling providing information on public transport and other means of travel to and from the Development other than the private car including an application form to the County Council for two (2) Bus Passes per Dwelling
"Travel Pack Administration Fee"	means the sum of £500 to be paid by the Owners to the County Council in accordance with clause 4.5
"Travel Plan Monitoring Contribution"	means the sum of £6,000 (Six Thousand Pounds) payable by the Owners to the County Council in accordance with the provisions of clause 4.9 towards monitoring the obligations contained in the Travel Plans

"The Owners"

means the First Owner and the Second Owner

- 1.2 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.3 Words in this Deed 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 Deed 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 Deed reference is made to a Clause Schedule or Plan such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of or in the case of a Plan attached to this Deed
- 1.6 Obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally
- 1.7 The expression "the First Owner" and "The Second Owner" shall where the context so admits include their respective successors and assigns

2. GENERAL PROVISIONS

Statutory Authority

- 2.1 This Deed and each of the covenants given by the Owners contained herein are planning obligations and are made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011
- 2.2 The covenants by the Owners 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 Deed is a local land charge and may be registered as such

Liability

- 2.4 The covenants given by the First Owner contained herein are made with the intent that the covenants will bind so much of the Application Land as is contained in title numbers LT405867 and LT338598 respectively and the covenants given by the Second Owner contained herein are made with the intent that that the covenants will bind so much of the Application Land as is contained in title number LT411155 and in respect of the First Owner and the Second Owner will be binding on and be enforceable against their respective successors in title or assignees and subject to clause 2.5 those deriving title under the First Owner and the Second 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 seized save in respect of any prior subsisting breach
- 2.5 Nothing in this Deed 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 Deed in respect of which development this Deed will not apply
- 2.6 The covenants contained in this Deed save for the occupancy restrictions provisions set out in clause 3.1.9 hereof shall not be enforceable against individual purchasers or lessees 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 other apparatus 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

- 2.7 In the event that the First Owner and/or the Second Owner dispose of their interests in the Application Land or any part thereof (other than a disposal to a purchaser of a Dwelling) they shall within twenty-eight days of such disposal give written notice of the name and address of his successors in title to the Planning Manager (Development Management) at the Borough Council and the Planning Obligations Team Manager at the County Council together with sufficient details of the land included in the disposal to allow its identification

Contingencies

- 2.7.1 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect as if such part was severed from this Deed.
- 2.7.2 Save for the provisions relating to (Exclusion of Third Party Rights) and (Commencement of Development) and (Borough Council and County Council costs) which shall come into effect on the date hereof the provisions of this Deed shall come into effect on
- a) the grant of the Planning Permission; and
 - b) the Commencement of Development
- 2.8 In the event of the Planning Permission expiring or in the event of the revocation or the quashing and refusal upon redetermination of the Planning Permission prior to the Commencement of Development the obligations under this Deed shall cease absolutely

Commencement of Development

- 2.9 The Owners shall give the Planning Manager (Development Management) at the Borough Council seven days' notice in advance of the Commencement of Development and shall send a copy of such notice to the Planning Obligations Team Manager at the County Council PROVIDED THAT default in giving notice shall not prevent Commencement of Development occurring

Notices

- 2.10 The service of notices and communications pursuant to this Deed shall be sent to the addressee at the address stated in this Deed or at such other address as the addressee shall have notified to the others in writing
- 2.11 Notices and communications under this Deed 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 and in the case of the County Council must be marked for the attention of the Planning Obligations Team Manager

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

- 2.12 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 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

- 2.13 Save as permitted by law or in equity nothing contained or implied in this Deed 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

Effect of any Waiver

- 2.14 No waiver (whether express or implied) by the Borough Council and/or the County Council of any breach or default by the Owners in performing or observing any of the terms or conditions of this Deed 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 Owners

Beneficiary's consent

- 2.15 The Beneficiary consents to the giving herein of the obligations by the Owners in relation to the Application Land and acknowledges that the Application Land is bound by those obligations and that they will be binding on successors in title to the Owners and agrees to be bound by them in the event that it becomes a successor in title to the Owners but that its liability will cease once it has parted with its interest in the Application Land but without prejudice to its liability for any subsisting breach of covenant prior to parting with such interest.

CIL Regulation 122 compliance

- 2.16 The Secretary of State has the right within the decision letter in respect of the Planning Appeal to confirm in his view if any obligation of this

Deed does not meet the tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and if the Secretary of State provides such written confirmation in the decision letter in respect of the Planning Appeal then the offending obligation shall be deemed severed from this Deed and shall not be enforceable by the Borough Council or the County Council as applicable.

Interest on Late Payment

- 2.17 If any sum or amount is not paid to the Borough Council or to the County Council by the date it is due the Owners shall pay to the Borough Council or to the County Council as applicable the interest on that amount at the Default Interest Rate (both before and after judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the day of payment

3. THE OWNERS' PLANNING OBLIGATIONS IN FAVOUR OF THE BOROUGH COUNCIL

Affordable Housing

- 3.1 The Owners hereby covenant in favour of the Borough Council as follows:
- 3.1.1 No Development shall Commence unless and until the Owners shall have submitted in writing to the Borough Council, and obtained the written agreement of the Borough Council to, the Affordable Housing Scheme for the provision of the Affordable Dwellings on the Application Land
- 3.1.2 To provide the Affordable Dwellings in accordance with the Affordable Housing Scheme or any variations thereto approved in writing by the Borough Council

- 3.1.3 To construct or procure the construction of the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Scheme or any variations thereto approved in writing by the Borough Council
- 3.1.4 Not to Occupy or to permit the Occupation of more than 50% of the Market Dwellings until 50% of the Affordable Rented Dwellings and the Shared Ownership Dwellings have been constructed ready for Occupation and the freehold interest in them has been transferred to a Registered Provider AND
- 3.1.4.1 Not to Occupy or to permit the Occupation of more than 80% of the Market Dwellings until 100% of the Affordable Rented Dwellings and the Shared Ownership Dwellings have been constructed ready for Occupation and the freehold interest in them has been transferred to a Registered Provider
- 3.1.5 Any transfers under clause 3.1.4 shall contain the following provisions:
- 3.1.5.1 the grant and reservation by the Owners 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
- 3.1.5.2 the imposition of such covenants as the Owners shall reasonably require as are consistent with the sale of any of the Dwellings within the Development
- 3.1.6 To notify the Borough Council, in writing, as follows;
- 3.1.7 a) within 14 days of such Occupation the date of the Occupation of the first Dwelling constructed pursuant to the Planning Permission, and
- 3.1.8 b) within 14 days of a binding contract being entered into with a Registered Provider, the date of that contract and the name and

address of the said Registered Provider, and

c) within 14 days of a transfer of the freehold of the Affordable Dwellings to the Registered Provider the date of such transfer

3.1.9 Subject to the provisions of this Deed none of the 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 person/s as shall be agreed between the Borough Council and the relevant Registered Provider who satisfy the District connection within the Local Connections criteria as agreed in the HAP

3.1.10 PROVIDED THAT if within 28 days of the Registered Provider notifying the Borough Council in writing of a dwelling becoming vacant and no such qualifying person/s can be found to occupy the dwelling the Relevant Registered Provider may let the dwelling to any person/s who satisfy their normal letting criteria

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

a) 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 (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

- i. 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
 - ii. 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 Deed which shall determine absolutely.
- b) any person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire the said Affordable Dwelling
 - c) a lessee under a shared ownership lease of an Affordable Dwelling or a mortgagee or chargee of a shared ownership lease granted in respect of an Shared Ownership Dwelling
 - d) a person who has staircased under a shared ownership lease or an Affordable Dwelling to acquire the freehold of the said Affordable Dwelling or a mortgagee or chargee of such an Affordable Dwelling
 - e) any person deriving title from any such person as is mentioned in (a) to (e) above

4. Off Site Open Space Contribution

- 4.1 The Owners covenant in favour of the Borough Council to pay the Off Site Open Space Contribution to the Borough Council prior to the first Occupation of 50% of the Dwellings

On Site Open Space Area

- 4.2 The Owners covenant in favour of the Borough Council in respect of the On Site Open Space Area as follows:
- 4.2.1 Not to Commence the Development until it has submitted the On Site Open Space Area Scheme to the Borough Council for written approval and written approval has been obtained
- 4.2.2 Not more than 105 Dwellings shall be Occupied or permitted to be Occupied until the On Site Open Space Area has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Scheme
- 4.2.3 To maintain the On Site Open Space Area for a period of 12 months after notice of practical completion of the works for the On Site Open Space Area has been offered to and accepted by the Borough Council 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
- 4.2.4 At the end of the maintenance period referred to in clause 4.2.3 to serve written notice on the Borough Council confirming whether the Owners wish to maintain the On Site Open Space Area or whether the Owners intend to transfer the On Site Open Space Area to a

management company or to offer to transfer the Area to the Parish Council.

4.2.5 In the event the Owner elects to maintain the On Site Open Space Area pursuant to clause 4.2.4 they shall within 56 days of the service of the notice referred to in clause 4.2.4 submit the On Site Open Space Area Maintenance Scheme to the Borough Council for approval and shall maintain the On Site Open Space Area in accordance with the On Site Open Space Area Maintenance Scheme

4.2.6 In the event that the Owners elect to transfer the On Site Open Space Area to a management company the Owners shall within 56 days of the service of the notice referred to in clause 4.2.4 submit to the Borough Council for approval 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 as the Borough Council is satisfied that

4.2.7 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 Area Maintenance Scheme, and

4.2.8 b) the On Site Open Space Area has been transferred to the management company on the terms set out in the Second Schedule hereto

4.2.9 In the event that the Owners agree to offer to transfer the On Site Open Space Area or any part of it to the Parish Council and the Parish Council agree to take a transfer of the area this area will be transferred on the terms set out in the Second Schedule hereto together with payment of the On Site Open Space Area Maintenance Contribution (or the relevant part of it in the event of a partial transfer).

4.3 **Health Care Contribution**

4.3.1 The Owners covenant as follows in favour of the Borough Council in relation to the payment of the Health Care Contribution:

4.3.2 To pay half of the Health Care Contribution to the Borough Council prior to the Occupation of the 10th Dwelling and the remaining half of the Healthcare Contribution to the Borough Council prior to the Occupation of 50% of the Dwellings.

4.4 **Borough Council's Legal Fees**

4.4.1 The Owners covenant in favour of the Borough Council to pay its legal fees in the sum of Two Thousand Pounds (2,000.00) upon execution of this Deed

THE OWNERS' PLANNING OBLIGATIONS IN FAVOUR OF THE COUNTY COUNCIL

Travel Packs

4.5 The Owners covenant in favour of the County Council to EITHER pay the Travel Pack Contribution to the County Council prior to first Occupation of the first Dwelling OR to submit a draft Travel Pack to the County Council together with the Travel Pack Administration Fee prior to Commencement of Development AND having received a travel pack produced by the County Council or having received approval in writing from the County Council to its own Travel Pack to provide each Dwelling on first Occupation with a Travel Pack

Bus Pass Contribution

4.6 The Owners covenant in favour of the County Council EITHER to provide those first Occupiers who submit a valid Bus Pass application form (as shall be included in the Travel Pack) with the Bus Passes

requested OR to pay the Bus Pass Contribution in accordance with the following:-

- 4.6.1 To pay 25% of the Bus Pass Contribution prior to first Occupation of the first Dwelling
- 4.6.2 To pay the remaining 75% of the Bus Pass Contribution prior to Occupation of 25% of the Dwellings except that payment may be deferred if agreed by the County Council

Bus Stop Contribution

- 4.7 The Owners covenant in favour of the County Council to pay the Bus Stop Contribution to the County Council prior to first Occupation of any Dwelling

Early Years Contribution and SEND Contribution

- 4.8 The Owners covenant in favour of the County Council to pay the Early Years Contribution and SEND Contribution to the County Council as follows:
 - 4.8.1 10% prior to first Occupation of the first Dwelling; and
 - 4.8.2 45% prior to first Occupation of the 12th Dwelling
 - 4.8.3 45% prior to first occupation of the 57th Dwelling

Travel Plan Monitoring Contribution

- 4.9 The Owners covenant in favour of the County Council to pay the Travel Plan Monitoring Contribution upon first Occupation of the first Dwelling

Highway Improvements Contribution

- 4.10 The Owners covenant in favour of the County Council to pay the Highways Improvements Contribution prior to first Occupation of the first Dwelling

4.11 **Civic Amenity Contribution**

4.11.1 The Owners covenant in favour of the County Council to pay the Civic Amenity Contribution prior to first Occupation of the first Dwelling

4.12 **Library Contribution**

4.12.1 The Owners covenant in favour of the County Council to pay the Library Contribution prior to first Occupation of the first Dwelling

County Council Monitoring Costs Contribution

4.13 The Owners covenant in favour of the County Council to pay the County Council Monitoring Costs Contribution prior to first Occupation of the first Dwelling

County Council Legal Fees

4.14 The Owners covenant in favour of the County Council to pay to the County Council legal fees in the sum of £1500.00 upon the execution hereof

Biodiversity and Landscape Management Plan

4.15 The Owners shall submit the Biodiversity and Landscape Management Plan to the Borough Council for approval with the first of the reserved matters applications pursuant to the Planning Permission. The Owners shall not Commence the Development or carry out any clearance works at the Application Land until the Biodiversity and Landscape Management Plan is approved by the Borough Council.

4.16 The Owners shall implement the Biodiversity and Landscape Management Plan as approved by the Borough Council and in accordance with the timescales approved in the Biodiversity and Landscape Management Plan.

- 4.17 The Owners shall employ an Ecological Clerk of Works (such appointment to be first approved by the Borough Council) to supervise the delivery of the approved Biodiversity and Landscape Management Plan.
- 4.18 The Owners shall thereafter maintain or fund and procure the maintenance of Amenity and Strategic Green Infrastructure (as shown on Land Budget drawing edp4824_d045) in accordance with the approved Biodiversity and Landscape Management Plan.
- 4.19 The Owners shall pay for an annual review by an independent ecologist (such appointment to be first approved by the Borough Council) who shall report annually to the Borough Council. The Owners shall implement any remedial steps required by the independent ecologist provided that these steps ensure compliance with the approved Biodiversity and Landscape Management Plan.

THE FIRST SCHEDULE

INDEXATION PROVISIONS

1. In this Schedule:-

"Index"	means in the case of the Bus Pass Contribution the Bus Stop Contribution the Civic Amenity Contribution the Early Years Contribution the Health Care Facilities Contribution the Off Site Open Space Contribution the On Site Open Space Area Maintenance Contribution the Library Contribution the SEND Contribution the Travel Pack Contribution 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 Deed 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 7 June 2022 except in relation to the Early Years Contribution and SEND Contribution when 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 relevant contribution becomes due for payment

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

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

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 ON SITE OPEN SPACE AREA

1. GENERAL

The following provisions shall apply to all transfers of the On Site Open Space Area pursuant to this Deed

- 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 Deed
- 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 easements and rights to allow the development and use of the land for the purposes specified in this Deed.
- 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) any 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 at 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 or the whole or relevant parts of the retained land to observe and perform these covenants
- k) not to erect any buildings or other erections except equipment ancillary to the purpose for which the land is transferred

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

SIGNED as a **DEED** on behalf of

COLIN IBBETSON by his attorney



DUNCAN PLESTER

In the presence of

Witness signature..... *Elizabeth Marjoram*

Witness name..... *ELIZABETH MARJORAM*

Witness occupation..... *SOLICITOR*

Witness address.....

BIRD WILFORD & SALE
SOLICITORS
20 CHURCH GATE
LOUGHBOROUGH
LE11 1UD

SIGNED as a **DEED** on behalf of

IAN FREDERICK IBBETSON by his attorney



DUNCAN PLESTER

In the presence of

Witness signature-----

Elizabeth Marjoram

Witness name-----

As above

Witness occupation-----

Witness address-----

EXECUTED as a **DEED BY**

BARWOOD DEVELOPMENT SECURITIES LIMITED

Acting by a single director

Director



In the presence of

Witness signature-----

Elizabeth Marjoram

Witness name-----

As above

Witness occupation-----

Witness address-----