

DATED 4th March 2022

(1) BAP PROPERTY LIMITED

and

(2) PERSIMMON HOMES (NORTH MIDLANDS) LIMITED

and

(3) LLOYDS BANK PLC

and

(4) HINCKLEY AND BOSWORTH BOROUGH COUNCIL

and

(5) LEICESTERSHIRE COUNTY COUNCIL

PLANNING AGREEMENT

Section 106 of the Town and Country Planning Act 1990 relating to
proposed residential development on Land on the North West side of
Brookfield Road, Hinckley

(21/00225/FUL)

THIS AGREEMENT by way of Deed is made the 4th day of March Two Thousand and Twenty Two

BETWEEN:

1. **BAP PROPERTY LIMITED** (Co. Regn No. 6953577) of 138 Edmund Street, Birmingham, B3 2ES ("the Owner")
2. **PERSIMMON HOMES (NORTH MIDLANDS) LIMITED** (Co. Reg. No 01069292) of Persimmon House, Fulford, York, YO19 4FF ("The Developer")
3. **LLOYDS BANK PLC** (Co. Regn. No. 2065) of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5H ("the Mortgagee")
4. **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire 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 (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 Highway Authority and is responsible for the provision of inter alia, transportation, waste management education 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 LT156786
- E. The Developer has the benefit of an option to purchase the Application Land dated 5 February 2021
- F. The Mortgagee has the benefit of a Registered Charge over the Application Land dated 11 September 2009
- G. The Planning Application was submitted to the Borough Council by the Developer for planning permission for the Development as described in the

Planning Application

- H. The Borough Council, the County Council, the Owner and the Mortgagee (together "the Parties") have agreed to enter into this Agreement to secure the planning obligations contained herein to the extent that is necessary without which planning permission would not be granted

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

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

"Act"	means the Town & Country Planning Act 1990 (as amended)
"Affordable Dwelling/s"	means the units to be constructed as part of the Development as Affordable Housing being 8 Dwellings (20%) and unless otherwise agreed in writing with the Borough Council to comprise: (i) 6 (75%) as Affordable Rented Dwellings; and (ii) 2 (25%) as Shared Ownership Dwellings
"Affordable Housing"	has the meaning given to it in Annex 2 of the NPPF
"Affordable Housing Plan"	means the plan attached to this Agreement containing details of the location of the Affordable Dwellings the house types and size and tenure of the Affordable Dwellings or other such plan as may be agreed between the Owner and the Borough Council from time to time
"Affordable Housing Provider"	means either: i) a provider of Affordable Housing who is registered with Homes England under the Housing and Regeneration Act 2008 or such successor authority;

	or ii) any other housing provider approved in writing by the Borough Council (such approval not to be unreasonably withheld or delayed); or iii) any other company or body approved in writing by the Borough Council (such approval not to be unreasonably withheld or delayed)
"Affordable Housing for Rent"	means the definition set out in Annex 2 of the NPPF
"Application Land"	means the land edged red on the Plan and forming part of title number LT156786
"Borough Council's Housing Register"	means a waiting list of housing applicants which the Borough Council maintains in order to deliver their statutory allocation functions
"Bus Pass(es)"	means up to two adult bus passes per Dwelling entitling the holder of each bus pass to travel free of charge on local bus services for a period of six months commencing from the issue of the Bus Pass
"Bus Pass Contribution"	means the sum of up to Seven Hundred and Twenty Pounds (£720.00) per Dwelling for two Bus Passes (at a cost of £360 per Bus Pass) adjusted in accordance with the indexation provisions contained in the First Schedule payable by the Owner to the County Council towards the provision of Bus Passes.
"Civic Amenity Contribution"	means the sum of One Thousand Nine Hundred and Eighty One Pounds (£1,981.00) (calculated on the basis of the sum of Forty Nine Pounds and fifty three pence (£49.53) per Dwelling) in accordance with the provisions of clause 6.4 and adjusted in

	accordance with the indexation provisions contained in the First Schedule payable by the Owner to the County Council towards Barwell Recycling and Household Waste Centre
"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) viii. any other preparatory works agreed in writing with the Borough Council and "Commence Development" and

	"Commence" shall be construed accordingly
"County Council Monitoring Costs"	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
"Default Interest Rate"	means a rate of 4% above the base rate
"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 and whether an Affordable Dwelling or otherwise
"Health Care Provider"	means NHS West Leicestershire Clinical Commissioning Group or any successor in title
"Health Facilities Contribution"	means the sum of Twenty Thousand Two Hundred and Fifty Two Pounds and Twenty Pence (£20,252.20) adjusted in accordance with the indexation provisions in the First Schedule to be paid by the Owner to the Borough Council towards the provision and/or improvement of facilities at Station View Health Centre, Hinckley and/or Burbage Surgery, Tilton Road.
"Hinckley and Bosworth Choice Based Lettings Scheme"	means the mechanism by which Affordable Housing for Rent are openly advertised for home seekers on the Borough Council's Housing Register
"Homes England"	means the statutory successor to the Homes and Communities Agency whose statutory objects are set out in the Housing and

	Regeneration Act 2008 (and any successor to its functions)
"Housing Allocations Policy ("HAP")"	means the mechanism by which the Borough Council determines priorities and defines the procedures to be followed in allocating housing accommodation
"Landscaping Area"	means the on-site landscaping area as shown on the Landscaping Area Plan
"Landscaping Area Maintenance Contribution"	means the sum of Two Thousand Nine Hundred and Seventy Pounds (£2,970.00) for the maintenance of the Landscaping Area in accordance with the provisions of clause 3.3.5.6 and such sums to be adjusted in accordance with the provisions contained in the First Schedule in relation to the maintenance of any Landscaping Area provided on the Application Land where such Landscaping Area is transferred to either the Borough Council or to Burbage Parish Council for future management and maintenance
"Landscaping Area Maintenance Scheme"	means the scheme for the future maintenance and management of the Landscaping Area to be submitted to the Borough Council by the Owner in accordance with the provisions of clause 3.3.5 hereof
"Landscaping Area Plan"	means the plan attached hereto with reference 195/LTP-01 showing the area which is to form the Landscaping Area
"Landscaping Area Scheme"	means the scheme required to be laid out by condition 28 of the Planning Permission
"Library Contribution"	means the sum of One Thousand Two Hundred and Ten Pounds (£1,210.00) adjusted in accordance with the indexation

	provisions in the First Schedule to be paid by the Owner to the County Council towards the provision and/or improvement of facilities at Hinckley Library including the provision of book stock and other forms of media for lending
"Local Connection"	means such local connection to the area within which the Application Land is situated including the parish/village connection (if any) as may be agreed within the HAP and thereafter the district of the Borough Council
"Market Dwelling/s"	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
"NPPF"	means the National Planning Policy Framework (July 2021) or any successor document thereto which may be introduced from time to time for the avoidance of doubt changes in policy or legislative changes
"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" "Occupiers" and "Occupied" shall be construed accordingly

"Off Site Open Space Contribution"	means a sum payable by the Owner to the Borough Council adjusted in accordance with the indexation provisions of the First Schedule hereof towards the provision and maintenance of any of the following facilities; Indigo Drive (BURNEW3), and/or Rugby Road Park (BUR09) and/or Sketchley Brook Recreational corridor (BUR10) in lieu of provision on site and calculated as follows; Equipped Children's Play Space based on an area of 3.6m² per Dwelling and a sum calculated at One hundred and Eighty One Pounds and Ninety Three Pence (£181.93) per square metre per Dwelling towards the provision of the same ("the Provision Sum") and at Eighty Seven Pounds and Eighty Pence (£87.80) per square metre per Dwelling towards the maintenance of the same ("the Maintenance Sum") Casual/Informal Play spaces based on an area of 18.6m² per Dwelling and a sum calculated at Four Pounds and Forty Four (£4.44) per square metre per Dwelling towards the provision of the same ("the Provision Sum") and at five pounds forty pence (£5.40) per square metre per Dwelling towards the maintenance of the same ("the Maintenance Sum") Outdoor sports provision based on an area of 38.4m² per Dwelling and a sum calculated at Nine Pounds and five pence (£9.05) per square metre per Dwelling towards the provision of the same ("the Provision Sum") and at Four Pounds thirty pence (£4.30) per square metre per Dwelling towards the maintenance of the same ("the Maintenance Sum")
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	Accessibility and natural green space based on an area of 40m² per Dwelling and a sum calculated at four pounds and nine pence (£4.09) per square metre per Dwelling towards the provision of the same ("the Provision Sum") and at seven Pounds and ten pence (£7.10) per square metre per Dwelling towards the maintenance of the same ("the Maintenance Sum")
"Plan"	means the plan attached hereto and labelled the Plan
"Planning Application"	means the Planning Application submitted to the Borough Council and allocated reference number 21/00225/FUL for the erection of 40 dwellings and associated infrastructure on land off Brookfield Road, Burbage, Hinckley, Leicestershire
"Planning Permission"	means the full planning permission granted by the Borough Council pursuant to the Planning Application
"Post 16 Education Contribution"	means the sum of Twenty Five Thousand Five Hundred and Eleven Pounds and Sixty Four Pence (£25,511.64) in accordance with the provisions of clause 6.5 adjusted in accordance with the indexation provisions of the First Schedule to be paid by the Owner to the County Council towards post 16 education provision at Hinckley Academy and John Cleveland Sixth Form Centre or a successor post 16 education facility or the provision of school places at any other school within the locality of the Development that will provide post 16 education places to serve the Development
"Shared Ownership Dwellings"	means dwellings purchased on a shared

	equity basis whereby not more than 75% and not less than 10% of the equity initially sold to the purchaser by the Affordable Housing Provider with flexibility to increase their degree of ownership if they so wish
"Travel Pack Administration Fee"	means the sum of £500 adjusted in accordance with the indexation provisions in the First Schedule payable by the Owner to the County Council towards the costs of the County Council reviewing and approving the Travel Pack if produced by the Owner
"Travel Pack Contribution"	means the sum of Fifty Two Pounds and Eighty Five Pence (£52.85) per Dwelling adjusted in accordance with the indexation provisions in the First Schedule payable by the Owner to the County Council for the provision of Travel Packs in accordance with the provisions of clause 6.2.1 if the Owner is not to provide the Travel Packs directly
"Travel Packs"	means the pack produced by the Owner or County Council for each Dwelling providing information on sustainable travel choices available in the surrounding area including application forms for 2 Bus Passes

- 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 Covenants made hereunder:

1.6.1 on the part of the Borough Council shall be enforceable against the Borough Council and any statutory successor to it as planning authority

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

1.7 The expression "the Owner" shall where the context so admits include its 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 binding on and enforceable against its successors in title or assignees and subject to clause 2.6 those deriving title under the Owner PROVIDED THAT without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any part of the Application Land of which he does not have an interest or after he shall have parted with its entire interest in the Application Land or that part of the Application Land to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest

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 (save that this exemption shall not apply to the occupancy restrictions set out in clauses 3.1.6-3.1.7) 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 save that this exemption shall not apply to the occupancy restrictions for the Affordable Dwellings

- 2.7 In the event that the Owner disposes of its interest in the Application Land or any part thereof (other than a disposal to a purchaser of a Dwelling or any disposal of any statutory utilities for operational purposes) it shall within twenty-eight 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 clause 2.11 (Commencement of Development), clause 2.18 (Exclusion of Third Party Rights), clause 2.27 (Jurisdiction), clauses 4.1 and 5.8 (Borough Council and County Council Legal Costs) which shall come into effect on the date hereof the provisions of this Agreement shall only come into effect upon the grant of the Planning Permission and the 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 contained in 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

Notification of Commencement of Development and Triggers

- 2.11 The Owner shall give the Team Leader Development Management at the Borough Council seven days' notice in advance of the Commencement of Development and seven days' notice in advance of each of the trigger points referred to in clauses 3 and 5 and shall send a copy of such notices to the Team Manager, Planning Obligations Team, Planning and Historic Natural Environment Department of the County Council. 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 The person to be appointed pursuant to this Clause 2.14 shall if possible be a person having ten 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
- 2.14 The reference to the expert shall be on terms that:
- 2.14.1 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;
 - 2.14.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
 - 2.14.3 the expert shall be bound to have regard to the said submissions and

representations;

- 2.14.4 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;
- 2.14.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
- 2.14.6 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

- 2.15 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

- 2.16 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

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

case of the County Council must be marked for the attention of the Team Manager, Planning Obligations Team, Planning and Historic and Natural Environment Department

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

- 2.19 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the Parties 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

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

Effect of any Waiver

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

General Requirement to Co-operate

- 2.22 Without prejudice to its statutory duties 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

Application of this Agreement

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

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

Mortgagee and Developer Consent

- 2.24 The Mortgagee and the Developer consent to the giving of the obligations by the Owner in relation to the Application Land and acknowledge that the Application Land is bound by the restrictions and obligations contained in this Agreement and that this Agreement will be binding on successors in title to the Owner but that this liability on the Owner will cease once it has parted with its interests in the Application Land but without prejudice to its liability for any subsisting breach of covenant prior to parting with such interests. Neither the Mortgagee nor the Developer shall unless expressly stated otherwise have any liability under this Agreement unless the Developer acquires an interest in the Application Land or the Mortgagee takes possession of the Application Land pursuant to its charge.

General Requirement to Co-operate

- 2.25 Without prejudice to its/their 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

Interest on late payment

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

Jurisdiction

- 2.27 This Agreement is governed by and interpreted in accordance with the law of

England and the Parties submit to the non-exclusive jurisdiction of the courts of England

Future Chargees

- 2.28 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

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

Affordable Housing

- 3.1 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 Not to Occupy or to permit the Occupation of more than 65% 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
- 3.1.3 Any transfers under clause 3.1.2. shall contain the following provisions:
- 3.1.3.1 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
- 3.1.3.2 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
- 3.1.4 To notify the Team Leader Development Management of the Borough Council within fourteen days of the first transfer of any of the Affordable Dwellings to an Affordable Housing Provider or individual purchaser of the date of such transfer and to provide the Borough Council with details of the Affordable Housing Provider or individual(s) to which the Affordable Dwelling was transferred
- 3.1.5 To ensure that the Affordable Dwellings shall not be used or occupied other

than for Affordable Housing provided that this clause 3.1.5 shall not be binding on:

- 3.1.5.1 any person acquiring an interest in an Affordable Dwelling under a statutory right to buy the said Affordable Dwelling
- 3.1.5.2 a lessee of a Shared Ownership Dwelling or a mortgagee or chargee of a Shared Ownership Dwelling
- 3.1.5.3 a person who has staircased under the lease of a Shared Ownership Dwelling or acquired the freehold of the said Shared Ownership Dwelling or a mortgagee or chargee of such a Shared Ownership Dwelling
- 3.1.5.4 a mortgagee or chargee of or successor in title to any such person as is mentioned in 3.1.5.1 to 3.1.5.3 above

Affordable Housing for Rent

- 3.1.6 Subject to the provisions of this Agreement no Affordable Housing for Rent shall be used for any purpose other than the provision of Affordable Housing for Rent under the Hinckley and Bosworth Choice-Based Lettings Scheme and in accordance with the objectives of the Borough Council's Housing Allocations Policy ("HAP") in force from time to time to persons in need of Affordable Housing within the Borough and being such persons as shall be agreed between the Borough Council and the Affordable Housing Provider who satisfy the Borough 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 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

Mortgagee Exclusion

- 3.1.7 The Affordable Housing provisions in this Agreement (as set out in this clause 3.1) shall not be binding on 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 any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- 3.1.7.1 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
- 3.1.7.2 if such disposal has not been 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 provisions shall determine absolutely.

Off Site Open Space Contribution

- 3.2 The Owner covenants with the Borough Council to pay the Off Site Open Space Contribution as follows;
- 3.2.1 There shall be no Commencement of Development unless and until the Owner shall have paid all the Provision Sums referred to in the definition of Off Site Open Space Contribution to the Borough Council
- 3.2.2 Not to Occupy or to permit the Occupation of more than 50% of the Dwellings unless and until the Owner shall have paid all the Maintenance Sums referred to in the definition of Off Site Open Space Contribution to the Borough Council

Landscaping Area

- 3.3 The Owner covenants with the Borough Council in respect of the Landscaping Area as follows:
- 3.3.1 To carry out the Landscaping Area Scheme as per the Landscaping Area Plan and details approved in accordance with condition 28 of the Planning Permission
- 3.3.2 Not more than 25% of the Dwellings shall be Occupied or permitted to be Occupied until the Landscaping Area has been laid out and made available for use by the residents of the Development in accordance with the approved Landscaping Area Scheme
- 3.3.3 To maintain the Landscaping Area for a period of 12 months after notice of practical completion of the works for the Landscaping Area in accordance with the provisions of the approved Landscaping Area Scheme has been submitted

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

3.3.4 The Owner shall give the Borough Council notice in writing that the 12-month period for maintenance in accordance with clause 3.3.3 hereof has expired and subject to the Borough Council being reasonably satisfied on an inspection that the Landscaping Area has been maintained in accordance with the provisions of the Landscaping Area Scheme the Borough Council shall issue a certificate to such effect provided that if the Borough Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the Landscaping Area and the maintenance period for such land shall be extended until such time as the Borough Council certifies in writing that the outstanding work has been completed or the defects have been remedied as the case may be

3.3.5 In the event that the Owner elects to transfer the Landscaping Area to a management company the Owner shall within 56 days of the service of the notice pursuant to clause 3.3.4 hereof submit to the Borough Council for approval (such approval not to be unreasonably withheld or delayed) the proposed Landscaping Area Maintenance Scheme and proposals for the management company which is to take a transfer of the Landscaping Area and shall maintain the Landscaping Area in accordance with the approved Landscaping Area Scheme until such time as the Borough Council has approved in writing the Landscaping Area Maintenance Scheme, and is satisfied that:

3.3.5.1 the management company has been incorporated and is functioning and there is an obligation on the management company to maintain the Landscaping Area in accordance with the maintenance provisions of the Landscaping Area Maintenance Scheme, and

3.3.5.2 the Landscaping Area has been transferred to the management company on the terms set out in the Second Schedule hereto

AND FOR THE AVOIDANCE OF DOUBT if the Owner elects for a management company to maintain the Landscaping Area the Landscaping Area Maintenance Contribution shall not be payable

3.3.5.3 In the event the Owner requests Burbage Parish Council (the Parish Council) to maintain the Landscaping Area and in the event that the

Parish Council confirm in writing to the Owner that it is willing to maintain the Landscaping Area the following provisions shall apply:

- 3.3.5.4 The Owner shall give the Borough Council or the Parish Council notice in writing that the 12-month period for maintenance in accordance with clause 3.3.4 hereof has expired and subject to the Borough Council or the Parish Council being reasonably satisfied on an inspection that the Landscaping Area has been maintained in accordance with the provisions of the Landscaping Area Scheme the Borough Council shall issue a certificate to such effect provided that if the Borough Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the Landscaping Area in accordance with the provisions of the Landscaping Area Scheme and the maintenance period for such land shall be extended until such time as the Borough Council certifies in writing that the outstanding work has been completed or the defects have been remedied as the case may be
- 3.3.5.5 The Owner shall transfer to the Parish Council the Landscaping Area for the sum of £1.00 within six months of the issue of the certificate issued pursuant to clause 3.3.5.4 such transfer to be in accordance with the relevant provisions of the Second Schedule and for the avoidance of doubt the Owner shall maintain the Landscaping Area in accordance with the Landscaping Area Maintenance Scheme until the transfer to the Parish Council has been completed
- 3.3.5.6 The Owner shall pay the Landscaping Area Maintenance Contribution to the Parish Council upon transfer of the Landscaping Area pursuant to clause 3.3.5.5

Health Facilities Contribution

- 3.4 The Owner covenants with the Borough Council to pay the Health Facilities Contribution to the Borough Council prior to the Commencement of Development

4 THE DEVELOPER'S OBLIGATIONS TO THE BOROUGH COUNCIL

Borough Council's Legal costs

- 4.1 The Developer covenants to pay the Borough Council's costs of Two Thousand Pounds (£2,000.00) upon the execution of this Agreement

5 THE OWNER'S PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

Library Contribution

- 5.1 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 and will not Occupy or cause or permit the Occupation of the first Dwelling until the Library Contribution has been paid

Travel Pack Contribution

- 5.2 The Owner covenants with the County Council to either:
- 5.2.1 pay the Travel Pack Contribution to the County Council prior to first Occupation of the first Dwelling to enable the County Council to provide Travel Packs for each first Occupier of each Dwelling; or
- 5.2.2 elect in writing, prior to the first Occupation of the first Dwelling, to provide its own Travel Packs (which shall be submitted to the County Council together with the Travel Pack Administration Fee for approval in writing by the County Council) to each Occupier of each Dwelling on first Occupation of that Dwelling

Bus Pass Contribution

- 5.3 The Owner covenants with the County Council to elect prior to first Occupation of the first Dwelling to either pay the Bus Pass Contribution or to provide Bus Passes directly to the Occupiers of the Dwellings in accordance with the following:
- 5.3.1 If Clause 6.3.3 does not apply to pay to the County Council, 25% of the Bus Pass Contribution prior to the first Occupation of the first Dwelling
- 5.3.2 within 28 days of receipt of a written request from the County Council to pay the remaining 75% of the Bus Pass Contribution on receipt of confirmation from the County Council to the Owner that the preceding 25% of the Bus Pass Contribution paid has or is about to be spent except that payment of part of the remaining contribution may be deferred by agreement with the County Council
- 5.3.3 Should the Owner elect to supply the Bus Passes directly to provide to each of the first Occupiers of each Dwelling who complete and return a Bus Pass application form contained within the Travel Pack within the first 6 months of their Occupation up to two Bus Passes per Dwelling.
- 5.3.4 Where the Owner provides the Bus Passes directly to the Occupiers of the Dwellings they will every 6 months commencing 6 months after the first Occupation of the first Dwelling and ending 6 months after the first Occupation of the last Dwelling supply to the County Council details of all Bus Passes issued in the preceding 6 month period

Civic Amenity Contribution

- 5.4 The Owner covenants with the County Council to pay the Civic Amenity Contribution to the County Council prior to first Occupation of the first Dwelling

Post 16 Education Contribution

- 5.5 The Owner covenants with the County Council to pay the Post 16 School Contribution to the County Council as follows:

- 5.5.1 50% prior to first Occupation of the first Dwelling
5.5.2 50 % prior to first Occupation of the twentieth Dwelling

Monitoring costs

- 5.6 The Owner covenants with the County Council to pay the County Council Monitoring Costs prior to the first Occupation of the first Dwelling and will not Occupy or cause or permit the Occupation of the first Dwelling until the County Council Monitoring Costs have been paid

Notice of Occupation

- 5.7 The Owner covenants with the County Council to serve written notice upon them at least 7 days in advance of the first Occupation of first twentieth and final Dwelling comprising part of the Development

THE DEVELOPER'S OBLIGATIONS TO THE COUNTY COUNCIL

County Council's costs

- 5.8 The Developer covenants with the County Council to pay the County Council's costs of One Thousand One Hundred and Fifty Pounds (£1150) on the execution of this Agreement

6 BOROUGH COUNCIL'S COVENANTS

Health Facilities Contribution

- 6.1 The Borough Council covenants with the Owner to pay the Health Facilities Contribution to the Health Care Provider upon receipt of the contribution from the Owner and to obtain a document from the Health Care Provider (addressed and supplied to both the Borough Council and the Owner) confirming that it will apply the Health Facilities Contribution for the purposes of providing additional health care services and/or facilities at Station View Health Centre, Hinckley and for no other purposes whatsoever and that should it not spend the Healthcare Facilities Contribution within 5 years of receipt of the contribution from the Borough Council or fail to provide evidence of such expenditure to the Owner when requested at the end of the 5 year period then it shall repay to the Owner the Healthcare Facilities Contribution or so much of it as remains

unspent for the purposes specified at the end of the 5 year period PROVIDED ALWAYS 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 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 and receipt by both the Owner and the Borough Council of the document herein specified

Off Site Open Space Contribution

- 6.2 The Borough Council covenants with the Owner as follows:
- 6.2.1 to apply the Off Site Open Space Contribution solely towards the stated purpose and for no other purpose whatsoever
 - 6.2.2 if any of the Provision Sums has not been expended for the specified purposes within the period of five years from the date of payment to repay to the Owner on demand such part of the Provision Sum as has not been so expended
 - 6.2.3 if any of the Maintenance Sums has not been expended for the specified purposes within fifteen years from the date of payment to repay to the Owner on demand such part of the Maintenance Sum as has not been so expended

Deed of Release

- 6.3 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

7 THE COUNTY COUNCIL COVENANTS

Library Contribution

- 7.1 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

- 7.2 The County Council covenants with the Owner to apply the Travel Pack Contribution (if received) solely towards the costs of producing Travel Packs and for no other purpose whatsoever

Bus Pass Contribution

- 7.3 The County Council covenants with the Owner as follows:

- 7.3.1 To apply the Bus Pass Contribution (if received) solely for the provision of Bus Passes to the Occupants of Dwellings who complete and return the application forms in the Travel Pack within 6 months of their first Occupation of a Dwelling
- 7.3.2 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
- 7.3.3 At the end of a period of nine months after the notification of the Occupation of the final Dwelling to be constructed pursuant to the Planning Permission to repay to the Owner any unexpended portion of the Bus Pass Contribution

Civic Amenity Contribution

- 7.4 The County Council covenants with the Owner to apply the Civic Amenity Contribution solely towards the costs associated with Waste Management and for no other purpose whatsoever

Post 16 Education Contribution

- 7.5 The County Council covenants with the Owner/s to apply the Post 16 Education Contribution in accordance with the definition hereof and for no other purpose whatsoever

Repayment

- 7.6 In the event that any monies received by the County Council pursuant to clause 8 of this Agreement with the exception of the Bus Pass Contribution are not applied to the purposes specified within five 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 thereon
- 7.7 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 request for the same from the Owner

Deed of Release

- 7.8 Upon 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 and procure that a note thereof is entered on the Register of Local Land Charges

THE FIRST SCHEDULE
INDEXATION PROVISIONS

1. In this Schedule:-

- "Index" means in the case of the Off Site Open Space Contribution, Health Facilities Contribution, the Civic Amenity Contribution, the Travel Pack Administration Fee, Post 16 Education Contribution, Bus Pass Contribution, Library Contribution and 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 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 respect of the Post 16 Education Contribution for which it shall mean 1 July 2021
- "Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date
- "Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the 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:-

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

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 increase in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be

made

4. If any substitution for the said the BCIS, or any index previously substituted therefore shall occur, the Parties 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 LANDSCAPING AREA

1. GENERAL

- 1.1 The following provisions shall apply to all transfers of the Landscaping Area pursuant to this Agreement
- 1.2 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
- 1.3 Standard Conditions 2.1, 2.2, 2.3, 4.3, 5.2 and 6.1 shall not apply to the transfer
- 1.4 The Transferor granting all reasonable easements and rights to allow the Development and use of the Application Land for the purposes specified in this Agreement.
- 1.5 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.
- 1.6 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
- 1.7 No unduly restrictive or burdensome covenant or clause being imposed upon the transferee in addition to the provisions contained in this Schedule
- 1.8 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

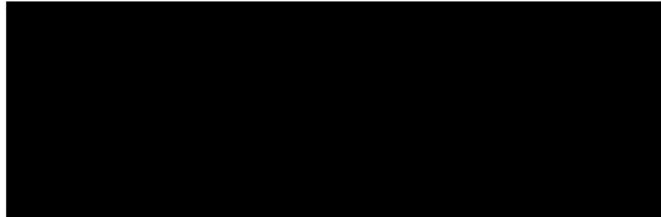
- a) restriction preventing use for any purpose other than public open space
- b) not to be used for a trade or business
- c) not to be used for residential purposes
- d) to keep land in good repair and condition
- e) not to obstruct public highway
- f) to keep and properly maintain the boundaries in 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 by

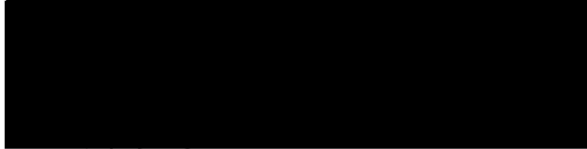
BAP PROPERTY LIMITED

~~acting by~~ EXECUTED BY A DIRECTOR

Director



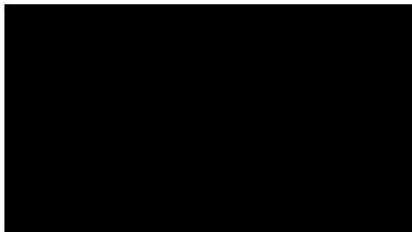
Director/Secretary IN THE PRESENCE OF A WITNESS



PERSIMMON HOMES (NORTH MIDLANDS) LIMITED

acting by

Director

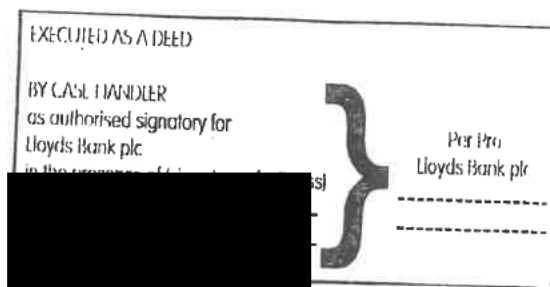


Director/Secretary



LLOYDS BANK PLC

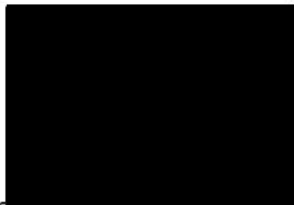
acting by



THE COMMON SEAL OF

THE COUNCIL OF THE BOROUGH OF HINCKLEY AND BOSWORTH

was hereunto affixed in the presence of: -



Authorised signatory

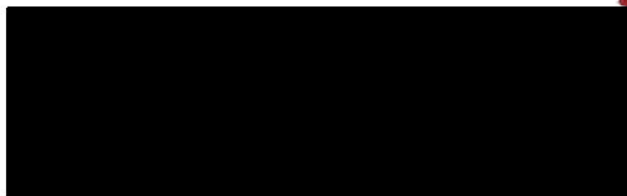


38663 (c)

THE COMMON SEAL of **LEICESTERSHIRE**

COUNTY COUNCIL was hereunto

affixed in the presence of: -



Authorised Signatory

