

DATED

2026

F P MCCANN GROUP LIMITED

- and -

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

LEICESTERSHIRE COUNTY COUNCIL

SECTION 106 AGREEMENT

PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to land at Brascote Lane, Cadeby, Nuneaton, Leicestershire, CV13 0BB

Planning Application: 25/00306/FUL

Anthony Collins
solicitors

THIS DEED is made the day of Two Thousand and Twenty Six

BETWEEN:

- (1) **F P MCCANN GROUP LIMITED** (N.I. Co. Regn. No. NI638170) of Knockloughrim Quarry 3 Drumard Road Magherafelt Londonderry BT45 8QA ("the Owner");
- (2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of County Offices, Hinkley Hub, Rugby Road, Hinkley, Leicestershire, LE10 0FR ("the Borough Council"); and
- (3) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall Glenfield Leicester LE3 8RA ("the County Council").

RECITALS:

- (A) The Borough Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The County Council is the local highway authority for the area in which the Site is situated.
- (C) The Borough Council and the County Council are both Principal Councils within the meaning of the Local Government Act 1972 (as amended) and the obligations contained herein are enforceable by the Borough Council and the County Council in respect of the obligations owed to each of them.
- (D) The Owner has a freehold interest in the Site registered at HM Land Registry under title number **LT222553, LT347762, LT365385, LT125241 and LT535365** free from encumbrances.
- (E) The Owner has made the Planning Application and is proposing to carry out the Development.
- (F) The Borough Council resolved at its meeting on the **[x]** that Planning Permission should be granted for the Development subject to the prior completion of this deed.

Commented [OD1]: Please provide title documents for LT222553 & LT535365

Commented [OD2R1]: I believe I am still awaiting these.

Commented [OD3]: To be confirmed.

NOW THIS DEED WITNESSES AS FOLLOWS

1. INTERPRETATION

1.1 For the purposes of this deed the following expressions shall have the following meanings unless the context requires otherwise:

1990 Act the Town and Country Planning Act 1990 (as amended).

Biodiversity Gain Land the sum of £[] to be paid by the Owner to the Borough Council under clause 6 of Schedule 1 to be applied by the Borough Council as a financial contribution towards the Borough Council's costs of monitoring compliance with the Owner's obligations under this deed in respect of the Site for the purpose of achieving the Biodiversity Net Gain.

Commented [OD4]: To be confirmed.

Commented [OD5]: Moved as referenced in Index definition.

Base Rate the base lending rate of Barclays Bank Plc. []

Commented [OD6]: Definition used - must remain.

Commencement of Development the carrying out in relation to the Development of any material operation as defined by section 56(4) of the 1990 Act but disregarding for the purposes of this deed, and for no other purpose, the following operations:

- (a) demolition works;
- (b) site clearance;
- (c) ground investigations;
- (d) site survey works;
- (e) temporary access construction works;
- (f) archaeological investigation; and
- (g) erection of any fences and hoardings around the Site.

and "Commenced" and "Commences" shall be construed accordingly.

Commencement Date the date Development Commences.

County Council Monitoring Costs Contribution the sum of £300.00 (three hundred pounds) or 0.5% of the value of any contribution due under

Development

this deed to the County Council per obligation the greater amount payable towards the County Council's costs of monitoring compliance with the obligations contained within this deed.

the development of the Site being the erection of a pipe manufacturing facility with associated storage.

Commented [EC7]: Is this intended? This seems to be a duplication of payment if owner is to make a payment to the contribution and then to pay an additional 0.5 on that?

Commented [CS8R7]: The amendments to this definition are not agreed. A monitoring fee is required per obligation.

Commented [EC9]: See amendments to the Travel pack Contribution

Default Interest Rate

4% per annum above the Base Rate.

Commented [OD10]: Not agreed - 4% required,

Employee

any one of the 60 (sixty) full time equivalent employees who are employed by the Owner at the Site who has commenced employment at the Development within the first 12 (twelve) months since the first Occupation of the Development.

Commented [CS11]: The amendments to this definition are not agreed. The Transport Assessment states that there will be 60 FTE employees and so this figure needs to be inserted in the draft.

Index

for the Travel Pack Contribution means the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the County Council and the Owner 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 and

for the Biodiversity Gain Land Monitoring Contribution means the Retail Prices Index or in the event of discontinuance any replacement thereof or such alternative index as may be proposed by the Owner and agreed by the Borough Council.

Commented [OD12]: Definition used - must remain.

Index Linked

increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A is the figure for the Index that applied immediately preceding the date the payment is due; and

B is the figure for the Index that applied when the index was last published before the date of this deed.

Occupation

the first occupation of the Development for the purposes permitted by the Planning Permission but not including occupation by persons engaged in construction, fitting out, or decoration, or occupation in relation to security operations during construction.

Plan

the plan appended to this deed at Appendix 1.

Planning Application

an application for Planning Permission registered by the Borough Council under reference number 25/00306/FUL.

Planning Permission

the planning permission to be granted by the Borough Council in respect of the Planning Application.

Site

the land situated at Brascote Lane, Cadeby, Nuneaton, Leicestershire, CV13 0BB edged red on the Plan.

Travel Pack

a pack providing information on public transport and other means of sustainable travel to and from the Development other than by private car including produced by the Owner and approved by the County Council acting reasonably (or in the alternative provided by the County Council

following receipt of the Travel Pack Contribution) and reference to "Travel Packs" shall be construed accordingly.

Travel Pack Contribution

the sum of £3,171.00 (three thousand one hundred and seventy one pounds) Index Linked representing a cost of £52.85 (fifty two pounds and eighty five pence) Index Linked per Employee to be paid by the Owner to the County Council in the event that the County Council provides Travel Packs to each Employee.

Commented [CS13]: The amendments to this definition are not agreed. This is the County Council's standard definition and must remain.

Working Day

any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

Commented [CS14]: The amendments to this definition are not agreed. This is the County Council's standard definition and clearly states the sum due and how it is calculated.

VAT

value added tax chargeable under the Value Added Tax Act 1994 (as amended) and any similar replacement tax and any similar additional tax.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors in title to that party and to anyone deriving title through or under that party and permitted assigns and in the case of the Borough Council and/or the County Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written excludes faxes.
- 1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the term(s) including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the 1990 Act, section 111 of the Local Government Act 1972 (as amended), section 1 of the Localism Act 2011 (as amended) and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Owner with the intention that they bind the interests held by that person in the Site and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Borough Council and the County Council in accordance with section 106 of the 1990 Act.

3. CONDITIONALITY

With the exception of clause [x] (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.

Commented [OD15]: To be confirmed.

4. COVENANTS TO THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

- 4.1 The Owner covenants with the Borough Council to:
- 19865923-10

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1 so as to bind its interest in the Site; and
- (b) give at least ten (10) Working Days written notice to the Borough Council of the intended Commencement Date.

Commented [EC16]: HMMP will be in respect of land within the Site

Commented [OD17R16]: That is noted.

4.2 The Owner covenants with the County Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Part 1 of Schedule 2; and
- (b) give at least ten (10) Working Days' written notice to the County Council of the intended Commencement Date.

5. COVENANTS BY THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

- 5.1 The Borough Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- 5.2 The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Part 2 of Schedule 2.

6. INDEXATION

- 6.1 All financial contributions payable to the Borough Council and/or the County Council (save where expressed otherwise) will be Index Linked.

7. RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Site, except in respect of any breach subsisting before parting with that interest.

8. DETERMINATION OF DEED

The obligations in this deed (with the exception of clause [x]) shall cease to have effect if, before the Commencement of Development, the Planning Permission:

Commented [OD18]: To be inserted.

- (a) expires;
- (b) is varied or revoked other than at the Owner's request; or
- (c) is quashed following a successful legal challenge.

9. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Borough Council.

10. COSTS

10.1 The Owner shall pay to the Borough Council on or before the date of this deed the Borough Council's reasonable and proper legal costs together with all properly incurred and vouched disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

Commented [OD19]: Not agreed - if my costs exceed the undertaking provided I will require an uplift to be provided. Ther costs cannot be capped.

10.2 The Owner shall pay to the County Council on the execution of this deed the County Council's reasonable and proper legal costs which shall not exceed [] together with all properly incurred and vouched disbursements incurred in connection with the preparation, negotiation and completion of this deed.

11. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Borough Council and/or the County Council by the date it is due, the Owner shall pay the Borough Council and/or the County Council interest on that amount at the Default Interest Rate (both before and after any judgment). This interest will accrue on a daily basis for the period from the due date to and including the date of payment.

12. OWNERSHIP

12.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Site.

12.2 The Owner will give to the Borough Council and the County Council immediate written notice of any change in ownership of any of its interests in the Site including:

12.2.1 the details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Site occurring before all the obligations under this deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not);

12.2.2 the name and address of the person to whom the disposition was made;
and

12.2.3 the nature and extent of the interest disposed of, including a plan.

13. CANCELLATION OF ENTRIES

- 13.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Borough Council's and the County Council's reasonable and proper costs), the Borough Council and the County Council shall issue a written confirmation of that performance or discharge.
- 13.2 Following the performance and full satisfaction of all the terms of this deed or if this deed is determined pursuant to clause 8 (and subject to the payment of the Borough Council's and the County Council's reasonable and proper costs and charges), the Borough Council shall on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

14. DISPUTES

- 14.1 In the event of any dispute or difference arising between the parties to this deed in respect of any matter contained in this deed including in the event of any refusal or approval required pursuant to this deed or in the event of a delay of more than 2 (two) months in providing such approval following written submission of a request for such approval such dispute or difference or refusal or delay shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties to this deed in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.
- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by any of the parties to this deed to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on the parties to this deed in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any

event not more than 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.

Commented [CS20]: This must remain at 28 working days. 20 is too short.

- 14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further 10 (ten) Working Days.
- 14.5 The provisions of this clause shall not affect the ability of the Borough Council or County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this deed and consequential and interim orders and relief.

15. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed fetters or restricts the Borough Council's and the County Council's statutory rights, powers, discretions and responsibilities.

16. WAIVER

No failure or delay by the Borough Council and/or the County Council to exercise any right or remedy provided under this deed or by law constitutes a waiver of that or any other right or remedy. No single or partial exercise of that right or remedy prevents or restricts the further exercise of that or any other right or remedy.

17. FUTURE PERMISSIONS

Nothing in this deed prohibits or limits the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

18. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) the nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and

- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Borough Council in the exercise of any other statutory function.

19. NOTICES

19.1 Any notice to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first-class post or other next Working Day delivery service.

19.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Borough Council at the address identified at the beginning of this deed marked for the attention of the Head of Planning and Regeneration;
- (b) to the County Council at the address identified at the beginning of this deed and marked for the attention of the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment Department.;
- (c) to the Owner at of Knockloughrim Quarry 3 Drumard Road Magherafelt Londonderry BT45 8QA marked for the attention of Paul Hamill; and
- (d) as otherwise specified by the relevant party by notice in writing to each other party.

19.3 Any notice given in accordance with clause 19.1 and clause 19.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that, if delivery occurs:
 - (i) before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day; and
 - (ii) if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting.

19.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 (as amended) to enforce any term of this deed.

21. VALUE ADDED TAX

- 21.1 Each amount stated to be payable by the Owner to the Borough Council or the County Council under or pursuant to this deed is exclusive of VAT (if any).
- 21.2 If any VAT is at any time chargeable on any supply made by the Borough Council or the County Council under or pursuant to this deed, the Owner shall pay the Borough Council or the County Council (as the case may be) an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

22. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England.

SCHEDULE 1
BIODIVERSITY NET GAIN

1. INTERPRETATION

For the purposes of this Schedule the following expressions shall have the following meanings unless the context requires otherwise:

Agreement Expiry Date	a date which is the expiration of the period of thirty (30) years following the Completion Date.
Biodiversity Metric	the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time that can be used to measure the biodiversity value or relative biodiversity value of habitat or habitat enhancement for the purposes of biodiversity net gain.
Biodiversity Net Gain or BNG	an increase in Biodiversity Units resulting from implementing and carrying out the Habitat Management and Monitoring Plan (as measured using the Biodiversity Metric) that can be allocated to a development to fulfil its requirement to create or enhance biodiversity under Schedule 7A of the 1990 Act.
Biodiversity Units	the quantum of biodiversity as measured by the Biodiversity Metric.
BNG Report	means the biodiversity net gain report in the form appended at Appendix [2]
Breach Notice	a notice which may be served by the Borough Council on the Owner under this deed.
Certificate of Completion	a written certificate of completion confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Borough Council on the

	Completion Date issued (or deemed to have been issued) by the Borough Council.
Completion Date	the date specified in the Certificate of Completion as the date the Habitat Creation and Enhancement Works were completed.
Completion Date Notice	written notice from the Owner to the Borough Council of the proposed Completion Date of the Habitat Creation and Enhancement Works.
DEFRA	the public body known as the Department for Environment, Food & Rural Affairs or any successor body which acts as the Government's advisor for the natural environment, food or rural affairs in England.
Habitat Creation and Enhancement Works	the habitat creation and enhancement works set out in the BNG Plan (excluding any management or monitoring activities).
Habitat Management and Monitoring Plan or HMMP	means the approved document titled 'Habitat Management and Monitoring Plan' at Appendix 2 which contains written narrative and spatial mapping details for Biodiversity Net Gain. on the Site as detailed in the BNG Report.
Monitoring Report	the monitoring reports to be issued to the Borough Council as specified in the Habitat Management and Monitoring Plan.
Natural England	the public body known as Natural England or any successor body which acts as the Government's advisor for the natural environment in England.

Commented [EC21]: To be provided? As this is just implementing the Biodiversity Net Gain report, can this be appended with the HMP to be agreed provided that this sets out what was articulated in the biodiversity net gain report?

Commented [OD22R21]: The HMMP should be submitted with the Biodiversity Gain Plan.

Can you confirm if this was submitted and if it is awaiting approval? If not, why. We cannot proceed without confirming what the current position is.

2. IMPLEMENTATION OF THE HABITAT CREATION AND ENHANCEMENT WORKS

2.1 The Owner covenants to:

- (a) [begin the Habitat Creation and Enhancement Works no later than 12 months following the date of first Allocation; and](#)

- (a) complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan;
- (b) issue the Completion Date Notice to the Borough Council within ten 10 Working Days of the Completion Date of the Habitat Creation and Enhancement Works.

(b)(c) promptly rectify any defects in the Habitat Creation and Enhancement Works identified by the Borough Council under paragraph 7.2(b) of this Schedule and issue a subsequent Completion Date Notice and thereafter to continue to rectify any defects and issue Completion Date Notices until the Borough Council issues a Certificate of Completion.

(e)(d) upon receiving the Certificate of Completion from the Borough Council, to maintain the Site in accordance with the BNG Plan for a period of not less than 30 years from the Completion Date.

(d)(e) provide a Monitoring Report to the Borough Council within 20 (twenty) Working Days of each Monitoring Report date specified in the Habitat Management and Monitoring Plan.

3. HABITAT MANAGEMENT AND MONITORING PLAN

3.1 The Owner covenants to notify the Borough Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:

- (a) the proposed amended Habitat Management and Monitoring Plan;
- (b) a statement of reasons for such amendment; and
- (c) confirmation (with reasons) that the amendment would not prejudice:
 - (i) the use or management of the Site in a manner consistent with its function to deliver Biodiversity Net Gain; and
 - (ii) the continued functioning of the Site for Biodiversity Net Gain ~~or any existing Allocation.~~

Commented [OD23]: Registration not required.

4. BIODIVERSITY GAIN LAND MONITORING CONTRIBUTION

4.1 The Owner covenants to pay the Biodiversity Gain Land Monitoring Contribution to the Borough Council prior to the Commencement of Development.

Commented [OD24]: Why has this been removed - has a monitoring schedule been established in the BNG Report? If so, please provide me with a copy.

Commented [OD25]: Trigger subject to my clients approval.

4.2 The Borough Council covenants to use the Biodiversity Gain Land Monitoring Contribution for its intended purpose and not for any other purpose.

5. INSPECTION

5.1 From the Commencement Date, the Owner covenants to allow the Borough Council, its agents, and contractors with or without workmen and equipment to:

- (a) enter onto the Site at all reasonable times and reasonable notice (save where entry is required urgently or in an emergency) to monitor compliance with:
 - (i) the obligations in this deed;
 - (ii) any Breach Notice; and
- (b) pass and repass across any land in the Owner's control which is necessary to gain access to for the purpose of accessing the in accordance with paragraph 7.1(a).

5.2 The Borough Council covenants to give not less than 10 Working Days' notice to the Owner of its intention to access the Site for the purposes of inspection to ascertain the Owner's compliance with its covenants under this deed or a Breach Notice.

5.3 The Borough Council covenants to:

- (a) inspect the Habitat Creation and Enhancement Works within 30 Working Days following receipt of the Completion Date Notice;
- (b) to do the following where Habitat Creation and Enhancement Works are inspected under sub-paragraph (a):
 - (i) promptly issue a Certificate of Completion if the Habitat Creation and Enhancement Works if the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Borough Council; or
 - (ii) promptly notify the Owner of any defects, if the Borough Council determines that the Habitat Creation and Enhancement Works have not been completed;
 - (iii) where the Owner issues a subsequent Completion Date Notice, re-inspect the Habitat Creation and Enhancement Works under paragraph 7.3(a) of this Schedule and to comply with paragraph 7.3(b) of this Schedule until it issues the Certificate of Completion;
 - (iv) to use reasonable endeavours to minimise disruption to the Site and or to the Habitat Creation and Enhancement Works and, where any material damage is caused by the Borough Council in the exercise of its inspection rights, to make good such damage as soon as reasonably practicable.

Commented [OD26]: Agreed with caveat.

Commented [OD27]: The clause you have inserted cannot be accepted. Please see amended wording.

6. ENFORCEMENT

6.1 The Borough Council covenants, where it considers that the Owner is not complying with its obligations under this deed, and intends to take steps to remedy the breach, to first notify the Owner:

- (a) the reasons for alleging non-compliance;
- (b) the steps it proposes the Owner should take to remedy any breach or non-compliance; and
- (c) the reasonable time limits for the Owner to take these steps.

6.2 The Borough Council covenants, where it serves a Breach Notice, it may notify the Owner of any extension of time specified in the Breach Notice as it considers appropriate (in its absolute discretion).

6.3 The Borough Council covenants, where the Owner does not comply with the time limits specified in the Breach Notice undertake the requirements imposed on the Owner as set out in the Breach Notice provided that the Borough Council:

- (a) provides reasonable notice that it, its agents, and contractors with or without workmen and equipment will enter the Site;
- (b) ensures minimal damage and inconvenience to the Owner;
- (c) promptly repairs any damage caused by exercising the step-in rights under this clause; and
- (d) issue to the Owner a full breakdown of the time spent and reasonable and proper costs incurred in exercising its step-in rights under this clause.

6.4 Where a Breach Notice is served, the Owner covenants to:

- (a) comply with the requirements of the Breach Notice within the time limits specified by the Breach Notice;
- (b) use reasonable endeavours to agree the following with the Borough Council within twenty (20) Working Days of the Breach Notice (or such additional period as the Borough Council may agree in writing):
 - (i) the steps required to remedy the breach; and
 - (ii) if applicable, any remedial works; and

Commented [OD28]: Not agreed - my client will not be bound to the Owner's approval.

Commented [OD29]: The clause you have inserted cannot be accepted. Please see amended wording.

~~(e)~~(f) remedy the breach within the time period specified in the Breach Notice in accordance with the details agreed under sub-paragraph (a) subject at all times to the proviso in 6.3 (a) to (c)

- 6.5 The Owner covenants where it has failed to comply with a time limit of the Breach Notice to allow the Borough Council, its agents, and contractors with or without workmen and equipment to enter the Site at all reasonable times and upon reasonable notice (save where entry is required urgently or in an emergency) to carry out works reasonably necessary to comply with the requirement of the Breach Notice (a) subject at all times to the proviso in 6.3 (a) to (c)
- 6.6 The Owner covenants to pay the Borough Council a sum equivalent to its reasonably and properly incurred costs in respect of carrying out the relevant works under clause 8.5 within 20 Working Days of a notice requesting payment.

SCHEDULE 2

COUNTY COUNCIL OBLIGATIONS

PART 1

1. COVENANTS TO THE COUNTY COUNCIL

Travel Packs

- 1.1 The Owner covenants with the County Council that prior to Commencement of Development it shall elect in writing to the County Council to EITHER:
 - 1.1.1 pay the Travel Pack Contribution to the County Council prior to first Occupation of the Development and not to Occupy the Development until the Travel Pack Contribution has been paid to the County Council; or
 - 1.1.2 deliver one Travel Pack (having submitted it in draft form to the County Council prior to Commencement of Development and had it approved in writing by the County Council accordingly) directly to each Employee AND to comply with paragraph 1.3 below.
- 1.2 In the event that the Owner elects to pay the Travel Pack Contribution to the County Council pursuant to paragraph 1.1.1 above, or it is obliged to pay the Travel Pack Contribution to the County Council pursuant to paragraph 1.3.2 below, then the Owner covenants with the County Council to pay to the County Council the Travel Pack Contribution prior to Occupation of the Development.
- 1.3 In the event that the Owner elects to provide the Travel Packs itself pursuant to paragraph 1.1.2 above then the Owner covenants with the County Council as follows:
 - 1.3.1 to submit a sample Travel Pack to the County Council together with the County Council's administration fee of £500.00 (five hundred pounds) for approval in writing and not to allow Occupation of the Development until such approval has been given (such approval not to be unreasonably withheld or delayed);
 - 1.3.2 to deliver one Travel Pack directly to each Employee and FOR THE AVOIDANCE OF DOUBT if the County Council has not approved the Travel Pack prior to first Occupation of the Development then the Owner shall pay the

Commented [EC30]: Please note that it is not consistent with the Owner's sustainability policy to produce a hard copy of a travel pack to each employee. An electronic copy should be sufficient for this purpose.

Commented [CS31R30]: There is nothing to prevent an electronic copy being provided but this will still need monitoring and so the monitoring fee must remain. This is stated in the County Council's Planning Obligations Policy.

Travel Pack Contribution to the County Council prior to first Occupation of the Development and the provisions of paragraph 1.2 shall instead apply; and

1.3.3 to supply to the County Council at the following intervals details of the Travel Packs supplied to the Employees within the preceding 6 (six) month period:

1.3.1.1 6 (six) months following first Occupation of the Development; and

1.3.1.2 12 (twelve) months following first Occupation of the Development.

Notifications

1.3.2 To give the County Council no less than 5 (five) Working Days' notice of first Occupation of the Development.

County Council Monitoring Costs **Contribution**

1.4 To pay the County Council Monitoring Costs Contribution to the County Council prior to Occupation of the Development and not to Occupy the Development until the County Council Monitoring Costs Contribution has been paid to the County Council.

Commented [EC32]: There should be no monitoring costs for the Council if a pack is provided by email. Please confirm. The Owner can confirm by reference to an anonymised employee register who has received the electronic pack?

Commented [CS33R32]: This is not agreed for the reasons stated above.

PART 2

2 COVENANTS TO THE OWNER

The County Council covenants with the Owner that on payment of the Travel Pack Contribution by the Owner under paragraph 1.2 above the County Council shall produce and distribute the Travel Packs to Employees. the first occupiers on the first Occupation of each Dwelling.

IN WITNESS whereof this deed has been duly executed as a deed by all the parties hereto the day and year first before written

EXECUTED as a DEED

BY FP McCANN LIMITED BY

DIRECTOR:

WITNESS:

Name

Occupation

Address

Name

Occupation

Address

THE COMMON SEAL of

THE COUNCIL OF THE BOROUGH OF

HINCKLEY AND BOSWORTH

was hereunto affixed in the presence of: -

Authorised signatory

19865923-10

THE COMMON SEAL of LEICESTERSHIRE

COUNTY COUNCIL was hereunto

affixed in the presence of: -

Authorised Signatory

APPENDIX 1

The Plan

APPENDIX 2
Habitat Management and Monitoring Plan