

DATED 20th August 2024

DEED OF VARIATION

BETWEEN:

(1) MIDLAND HEART LIMITED

-and-

(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL

Pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended)
relating to development of land at Ashby House Hill Top Farm Hill Top Earl Shilton

Planning Application Reference – 20/00916/FUL

Legal Reference: 029548.0568

Anthony
Collins

THIS DEED is made this day of

20th August

2024

BETWEEN:

- (1) **MIDLAND HEART LIMITED** a company registered under the Co-operative and Community Benefit Societies Act 2014 (registered number 30069R) whose registered office is at 20 Bath Row, Birmingham ("the Owner")
- (2) **HINCKLEY and BOSWORTH BOROUGH COUNCIL** of Hinckley Hub Rugby Road Hinckley Leicestershire LE10 0FR ("the Borough Council")

Known collectively as the "Parties" and "Party" is to be construed accordingly.

RECITALS:

- 1) 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.
- 2) The Borough Council is a Principal Council within the meaning of the Local Government Act 1972 (as amended) and the obligations contained herein are enforceable by the Borough Council
- 3) The Owner is the freehold owner of the Application Land pursuant to a transfer dated 6 February 2023 which has yet to be registered at HM Land Registry and has been allocated title number LT544188
- 4) An application was made on 31 July 2023 under section 96A and section 106A of the Act to modify the planning obligations set out in the Original Agreement so that all Dwellings could be delivered as Social Rented Housing.
- 5) The Parties have hereto agreed to enter into this Deed to amend the Original Agreement to confirm that all 50 Dwellings will now be delivered as Social Rented Housing.

NOW THIS DEED WITNESSETH AS FOLLOWS:

INTERPRETATION:

1. The following words and expressions shall have the following meaning in this Deed:

"the Original Agreement"

means the deed made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) dated the 8th of November 2022 and made between (1) Ronald Ian Hemsley and Janet Ellen Hemsley and (2) Hinckley and Bosworth Borough Council and (3) Leicestershire County Council

"the Original Permission"

means the full planning permission granted

by the Borough Council under reference
20/00916/FUL

AGREED TERMS:

2. Unless the context otherwise states or requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
3. Clause headings shall not affect the interpretation of this Deed.
4. A reference to the Owner shall include the Owner's personal representatives, successors or permitted assigns and in the case of the Borough Council shall include the successors to their respective statutory functions.
5. Unless the context otherwise requires or states, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
6. Unless the context otherwise requires or states, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

STATUTORY POWERS:

7. This Deed is made under the provisions of Section 106 and 106A of the Act, Section 111 of the Local Government Act 1972 (as amended), Section 1 of the Localism Act 2011 (as amended) and all other enabling powers and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act in respect of the Application Land.
8. The planning obligations contained in this Deed shall be enforceable by the Borough Council in accordance with the provisions of Section 106(3) of the Act.

EFFECT OF THIS DEED:

9. It has been agreed between the Parties that the Original Agreement shall be amended as set out in the Schedule.

EFFECT OF THE ORIGINAL AGREEMENT:

10. Save as varied by this Deed the provisions of the Original Agreement shall continue to apply and remain in full force and effect.
11. The Owner hereby covenants with the Borough Council that it will be bound by the obligations set out in the Original Agreement as amended by this Deed.

MISCELLANEOUS:

12. A copy of this Deed shall be lodged with and registered in the register of Local Land Charges by the Borough Council.
13. The Owner agrees to pay to the Borough Council its costs in the sum of Eight Hundred and Twenty Five Pounds (£825.00) on the execution of this Deed.

RIGHTS OF THIRD PARTIES:

14. Unless expressly stated nothing in this Deed will create any rights under the contracts (Rights of Third Parties) Act 1999 (as amended) in favour of anyone other than the Parties.

JURISDICTION:

15. This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the courts of England.

THE SCHEDULE

The Parties hereby agree that the Original Agreement shall be modified as follows:

1. The definition of "Affordable Dwelling/s" shall be amended to read as follows:
"means the 50 Dwellings to be provided as Social Rented Housing"
2. The definition of "Affordable Housing for Rent" shall be deleted.
3. A new definition of "Social Rented Housing" shall be added and will read as follows:
"means a rented housing unit built pursuant to the Planning Permission which meets all of the following criteria
 - a) The rent is set in accordance with the Government's rent policy for social rent;
 - b) The landlord is a Registered Provider; and
 - c) It includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision."
4. The definition of "Market Dwelling/s" shall be deleted.
5. The definition of "Shared Ownership Dwellings" shall be deleted.
6. Amendment to paragraph 3.1.4 to read as follows:
"Any transfers under clause 3.1.3 shall contain the following provision:
3.1.4.1 the grant and reservation by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Dwellings"
7. Paragraph 3.1.4.2 shall be deleted.
8. Amendment to paragraph 3.1.5 to read as follows:
"Subject to the provisions of this Agreement no Affordable Dwellings shall be used for any purpose other than the provision of Social Rented Housing under the Hinckley and Bosworth Choice-Based Lettings Scheme and in accordance with the objectives of the Borough Council's Housing Allocations Policy in force from time to time to persons in need of affordable housing within the borough of Hinckley and Bosworth and being such persons as shall be agreed between the Borough Council and the relevant Registered Provider who satisfy the District connection within the Local Connections criteria as defined in the HAP."
9. Removal of paragraphs 3.1.6 (c) and 3.1.6 (d).
10. Amendment to paragraph 3.1.6 (e) to read as follows:
"any person deriving title from any such person as mentioned in (a) or (b) above"

IN WITNESS whereof this Deed has been duly executed as a Deed by the Parties the day and year first before written

The common seal of
MIDLAND HEART LIMITED
was hereunto affixed in the presence of

Adil

Authorised signatory

Adil

Authorised Signatory

The common seal of
**THE COUNCIL OF THE BOROUGH OF
HINCKLEY AND BOSWORTH**
Was hereunto affixed in the presence of:-

UMST

Authorised Signatory



12938

DATED 8th November 2022

(1) RONALD IAN HEMSLEY and JANET ELLEN HEMSLEY

and

(2) HINCKLEY and BOSWORTH BOROUGH COUNCIL

and

(3) LEICESTERSHIRE COUNTY COUNCIL

PLANNING AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
relating to development on land at Ashby House Hill Top Farm Hill
Top Earl Shilton

Planning reference 20/00916/FUL

Hinckley and Bosworth Borough Council

Legal Services

The Hub

Rugby Road

Hinckley

THIS AGREEMENT by way of Deed is made the 8th day of November Two Thousand and Twenty Two

BETWEEN:

1. **RONALD IAN HEMSLEY and JANET ELLEN HEMSLEY** of Hill Top Farm Earl Shilton Leicester ("the Owner")
2. **HINCKLEY and BOSWORTH BOROUGH COUNCIL** of Hinckley Hub Rugby Road Hinckley Leics LE10 0FR ("the Borough Council")
3. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield Leicester LE3 8RA ("the County Council")

RECITALS:

- A. The Borough Council is the local planning authority for the purposes of the Act for the Borough of Hinckley and Bosworth within which the Application Land is situated
- B. The Borough Council and the County Council are both Principal Councils within the meaning of the Local Government Act 1972 (as amended) and the obligations contained herein are enforceable by the Borough Council and the County Council in respect of obligations owed to each of them
- C. The County Council is the local highway authority and responsible for the provision of education/civic amenity /library facilities for the area in which the Application Land is situated
- D. The Owner is the freehold owner of the Application Land registered at HM Land Registry with title absolute under title numbers LT138771 and LT 176995 respectively.
- E. The Planning Application has been made to the Borough Council by Midland Heart for planning permission for the Development as described in the Planning Application
- F. The Owner has agreed to enter into this Agreement with the intent that its interest in the Application Land shall be subject to the covenants and obligations entered into by it and with the intention that the covenants and obligations entered into by it should create planning obligations pursuant to Section 106 of the Act in the manner hereinafter appearing.

G The Borough Council has resolved to grant the Planning Permission subject to
...conditions and to the obligations contained in this Agreement 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:

"The Act" means the Town and Country Planning Act 1990 (as amended)

"Accessible Green Space" means open space to be provided on the Application Land as publicly accessible woodland and/or urban forestry and/or scrub grasslands (including downlands and/or commons and/or meadows and/or wetlands and/or open and running water and/or wastelands)

"Affordable Dwelling/s" means the 49 Dwellings to be constructed pursuant to the Planning Permission as Affordable Housing and to comprise:

(i) 26 Dwellings as Affordable Housing for Rent; and

(ii) 23 Dwellings as Shared Ownership Dwellings

has the meaning given to it in Annex 2 of the

"Affordable Housing"

National Planning Policy Framework

published by The Ministry of Housing, Communities and Local Government in July 2021 or any successor provisions which may be introduced from time to time including for the avoidance of doubt changes in policy or legislative changes

"Affordable Housing Scheme"

means the Scheme for the provision of the Affordable Dwellings as part of the Development to be submitted to the Borough Council for approval in accordance with Clause 3 hereof and containing for consideration by the Borough Council the proposed details of the location of the Affordable Dwellings, the house types, and the size and tenure of the Affordable Dwellings and details of the Registered Provider if known

"Affordable Housing for Rent"

means a rented housing unit built pursuant to the Planning Permission which meets all of the following criteria

- a) The rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable);
- b) The landlord is a Registered Provider, and,

- c) It includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision.

"Application Land"

means the land edged red on the Plan

"Base Rate"

means the base lending rate from time to time of HSBC Bank PLC or if that base rate ceases to be used or published a comparable commercial lending rate reasonably determined by the Borough Council

"Bus Pass/es"

means an adult bus pass entitling the holder of each bus pass to travel free of charge on local bus services over a period of six (6) months commencing from the first Occupation of each Dwelling

"Bus Pass Contribution"

means the sum of Seven Hundred and Twenty Pounds (£ £720.00) per Dwelling adjusted in accordance with the indexation provisions contained in the Schedule payable by the Owner to the County Council towards the provision of Bus Passes in accordance with the provisions of clauses 4.2-4.4 if the Owner chooses not to provide the Bus Passes itself

"Civic Amenity Contribution"

means the sum of Two Thousand Four Hundred and Twenty Seven Pounds (£2,427.00) adjusted in accordance with the indexation provisions contained in the

Schedule and payable by the Owner to the County-Council in accordance with the provisions of clause 4.3 hereof towards the provision of waste management facilities at Barwell Household Waste and Recycling 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

"County Council Monitoring Costs Contribution"

means the sum of Three Hundred Pounds (£300.00) per planning obligation owed to the County Council herein or 0.5% of the value of any contribution due to the County Council (whichever is the greater) as a contribution towards the costs of the County Council in monitoring compliance with obligations owed to it contained herein

"Default Interest Rate"

means a rate 4% above 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 to be built on the Application Land as part of the Development and "Dwellings" will be construed accordingly

"Health Care Facilities Contribution"

means the sum of Twenty Thousand One Hundred and Thirty Seven Pounds and Forty Three Pence (£20,137.43) adjusted in accordance with the provisions of the Schedule and payable by the Owner to the Borough Council in accordance with the provisions of Clause 3.2 hereof towards

	improvements at Heath Lane Surgery Earl Shilton to deal with the impact of the Development
"Health Care Body"	means the Leicester, Leicestershire and Rutland Integrated Care Board, or any successor body
"Housing Allocations Policy (HAP)"	means the policy used by the Borough Council to assess a local connection as set out in the policy
"Informal Open Space"	means the minimum of informal open space to be provided on the Application Land to accord with the Borough Council's current policy requirements amounting to 16.8 square metres per Dwellings and including a LAP
"LAP"	means a local area of play of a minimum size of 10m x 10m open space to be provided on the Application Land specifically designed and primarily laid out for very young children to play close to where they live
"Library Facilities Contribution"	means the sum of One Thousand Five Hundred Pounds (£1,500.00) adjusted in accordance with the indexation provisions of the Schedule hereof and payable by the Owner to the County Council in accordance

with the provisions of clause 4.1 hereof as a contribution towards the provision and/or improvement of facilities at Earl Shilton Library to deal with the impact of the Development

"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

"Occupation"

means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include

(i) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or

(ii) the use of any Dwellings for the marketing of the Development; or

(iii) the storage of plant and materials

and "Occupy" and "Occupied" shall be construed accordingly

"Off Site Open Space Contribution"

means a sum payable by the Owner to the Borough Council adjusted in accordance with the indexation provisions in the Schedule towards the provision and maintenance of the following facilities at Weaver Springs and/or Wood Street Parks in lieu of provision on site as follows;

Outdoor sports provision the sum of

Seventeen Thousand Three Hundred and Seventy Six Pounds (£17,376.00) towards the provision of the same ("the Provision Sum") and the sum of Eight Thousand Two Hundred and Fifty Six Pounds (£8,256.00) towards the maintenance of the same ("the Maintenance Sum")

"On Site Open Space Area"

means those parts of the Application Site to be shown as public open space and which for avoidance of doubt shall include:

100sqm of Informal Open Space, and

1908.4sqm of accessible natural green space

"On Site Open Space Area Maintenance Scheme"

means the scheme for the future maintenance and management of the On Site Open Site Space Area (Informal Open Space & Accessible Green Space) to be submitted by the Owner to the Borough Council in accordance with the provisions of clause 3.4.3

"On Site Open Space Area Scheme"

means the scheme for the provision and laying out of the On Site Open Space Area to be submitted by the Owner to the Borough Council in accordance with the provisions of clause 3.4.1

"Post-16 Education Sector Contribution"

means the sum of Thirty One Thousand Two Hundred and Fifty One Pounds and Seventy Six Pence (£31,251.76) adjusted in accordance with the indexation provisions of the Schedule and payable by the Owner to the County Council pursuant to clause 4.4 towards the improvement remodelling or enhancement of the existing facilities at

	Hinckley Academy and/or John Cleveland Sixth Form Centre in order to create additional capacity and/or any other Post-16 educational establishment which shall provide a catchment facility for pupils living on the Development
"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 20/00916/FUL applying for full planning permission for development comprising the demolition of farm building and Ashby House and the development of 50 dwellings comprising 49no. affordable houses and 1 no. bungalow to replace Ashby House with access road off Leicester Road open space landscaping drainage basin and foul pumping station.
"Planning Permission"	means the planning permission granted pursuant to the Planning Application
"Registered Provider"	means either: i) a provider of Affordable Housing who is registered with the Regulator of Social Housing under the Housing and Regeneration Act 2008 or any successor authority; or ii) any other housing provider approved in writing by the Borough Council; or iii) any other company or body

	approved in writing by the Borough Council
"Secondary School Contribution"	means the sum of One Hundred and Forty Six Thousand Two Hundred and Seventy Nine Pounds and Thirty One Pence (£146,279.31) adjusted in accordance with the indexation provisions of the Schedule and payable by the Owner to the County Council pursuant to clause 4.5 towards the improvement remodelling or enhancement of the existing facilities at Heath Lane Academy in order to create additional capacity and/or any other secondary educational establishment which shall provide a catchment facility for pupils living on 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 Registered Provider with flexibility to increase their degree of ownership if they so wis
"Travel Packs"	means the pack produced by the Owner and approved by the County Council (or in the alternative provided by the County Council at a cost of Fifty Two Pounds and Eighty Five Pence (£52.85) (adjusted in accordance with the indexation provisions in the Schedule hereto) per Travel Pack) for each Dwelling providing information on public transport and other means of travel to and from the Development other than the private car

including an application form for Two (2) Bus
_Passes_____

"Travel Pack Administration Fee" means the sum of Five Hundred Pounds
(£500) (adjusted in accordance with the
indexation provisions in the Schedule hereto)

"Travel Pack Contribution" means the sum of Fifty Two Pounds and
Eighty Five Pence (£52.85) per Travel Pack
(adjusted in accordance with the indexation
provisions in the Schedule hereto) to enable
the County Council to issue a Travel Pack if
required

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 or Schedule of or in the case of a Plan attached to this Agreement

1.6 Obligations and liabilities of a party comprising more than one person are
obligations of such persons jointly and severally

1.7 Covenants made hereunder:

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

1.7.2 on the part of the County Council shall be enforceable against the County

Council and any statutory successor to it as County Council

- 1.8 The expression "the Owner" shall where the context so admits include 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 their 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 land of which he is no longer seised save in respect of any prior subsisting breach

- 2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof) granted (whether or not on appeal) after the date of this

Agreement in respect of which development this Agreement will not apply

2.6

The covenants contained in this Agreement (save for the occupancy restrictions provisions set out in clause 3.1.5 hereof) shall not be enforceable against individual purchasers or lessees of Dwellings on the Application Land constructed pursuant to the Planning Permission having a roof, windows and doors and being in a state of readiness for Occupation or against statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant

2.7

In the event that the Owner disposes of their interest in the Application Land or any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within fourteen (14) 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

2.8.1

Save for the provisions of clause 2.14 (Exclusion of Third Party Rights) clause 2.9 (Commencement of Development) clause 2.20 (Jurisdiction) and clauses 3.5 and 4.8 (Borough Council and County Council costs) which shall come into effect on the date hereof the provisions of this Agreement shall come into effect on;

a) the grant of the Planning Permission; and

b) the Commencement of Development

- 2.8.2 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission prior to the Commencement of Development the obligations under this Agreement shall cease absolutely and the Borough Council shall immediately upon written demand procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith

Commencement of Development

- 2.9 The Owner shall give the Borough Council seven (7) days' notice in advance of the Commencement of Development and shall send a copy of such notice to the Planning Obligations Team Manager, Planning Historic and Natural Environment Department at the County Council and to the Planning Manager (Development Management) at the Borough Council and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and the Borough Council and the County Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring

Determination by Expert

- 2.10 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner the Borough Council or the County Council (or any of them) concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within twenty (20) working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms
- 2.10.1 The person to be appointed pursuant to clause 2.10 shall if possible be a person having ten (10) years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of

the Development and of the particular issue in dispute

- 2.10.2 The reference to the expert shall be on terms that:
- 2.10.3 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
- 2.10.4 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
- 2.10.5 the expert shall be bound to have regard to the said submissions and representations;
- 2.10.6 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
- 2.10.7 the expert shall be limited in his findings to the proposals put by either party and
- 2.10.8 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner the Borough Council and the County Council save that the parties retain the right to refer to the Courts on a matter of law

Time Periods

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

Approvals

- 2.12 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

2.13 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

2.13.1 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 Planning Obligations Team Manager, Planning Historic and Natural Environment Department

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

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

Application of this Agreement

2.15 In the event that 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

No Fetter of Discretion

- 2.16 Save as permitted by law or 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

- 2.17 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

- 2.18 Without prejudice to 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

- 2.19 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 (both before and after judgement). Such interest shall accrue on a daily basis for the period from the due date to and including the day of payment.

Jurisdiction

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

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

Affordable Housing

- 3.1 The Owner hereby covenants with the Borough Council as follows:
- 3.1.1 No Development shall Commence unless and until the Owner shall have submitted in writing to the Borough Council and obtained the written approval (such approval not to be unreasonably delayed or withheld) of the Borough Council to the Affordable Housing Scheme for the provision of the Affordable Dwellings on the Application Land
- 3.1.2 To construct or procure the construction of the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Scheme or any variations thereto approved in advance in writing by the Borough Council
- 3.1.3 To notify the Borough Council within fourteen days of the transfer of any of the Affordable Dwellings to a Registered Provider of the date of such transfer and to provide the Borough Council with details of the Registered Provider to which the Affordable Dwelling was transferred
- 3.1.4 Any transfers under clause 3.1.3 shall contain the following provisions:
- 3.1.4.1 the grant and reservation by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Dwellings and the remainder of the Dwellings constructed or to be constructed as part of the Development
- 3.1.4.2 the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any of the Dwellings within the Development
- 3.1.5 Subject to the provisions of this Agreement no Affordable Housing for Rent shall be used for any purpose other than the provision of affordable housing

for rent under the Hinckley and Bosworth Choice-Based Lettings Scheme and in accordance with the objectives of the Borough Council's Housing Allocations Policy ("HAP") in force from time to time to persons in need of affordable housing within the borough of Hinckley and Bosworth and being such persons as shall be agreed between the Borough Council and the relevant Registered Provider who satisfy the District connection within the Local Connections criteria as defined in the HAP.

3.1.5.1 PROVIDED THAT if within 28 days of the Registered 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 relevant Registered Provider may let the dwelling to any person/s who satisfy their normal letting criteria

3.1.6 The Affordable Housing provisions contained in this clause 3.1 shall not be binding on:

a) A mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or part of the Affordable Dwellings or any person or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT

i) Such mortgagee or chargee or Receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Borough Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses, and

- ii) If such disposal is not completed within the three-month period the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this Agreement which shall determine absolutely.
- b) any person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire the said Affordable Dwelling
- c) a lessee under a shared ownership lease of an Affordable Dwelling or a mortgagee or chargee of a shared ownership lease granted in respect of an Affordable Dwelling
- d) a person who has staircased under a shared ownership lease or an Affordable Dwelling to acquire the freehold of the said Affordable Dwelling or a mortgagee or chargee of such an Affordable Dwelling
- e) any person deriving title from any such person as is mentioned in (a) to (d) above

Health Care Facilities Contribution

- 3.2 The Owner covenants with the Borough Council to pay the Health Care Facilities Contribution to the Borough Council prior to the first Occupation of the first Dwelling

Off Site Open Space Contribution

- 3.3 The Owner covenants with the Borough Council to pay the Off Site Open Space Contribution to the Borough Council as follows;
 - 3.3.1 Not to Occupy or to permit the Occupation of more than 25% of the Dwellings unless and until the Owner shall have paid the Provision Sum referred to in the definition of Off Site Open Space Contribution to the Borough Council
 - 3.3.2 Not to Occupy or to permit the Occupation of more than 75 % of the Dwellings unless and until the Owner shall have paid the Maintenance Sum

referred to in the definition of Off Site Open Space Contribution to the Borough Council

On Site Open Space Area

- 3.4 The Owner covenants with the Borough Council in respect of the On Site Open Space Area as follows:
- 3.4.1 To submit the On Site Open Space Area Scheme to the Borough Council for written approval (such approval not to be unreasonably withheld or delayed) and to obtain the written approval of the Borough Council to the submitted Scheme prior to the Commencement of Development and that not more than 50% of the Dwellings shall be Occupied or permitted to be Occupied until the On Site Open Space Area has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Area Scheme
- 3.4.2 To maintain the On Site Open Space Area for a period of 12 months after notice of practical completion of the works for the On Site Open Space Area in accordance with the provisions of the approved On Site Open Space Scheme has been offered to and accepted in writing 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
- 3.4.3 The Owner shall within 56 days of the acceptance by the Borough Council of the notice of practical completion submit the On Site Open Space Area Maintenance Scheme to the Borough Council for approval (such approval not to be unreasonably withheld or delayed) and shall maintain the On Site Open Space Area in accordance with the approved On Site Open Space Area Maintenance Scheme

Borough Council's Legal Fees

- 3.5 The Owner hereby covenants with the Borough Council to pay its legal fees in the sum of Two Thousand Pounds (£2,000.00) upon execution of this Agreement

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

Library Facilities Contribution

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

Travel Packs

- 4.2 The Owner hereby covenants with the County Council that they shall elect in writing to the County Council (prior to the Commencement of Development) to either pay the Travel Pack Contribution (upon the first Occupation of the first Dwelling) to the County Council or to provide the Travel Pack(s) (approved by the County Council subject to payment prior to the Commencement of Development of the Travel Pack Administration Fee) directly to the first occupiers of each Dwelling AND should the Owner elect in accordance with this paragraph to provide the Travel Packs directly they shall provide them upon the first Occupation of each Dwelling.
- 4.2.1 The Owner hereby covenants with the County Council that in circumstances where the first occupier of each Dwelling submits a valid application form (contained within the Travel Pack which shall include two (2) such forms) for a Bus Pass or Bus Passes within six (6) months of first Occupation by that applicant then the Owner shall either supply such occupier (at no cost to the occupier) with the Bus Pass(es) requested up to a maximum of two (2) Bus Passes per Dwelling or comply with paragraphs 4.2.2-4.2.4 of this Schedule below.
- 4.2.2 As an alternative to the provision of Bus Pass(es) by the Owner, the Owner shall pay to the County Council the Bus Pass Contribution as follows:

- 4.2.3 20% (Twenty Percent) shall be payable upon Commencement of Development and;
- 4.2.4 The remaining 80% (Eighty Percent) of the Bus Pass Contribution shall be paid in 20% (Twenty Percent) tranches (or such smaller percentage as may be agreed by the Owner and the County Council) on submission of evidence by the County Council to the Owner providing that all preceding payments of the Bus Pass Contribution have been spent or are about to be spent SAVE THAT the obligation to pay the Bus Pass Contribution shall apply up until the expiry of nine (9) months after the Occupation of the final Dwelling at which point the Owner shall no longer be obligated to comply with the provisions of this paragraph.
- 4.2.5 The Owner hereby covenants with the County Council to notify the County Council in writing every six (6) months (beginning with the first Occupation of the first Dwelling and ending with the first Occupation of the final Dwelling) of the number of Travel Packs and Buss Passes (as relevant) issued in the previous six (6) month period.

Civic Amenity Contribution

- 4.3 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 Sector Contribution

- 4.4 The Owner covenants with the County Council to pay the Post-16 Education Sector Contribution to the County Council as follows:
- 4.4.1 10% prior to first Occupation of the first Dwelling; and
- 4.4.2 90% prior to first Occupation of the Thirtieth (30th) Dwelling

Secondary School Contribution

- 4.5 The Owner covenants with the County Council to pay the Secondary School Contribution to the County Council as follows:
- 4.5.1 10% prior to first Occupation of the first Dwelling; and
- 4.5.2 90% prior to first Occupation of the Thirtieth (30th) Dwelling

Notice of Occupation

- 4.6 The Owner covenants with the County Council to serve written notice upon them at least seven (7) days in advance of the following events – namely the first Occupation of the first Dwelling and first Occupation of the Thirtieth (30th) Dwelling

County Council Monitoring Costs Contribution

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

County Council Legal Fees

- 4.8 The Owner covenants with the County Council to pay to the County Council its legal fees in the sum of One Thousand One Hundred and Fifty Pounds (£1,150.00) upon the execution hereof

5. BOROUGH COUNCIL'S COVENANTS TO THE OWNER

Health Care Facilities Contribution

The Borough Council covenants with the Owner

- 5.1 To pay the Health Care Facilities Contribution to the Health Care Body upon receipt of the contribution from the Owner and a document from the Health Care Body confirming that it will apply the Health Care Facilities Contribution for the defined purposes and for no other purposes whatsoever PROVIDED ALWAYS that the Borough Council shall be under no obligation to the Owner to ensure that the Health Care Facilities Contribution is so applied by the Health Care Body and shall be deemed to have discharged its obligation under this Agreement to the Owner in respect of the Health Care Facilities Contribution upon payment of the Health Care Facilities Contribution to the Health Care Body.

Off Site Open Space Contribution

- 5.3 The Borough Council covenants with the Owner as follows:
 - 5.3.1 to apply the Off Site Open Space Contribution solely towards the stated purpose and for no other purpose whatsoever, and
 - 5.3.2 if the Provision Sum has not been expended for the specified purposes within the period of seven (7) years from the date of payment to repay to the Owner on written demand such part of the Provision Sum as has not been so expended
 - 5.3.3 if the Maintenance Sum has not been expended for the specified purposes within fifteen years (15) from the date of the expenditure of the Provision Sum to repay to the Owner on written demand such part of the Maintenance Sum as has not been so expended

Deed of Release

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

6. THE COUNTY COUNCIL'S COVENANTS TO THE OWNER

Library Facilities Contribution

- 6.1 The County Council covenants with the Owner to apply the Library Facilities Contribution in accordance with the purpose specified in this Agreement and for no other purpose whatsoever

Bus Pass Contribution

- 6.2 The County Council covenants with the Owner as follows:-
- 6.2.1 To apply the Bus Pass Contribution in accordance with the purpose specified in this Agreement and for no other purpose whatsoever
- 6.2.2 Upon receipt of a written request to account in writing to the Owner commencing from the payment of the first tranche of the Bus Pass Contribution with full details of the number of Bus Passes issued
- 6.2.3 At the end of a period of nine (9) 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

- 6.3 The County Council covenants with the Owner to apply the Civic Amenity Contribution in accordance with the purpose specified in this Agreement and for no other purpose whatsoever

Post-16 Education Sector Contribution

- 6.4 The County Council covenants with the Owner to apply the Post-16 Education Sector Contribution in accordance with the purpose specified in this Agreement and for no other purpose whatsoever

Secondary School Contribution

- 6.5 The County Council covenants with the Owner to apply the Secondary School Contribution in accordance with the purpose specified in this Agreement and for no other purpose whatsoever

Travel Pack Contribution

- 6.6 The County Council covenants with the Owner that on payment of the Travel Pack Contribution the County Council shall produce and distribute the Travel Packs to the first occupiers on the first Occupation of each Dwelling

Repayment

- 6.7 In the event that any monies payable to the County Council under clause 4 (save for the Bus Pass Contribution which is dealt with separately at clause 6.2) of this Agreement are not applied or contractually committed to the purposes specified within ten (10) years of the receipt of the final tranche of each respective contribution the County Council covenants with the Owner upon receipt of a written request to refund to the Owner such unexpended contribution along with interest thereon (if any has accrued) from the date of any payment until the date of repayment
- 6.8 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

- 6.9 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

THE SCHEDULE
INDEXATION PROVISIONS

1. In this Schedule:-

- "Index" means the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs
- "Base Index Date" means the date of this Agreement save in the case of the Post-16 Education Sector Contribution and the Secondary Education Contribution where it means 1 July 2021
- "Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date
- "Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid

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

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

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 hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the BCIS or any index previously substituted therefore on the other hand

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

SIGNED as a **DEED** by

RONALD IAN HEMSLEY

X R I Hemsley

In the presence of: -

h _____

Signature of Witness

GAVIN HAMMOND
Solicitor / Director
Thomas Flavell & Sons
20 Market Place, Market Bosworth
Nuneaton CV13 0LF

Name (in block capitals)

Address

SIGNED as a **DEED** by

JANET ELLEN HEMSLEY

J E Hemsley

In the presence of: -

h _____

Signature of Witness

GAVIN HAMMOND
Solicitor / Director
Thomas Flavell & Sons
20 Market Place, Market Bosworth
Nuneaton CV13 0LF

Name (in block capitals)

Address

THE COMMON SEAL OF
**THE COUNCIL OF THE BOROUGH OF
HINCKLEY AND BOSWORTH**

was hereunto affixed in the presence of: -

[Signature]

Authorised signatory



39387

THE COMMON SEAL of **LEICESTERSHIRE**

COUNTY COUNCIL was hereunto

affixed in the presence of: -



Authorised Signatory

Revision: _____ Date: _____ Drawn: _____ Check: _____



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12665

Handwritten signature



Project: A development at Hill Top Farm,

Status: Planning

Client: Midland Heart

Sheet title: Site Location plan

Scale: 1:1250@A3

Date: 24-11-2017

Drawn: BW

Checked: AW

Ref: 40963/005

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Revised: _____ Date: _____ Drawn: Check: _____



✓ R. J. Hemby
J. E. Hemby

Handwritten notes and signatures in the top right corner, including a signature and the number '1665'.



Project:	A development at Hill Top Farm.
Site:	Planning
Client:	Midland Heart
Sheet title:	Site Location plan
Scale:	1:1250@A3
Date:	26-11-2017
Drawn:	BY
Checked:	AW
Ref:	40963/005

Location of development: Leicester
 OSN 101 1011 | 0115 929001 | 0115 254 1900
 79990011 - 0115 929001
 The drawings are prepared by the author and are not to be used for any other purpose without the written consent of the author. The drawings are not to be used for any other purpose without the written consent of the author.



