

DATED

2025

(1) LESLIE ALAN JAMES

and

**(2) CLIVE VERO, GEOFFREY MALCOM VERO and
KATHLEEN ANN SHEPPARD**

and

(3) HINCKLEY AND BOSWORTH BOROUGH COUNCIL

and

(4) LEICESTERSHIRE COUNTY COUNCIL

and

(5) RICHBOROUGH ESTATES GROUP LIMITED

PLANNING AGREEMENT

Pursuant to Section 106 of the Town and Country
Planning Act 1990 relating to residential development on
land north of Station Road, Market Bosworth,
Leicestershire

Planning application reference: 24/01079/OUT

Planning appeal reference: APP/K2420/W/25/3372919

Hinckley and Bosworth Borough Council

Legal Services

The Hub

Rugby Road

Hinckley

THIS AGREEMENT by way of Deed is made the day of

Two Thousand and Twenty Five

BETWEEN:

1. **LESLIE ALAN JAMES** of Wharf Farm Station Road Market
Bosworth Leicestershire CV13 0PG ("the First Owner")
2. **CLIVE VERO** of Heritage House Main Street Stoke Golding
Nuneaton CV13 6HP **GEOFFREY MALCOLM VERO** of Ox
Pastures Sutton Lane Cadeby Nuneaton CV13 0AR and
KATHLEEN ANN SHEPPARD of Wykin Hall Wykin Road Wykin
Hinckley LE10 3ET ("the Second Owner")
3. **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley
Hub Rugby Road Hinckley Leicestershire LE10 0FR ("the Borough
Council")
4. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall Glenfield
Leicester LE3 8RA ("the County Council")
5. **RICHBOROUGH ESTATES GROUP LIMITED** (registered
number 08052635) of Second Floor Waterloo House, 20
Waterloo Street Birmingham B2 5TB ("the Promoter")

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 the obligations owed to each of them

- C. The County Council is the local highway authority and is responsible for the provision of education waste library facilities and highways matters for the area in which the Application Land is situated
- D. The First Owner is the freehold owner of those parts of the Application Land registered at HM Land Registry with title absolute under title number LT132157
- E. The Second Owner is the freehold owner of those parts of the Application Land registered at HM Land Registry with title absolute under title number LT440068
- F. The Promoter has the benefit of a promotion agreement in relation to the part of the Application Land within title number LT132157 entered into with the First Owner dated 16 January 2025 and enters this Agreement for the purpose of consenting to such land being bound by the obligations contained in this Agreement and The Richborough Estates Partnership LLP has entered into a planning promotion agreement dated 28 March 2019 with the Second Owner in relation to the part of the Application Land within title number LT440068
- G. The Planning Application was made to the Borough Council by the Promoter for planning permission for the Development as described in the Planning Application and was refused by the Borough Council on 15th August 2025

- H. The Promoter has submitted the Appeal to the Secretary of State and the Appeal has been allocated reference number APP/K2420/W/25/3372919
- I. The Borough Council, the County Council, the Owner and the Promoter are entering into this Agreement to make provision for regulating the Development in the manner hereinafter appearing and have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council against the Owner should the Appeal be allowed
- J. The Borough Council and the County Council have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraph 58 of the NPPF and consider that the planning obligations contained within this Agreement are:
- (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development

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 Natural 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) to accord with the Borough Council's current policy requirements amounting to at least 40 square metres per Dwelling
"Affordable Dwelling/s"	means the units to be constructed as part of the Development as Affordable Housing being 40% of the total number of Dwellings and to comprise: (i) 75% Affordable Housing for Rent (rounded down to the nearest whole Dwelling); and (ii) 25% Shared Ownership Dwellings (rounded up to the

nearest whole Dwelling)

unless otherwise agreed in writing by the Owner and the Borough Council
PROVIDED THAT in (ii) above where the rounding up to the nearest whole Dwelling results in more than the overall requirement of Affordable Dwellings then the relevant Shared Ownership Dwellings shall be rounded down to the nearest whole Dwelling as appropriate to achieve the correct number of Affordable Dwellings overall

"AHP Affordable Dwelling/s"

means those Affordable Dwellings which are to be transferred to an Affordable Housing Provider (being the Affordable Housing for Rent and the Shared Ownership Dwellings)

"Affordable Housing"

has the meaning given to it in Annex 2 of the NPPF

"Affordable Housing Commuted Sum"

means a financial contribution in lieu of the on site provision of Affordable Dwellings such contribution being part of the Alternative Affordable Housing Provision such sum to be equivalent to the difference in value

of the relevant land which is released
(i) with Affordable Housing provision
on such land and (ii) without
Affordable Housing provision on
such land with provision of Market
Dwellings on such land instead such
financial contribution to be paid to
the Borough Council to procure new
affordable housing or improvements
to existing affordable housing within
the Borough Council's administrative
area

"Affordable Housing Notice"

means a written notice to be served
by the Owner on the Borough
Council confirming that the Owner
has been unable to transfer the AHP
Affordable Dwellings or any of them
within the Development to an
Affordable Housing Provider such
notice to be accompanied by: (i)
details of the Affordable Housing
Providers who have been
approached to purchase the relevant
Affordable Dwellings and (ii) copies
of the responses/offers from
Affordable Housing Providers

"Affordable Housing 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

"Affordable Housing Scheme"

means the scheme for the provision of the Affordable Dwellings as part of the Development to be submitted in accordance with clause 3.1.1 and containing details of the number of the Affordable Dwellings and details of the composition of the Affordable Dwellings in relation to tenure and housing type and on the basis of 126 Dwellings including 51 Affordable Dwellings (40% of the total number of Dwellings) in the scheme for the whole Development including 38 Affordable Housing for Rent (75% of the Affordable Dwellings) and 13

	Shared Ownership Dwellings (25% of the Affordable Dwellings) (and if the number of Affordable Dwellings is less than 51 due to the overall number of Dwellings being less than 126 then the number of Affordable Housing for Rent and Shared Ownership Dwellings shall be reduced proportionately) and details of the Affordable Housing Provider if known
"Affordable Housing for Rent"	means a rented housing unit built pursuant to the Planning Permission which is within the definition of 'Affordable housing for rent' set out in Annex 2 of the NPPF
"Alternative Affordable Housing Provision"	means the package of alternative Affordable Housing provision to be proposed by the Owner and approved by the Borough Council as set out in clauses 3.3 – 3.5 of this Agreement
"Appeal"	means the appeal to the Secretary of State following the refusal of the Planning Application by the Borough Council and allocated reference APP/K2420/W/25/3372919 and to be

"Application Land"

determined by the Secretary of State or an Inspector appointed by the Secretary of State for the purpose means the land north of Station Road Market Bosworth being the land registered with title absolute at the Land Registry under title numbers LT132157 and LT440068 as shown edged red on Plan 1 excluding any public highway

"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

"Borough Council Monitoring Fees Contribution"

means the sum of £[to be inserted] (calculated on the basis of £489 per Borough Council planning obligation) such sum adjusted in accordance with the indexation provisions of the First Schedule hereto and payable by the Owner to Borough Council as a contribution towards the costs of the Borough Council monitoring compliance with obligations contained herein

Commented [MH1]: TBC

"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 date of issue of the bus pass
"Bus Pass Contribution"	means the sum of One Thousand and Twenty Pounds (£1,020.00) per Dwelling (adjusted in accordance with the indexation provisions contained in the First Schedule) payable by the Owner to the County Council towards the provision of Bus Passes in accordance with the provisions of clause 5.6
"Casual/Informal Open Space"	means usable informal open play space to be provided on the Application Land to accord with the Borough Council's current policy requirements amounting to at least 16.8 sqm per Dwelling
"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 on the Application

Land is begun save that irrespective of the provisions of Section 56 (4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development

- i. trial holes or other operations to establish the ground conditions of the Application Land site survey work or works of remediation
- ii archaeological investigations on the Application Land
- iii any works of demolition or site clearance
- iv any structural planting or landscaping works
- v. ecological or nature conservation works associated with the Development
- vi. construction of site compounds boundary fencing or hoardings
- vii. construction of access or highway works or provision of

services (including drainage and media)

viii. any other preparatory works agreed in writing with the Borough Council

and "Commence the Development" shall be construed accordingly

"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) payable by the Owner to the County Council as a contribution towards the costs of the County Council in monitoring compliance with the obligations owed to it contained herein

"Decision Letter"

means the decision letter issued by the Inspector or the Secretary of State confirming whether the Appeal is allowed

"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 built pursuant to the Planning Permission and whether an Affordable Dwelling or otherwise

"Early Years Contribution"

means the maximum sum of One Hundred and Ninety Six Thousand Five Hundred and Ninety Two Pounds and Seventy Six Pence (£196,592.76) (adjusted in accordance with the indexation provisions of the First Schedule) calculated as follows

$$(A \times 0.085 \times £18,356.00) = B$$

Where:

A = total no of Dwellings which comprise two or more bedrooms

B = total Early Years Contribution payable (index linked in accordance with the indexation provisions of the First Schedule)

in accordance with the provisions of clause 5.10 to be paid by the Owner to the County Council towards the improvement remodelling or enhancement of the existing facilities at St Peter's Church of England Primary Academy School in order to create additional capacity for early years provision or at any other early years educational establishment (including the construction of a new

educational establishment) within the locality of the Development to support the early years provision for the Development

"Equipped Children's Play Space"

means open space to be provided with play equipment on the Application Land to accord with the Borough Council's current policy requirements amounting to at least 3.6 square metres per Dwelling which will accommodate a LEAP (local equipped area of play) and LAP (local area of play) where such LAP includes equipment

"Health Care Facilities Contribution"

means the sum (not exceeding Ninety Seven Thousand Five Hundred and Seventy Four Pounds and Forty Pence (£97,574.40)) which shall be calculated in accordance with the following:

$(A \times B) \times (C \times D) = \text{Health Care Facilities Contribution}$

Where:

A is 2.42 (the average persons per dwelling)

Commented [OM2]: Max - I have not accepted your change to the figure here. The figure of £97,574.40 is as per the Committee Report and the NHS Consultation Response. Please can you check where your different figure came from?

B is the number of Dwellings erected as part of the Development

C is 0.08 (the standard area m²/person)

D is £4,000 (cost of extension including fees £/m²)

payable by the Owner to the Borough Council in accordance with the provisions of clause 4.3 and adjusted in accordance with the indexation provisions of the First Schedule towards the improvement of facilities at surgeries within the Newbold Verdon Surgery Group (including the Market Bosworth branch and the Newbold Verdon branch) consequent upon the impact of the Development

"Health Care Body"

means the Leicester Leicestershire and Rutland Integrated Care Board or any successor body

[Index Linked](#)

~~means adjusted in accordance with the indexation provisions of the First Schedule~~

Commented [OM3]: Max - this is not needed as it refers to "adjusted in accordance with the indexation provisions at First Schedule" where needed.

"Inspector"

means the planning inspector appointed by the Planning

Inspectorate/Secretary of State in determination of the Appeal

"LAP"

means a local area of play of a minimum size of 100 square metres of open space to be provided on the Application Land specifically designed and primarily laid out for very young children to play safely close to where they live, designed to encourage informal play and social interaction for toddlers. The LAP requires no play equipment as such, relying more on demonstrative features indicating that play is positively encouraged

"Library Facilities Contribution"

means the sum to be used at Market Bosworth Library to provide improvements to the library and its facilities, including, but not limited to, books, materials, or associated equipment or to reconfigure the internal or external library space to account for additional usage of the venue arising from an increase in members to the library as a result of the Development calculated in

accordance with the following formula:

$$(A \times 1.157 \times 8.70 \times 3) + (B \times 1.157 \times 8.70 \times 1.5) + (C \times 1.157 \times 8.70 \times 1) = D$$

Where:

A = total number of Dwellings which comprise two or more bedrooms

B = total number of Dwellings which comprise one bedroom

C = total number of student bed Dwellings

D = total Library Facilities Contribution payable (adjusted in accordance with the indexation provisions of the First Schedule)

subject to a maximum sum of Three Thousand Eight Hundred and Four Pounds and Ninety One Pence (£3,804.91) (adjusted in accordance with the indexation provisions of the First Schedule) payable by the Owner to the County Council

"Management Company"

means a management company (including a residents management company) whose aims include the

	management and maintenance of the On Site Open Space Area (s)
"Market Dwelling/s"	means any Dwelling for sale lease or other disposal on the open market constructed as part of the Development which is not an Affordable Dwelling
"NPPF"	means the National Planning Policy Framework published by The Ministry of Housing Communities and Local Government in December 2024 or any successor provisions which may be introduced from time to time including for the avoidance of doubt changes in policy or legislative changes
"Off Site Open Space Contribution"	means a sum payable by the Owner to the Borough Council in accordance with the provisions of clause 4.1 hereof towards the provision and/or improvement and maintenance of outdoor sports facilities at <i>[insert specific details as to where the funds are to be used]</i> adjusted in accordance with the indexation provisions of the First

Commented [OM4]: HBBC to provide details for the purposes for this contribution

Commented [MH5R4]: TBC

Schedule hereof and calculated as follows:

in relation to Outdoor Sports Provision the sum of number of Dwellings x 38.4 sqm x £9.05 towards the provision of the same (to a maximum of Forty Three Thousand Seven Hundred and Eighty Seven Pounds and Fifty Two Pence (£43,787.52)) ("the Provision Sum") and in relation to maintenance the sum of number of Dwellings x 38.4 sqm x £4.30 towards the maintenance of the same (to a maximum of Twenty Thousand Eight Hundred and Five Pounds and Twelve Pence (£20,805.12)) ("the Maintenance Sum")

"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

"On Site Open Space Area"

means those parts of the Application Land comprising the Casual/Informal Open Space; the Accessible Natural Green Space; and the Equipped Children's Play Space (as defined in this Agreement) with the precise boundary of the overall area of On Site Open Space Area and the precise boundaries of each of the above typologies to be determined by the Reserved Matters Approvals pursuant to the Planning Permission and the term On Site Open Space Area shall be construed as referring to the relevant part of the On Site Open Space Area within the Development where the context so requires in clause 4.2

"On Site Open Space Area Maintenance Contribution"

means the sum of £22,861.44 in relation to the total Casual/Informal Open Space across the Development

(such sum being on the basis of the number of Dwellings x 16.8 sqm of Casual/Informal Open Space x £10.80 with the sum changing if there is more or less Casual/Informal Open Space at a rate of £10.80 per square metre) for the maintenance of the Casual/Informal Open Space; the sum of £71,568.00 in relation to the total Accessible Natural Green Space across the Development (such sum being on the basis of the number of Dwellings x 40 sqm of Accessible Natural Green Space x £14.20 with the sum changing if there is more or less Accessible Natural Green Space at a rate of £14.20 per square metre) for the maintenance of the Accessible Natural Green Space; and the sum of £79,652.16 in relation to the total Equipped Children's Play Space across the Development (such sum being on the basis of the number of Dwellings x 3.6 sqm of Equipped Children's Play Space x £175.60 with the sum changing if there is more or less Equipped Children's Play Space at a rate of

£175.60 per square metre) in accordance with the provisions of clause 4.2.6.3 and such sums to be adjusted in accordance with the indexation provisions contained in the First Schedule in relation to the maintenance of the On Site Open Space Area provided on the Application Land where the On Site Open Space Area is transferred to the Borough Council or the Parish Council for future management and maintenance

"On Site Open Space Area Maintenance Scheme"

means the scheme for the future maintenance and management of the On Site Open Site Space Area to be submitted by the Owner to the Borough Council in accordance with the provisions of clause 4.2.4

"Outdoor Sports Provision"

means natural or artificial services either publicly or privately owned used for sport and recreation and includes school playing fields

"On Site Open Space Area Scheme"

means the scheme for the provision phasing 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 4.2.1
"Other Affordable Home Ownership"	means Affordable Housing for sale as described in paragraphs (c) and (d) to the definition of 'Affordable Housing' in Annex 2: Glossary to the NPPF which for the avoidance of doubt may include discount market sales housing, shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent)
"Parish Council"	means Market Bosworth Parish Council
"Plan 1"	means the plan attached hereto being drawing number P25-1644_DE_002 and titled Site Location Plan
"Planning Application"	means the Planning Application submitted to the Borough Council and allocated reference number 24/01079/OUT applying for outline planning permission for up to 126 dwellings with associated access,

	landscaping, open space and drainage infrastructure (all matters reserved except access)
"Planning Permission"	means the outline planning permission which may be granted pursuant to the Appeal
"Post -16 Sector Contribution"	means the maximum sum of Eighty Thousand Three Hundred and Sixty One Pounds and Sixty Seven Pence (£80,361.67) (adjusted in accordance with the indexation provisions of the First Schedule) calculated as follows: $(A \times 0.033 \times £19,327) + (B \times 0.0053 \times £19,327) = C$ Where: A = total no of houses within the Development which comprise two or more bedrooms B = total no of flats/apartments within the Development with two or more bedrooms C = total Post-16 Sector Contribution payable (index linked in accordance with the indexation provisions of the First Schedule)

	payable by the Owner to the County Council pursuant to clause 5.14 towards the improvement remodelling or enhancement of the existing facilities at The Bosworth Academy in order to create additional capacity or at any other Post-16 educational establishment (including the construction of a new educational establishment) which shall provide a catchment facility for pupils living on the Development
"Reserved Matters Approval"	means a reserved matters approval pursuant to the Planning Permission
"Secondary School Sector (11-16) Contribution"	means the maximum sum of Three Hundred and Seventy Six Thousand and One Hundred and Forty Six Pounds and Seventy Nine Pence (£376,146.79) (adjusted in accordance with the indexation provisions of the First Schedule) calculated as follows: $(A \times 0.167 \times £17,876) + (B \times 0.0267 \times £17,876) = C$ Where:

A = total no of houses within the Development which comprise two or more bedrooms

B = total no of flats/apartments within the Development with two or more bedrooms

C = total Secondary School Sector (11-16) Contribution payable (index linked in accordance with the indexation provisions of the First Schedule)

payable by the Owner to the County Council to be used to improve remodel or enhance existing facilities at The Market Bosworth School in order to create additional capacity or at any other secondary school (including the construction of a new educational establishment) which shall comprise a catchment school for pupils living on the Development

"Secretary of State"

means the Secretary of State for Ministry of Housing Communities and Local Government from time to time appointed and includes any successor in function

"SEND Contribution" means together the SEND Contribution (Primary) and the SEND Contribution (Secondary)

"SEND Contribution (Primary)" means the maximum sum of Thirty Thousand and Thirty Three Pounds and Forty Pence (£30,033.40) calculated as follows:

$$(A \times 0.00363 \times £65,664) + (B \times 0.00052 \times £65,664) = C$$

Where:

A = total no of houses within the Development which comprise two or more bedrooms

B = total no of flats/apartments within the Development with two or more bedrooms

C = total SEND Contribution (Primary) payable (index linked in accordance with the indexation provisions of the First Schedule)

payable by the Owner to the County Council to be used to improve remodel or enhance existing facilities at Dorothy Goodman School Hinckley in order to create additional

capacity for primary age pupils with special educational needs or at any other establishment (including the construction of a new educational establishment) which will accommodate pupils with special educational needs living in the Development

"SEND Contribution (Secondary)"

means the maximum sum of Forty One Thousand and Ninety One Pounds and Sixty Two Pence (£41,091.62) calculated as follows:

$$(A \times 0.004 \times £81,531.00) + (B \times 0.00064 \times £81,531.00) = C$$

Where:

A = total no of houses within the Development which comprise two or more bedrooms

B = total no of flats/apartments within the Development with two or more bedrooms

C = total SEND Contribution (Secondary) payable (index linked in accordance with the indexation provisions of the First Schedule)

payable by the Owner to the County Council to be used to improve remodel or enhance existing facilities at Dorothy Goodman School Hinckley in order to create additional capacity for secondary age pupils with special educational needs or at any other secondary establishment (including the construction of a new educational establishment) which will accommodate pupils with special educational needs living in the Development

"Shared Ownership Dwellings"

means dwellings purchased on a shared equity basis whereby not more than 75% and not less than 10% of the equity initially sold to the purchaser by the Affordable Housing Provider with flexibility to increase their degree of ownership if they so wish

"Travel Packs"

means the pack produced by the Owner and approved by the County Council (or in the alternative provided by the County Council) for each Dwelling providing information

on public transport and other means of travel to and from the Development other than by private car including an application form for the Bus Pass(es)

"Travel Pack Contribution"

means the sum of Fifty Two Pounds and Eighty Five Pence (£52.85) per Dwelling (adjusted in accordance with the indexation provisions contained in the First Schedule) payable by the Owner to the County Council towards the provision of Travel Packs in accordance with the provisions of clause 5.3 if the Owner is not to provide the Travel Pack itself

"Travel Plan"

means the travel plan to be secured by way of a planning condition on the Planning Permission

"Travel Plan Monitoring Contribution"

means the sum of Six Thousand Pounds (£6,000) payable by the Owner to the County Council in accordance with the provisions of clause 5.8 for monitoring the Travel Plan

"Waste Management Contribution" means the sum of Forty Nine Pounds and Fifty Three Pence (£49.53) (adjusted in accordance with the indexation provisions contained in the First Schedule) per Dwelling subject to a maximum sum of Six Thousand Two Hundred and Forty Pounds and Seventy Eight Pence (£6,240.78) (adjusted in accordance with the indexation provisions contained in the First Schedule) payable by the Owner to the County Council towards site reconfiguration and/or development of waste infrastructure to increase the capacity for the Barwell Household Waste and Recycling Centre ("HWRC") or any other HWRC directly impacted by the Development in accordance with the provisions of clause 5.9 hereof

"Working Day" means any day except any Saturday or Sunday or any other day on which banks in the City of London are not open to the general public

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

- 2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply
- 2.6 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Application Land (save that this exemption shall not apply to the occupancy restrictions of the Affordable Dwellings as set out in clauses 3.1.7-3.1.9 hereof) 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 its interest in the Application Land or any part thereof (other than a disposal to a purchaser of a Dwelling or any disposal of any land to statutory utilities operators for operational purposes) it shall within twenty-eight (28) days of such disposal give written notice of the name and address of its successors in title to the Borough Council and the County Council together with sufficient details of the land included in the disposal to allow its identification

Contingencies

- 2.7.1 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
- 2.7.2 Save for the provisions of clause 2.15 (Exclusion of Third Party Rights) clause 2.9 (Commencement of Development) clause 2.22 (Appeal) clause 2.23 (Jurisdiction) clauses 4.5 and 5.17 (Borough Council and County Council legal costs) and clause 5.2 (Travel Packs insofar as it relates to the election to be made prior to Commencement of Development) which shall come into effect on the date hereof the provisions of this Agreement shall come into effect only on the date on which both of the following have taken place:
- a) the grant of the Planning Permission; and
 - b) the Commencement of Development
- 2.8 In the event of the Planning Permission expiring or in the event of the revocation 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 (addressed to the Borough Council's Head of Planning at the address for the Borough Council as stated in this Agreement) in advance of the Commencement of Development and shall send a copy of such notice to the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment Department at the County 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:
 - 2.10.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
 - 2.10.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
 - 2.10.2.3 the expert shall be bound to have regard to the said submissions and representations;
 - 2.10.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
 - 2.10.2.5 the expert shall be limited in his findings to the proposals put by either party and
 - 2.10.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner the Borough Council and the County Council save that the parties retain the

right to refer to the Courts on a matter of law

Time Periods

- 2.11 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 not be unreasonably withheld or delayed and shall be deemed to have not been given or expressed unless given or expressed in writing

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
- 2.14 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed

to have been received by the addressee on the second Working Day following the date of posting and in the case of the County Council must be marked for the attention of the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment Department

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

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

Application of this Agreement

- 2.16 In the event that the Borough Council shall at any time hereafter grant a planning permission pursuant to an application under Section 73 of the Act in respect of the conditions relating to the Planning Permission (and for no other purpose whatsoever) references in this Agreement to the Planning Application Planning Permission and the Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly so that the planning obligations in this Agreement shall apply to development under such subsequent planning permissions save where the Borough

Council in its consideration of such an application for the new planning permission indicates that consequential amendments are required to this Agreement to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106A of the Act will be required to secure relevant planning obligations relating to the new planning permission

No Fetter of Discretion

- 2.17 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

- 2.18 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

Promoter's consent

- 2.19 The Promoter consents to the Owner entering into this Agreement and acknowledges that this Agreement binds the Application Land PROVIDED THAT the Promoter shall otherwise have no liability under this Agreement (save for clauses 4.4 and 5.17) unless it acquires the Application Land and becomes a successor in title to the Owner or takes possession of the Application Land in which case it too will be bound by the obligations as if it was a successor in title to the Owner

General Requirement to Co-operate

- 2.20 Without prejudice to its/their statutory duties the Borough Council the County Council and the Owner shall all act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified

Interest on late Payment

- 2.21 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 but excluding the due date to and including the day of payment

Appeal

2.22 If in determining the Appeal the Inspector or the Secretary of State determines and states in the Decision Letter that any of the obligations (or a relevant part of any planning obligation) secured by this Agreement:

- (i) is not a material planning consideration; or
- (ii) can be given no weight in determining the Appeal; or
- (iii) does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended)

then the relevant obligation (or part of the planning obligation, as appropriate) shall not be required to be complied with by the Owner and shall not be enforceable pursuant to this Agreement and shall cease to have effect within this Agreement save as set out in the Decision Letter

Jurisdiction

2.23 This Agreement 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

Indexation

~~2.24 Unless otherwise stated to the contrary all sums payable under the terms of this Agreement by the Owner to the Borough Council or the County Council or otherwise due to the Borough Council or the County Council under the provisions of this Agreement will be Index Linked~~

Commented [OM6]: Max - this is not needed as it refers to "adjusted in accordance with the indexation provisions at First Schedule" where needed. If you want a clause like this then we will need to list all of the financial contributions to which indexation applies.

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

AHP Affordable Dwellings

3.1 The Owner hereby covenants with the Borough Council as follows:

3.1.1 That no Development shall Commence unless and until the Owner shall have submitted in writing to the Borough Council and obtained the written approval of the Borough Council to the Affordable Housing Scheme for the provision of the Affordable Dwellings on the Development

3.1.2 To provide the Affordable Dwellings in accordance with the Affordable Housing Scheme (Development) or any variations thereto approved in advance in writing by the Borough Council

3.1.3 Not to Occupy or to permit the Occupation of more than 75% of the Market Dwellings (or such higher percentage as may be proposed by the Owner and agreed by the Borough Council) until the AHP Affordable Dwellings to be delivered on the Development have been constructed ready for Occupation

3.1.4 That any transfers of the freehold interest in the AHP Affordable Dwellings to an Affordable Housing Provider 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 AHP 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 To notify the Borough Council within fourteen days of the transfer of any of the AHP Affordable Dwellings to an Affordable Housing Provider of the date of such transfer and to provide the Borough Council with details of the Affordable Housing Provider to which the AHP Affordable Dwelling was transferred
- 3.1.7 To ensure that the AHP Affordable Dwellings shall not be used or occupied other than for Affordable Housing provided that this clause 3.1.7 shall not be binding on:
- 3.1.7.1 any person acquiring an interest in an AHP Affordable Dwelling under a statutory right to buy the said AHP Affordable Dwelling
- 3.1.7.2 a lessee under a shared ownership lease of an AHP Affordable Dwelling or a mortgagee or chargee of a shared ownership lease granted in respect of an AHP Affordable Dwelling
- 3.1.7.3 a person who has staircased under a shared ownership lease or an AHP Affordable Dwelling to acquire the freehold of the said AHP Affordable Dwelling or a mortgagee or chargee of such an AHP Affordable Dwelling
- 3.1.7.4 a mortgagee or chargee of or successor in title to any such person as is mentioned in 3.1.7.1 to 3.1.7.3 above
- 3.1.8 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 administrative area of the Borough Council and being such persons as shall be agreed between the Borough Council and the Affordable Housing Provider who satisfy the borough connection criteria as defined in the HAP.

3.1.9 PROVIDED THAT if within 28 days of the Affordable Housing Provider notifying the Borough Council in writing of an AHP Affordable Dwelling becoming vacant no such qualifying person/s can be found to occupy the AHP Affordable Dwelling the Affordable Housing Provider may let the AHP Affordable Dwelling to any person/s who satisfy their normal letting criteria

3.1.10 The Affordable Housing provisions set out in this clause 3.1 shall not be binding on a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) of the whole or part of the AHP 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 AHP 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 AHP Affordable Dwellings to another Affordable Housing Provider or to the Borough Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses , and

- ii) If such disposal has not been completed within a three-month period the mortgagee chargee or receiver shall be entitled to dispose of the AHP Affordable Dwellings free from the Affordable Housing provisions in respect of the AHP Affordable Dwellings in this Agreement which shall determine absolutely.

3.2 Where the Owner has used reasonable endeavours to enter into a legally binding contract with an Affordable Housing Provider for the AHP Affordable Dwellings for a period of at least 6 months following the approval of the reserved matters applications for that part of the Development pursuant to the Planning Permission (or such shorter period as may be agreed in writing by the Borough Council) but has not been able to secure a contract the Owner shall serve the Affordable Housing Notice on the Borough Council demonstrating the use of reasonable endeavours over that period such that an Alternative Affordable Housing Provision is necessary in relation to the Development

3.3 The Owner shall submit to the Borough Council details of the proposed Alternative Affordable Housing Provision for the

Development for the Borough Council's approval either at the same time as the Affordable Housing Notice or after the Affordable Housing Notice

- 3.4 The Alternative Affordable Housing Provision shall comprise one or more of the following options:
 - 3.4.1 an alternative tenure mix of Affordable Housing for Rent and Shared Ownership Dwellings
 - 3.4.2 an alternative tenure mix which includes Other Affordable Home Ownership and which may include any of the tenures referred to in clause 3.4.1
 - 3.4.3 the payment of an Affordable Housing Commuted Sum in respect of part or all of the Affordable Housing within the Development
 - 3.4.4 the gifting of a percentage of Affordable Dwellings to the Borough Council PROVIDED THAT it is acknowledged by the parties that where gifting of Affordable Dwellings is agreed it will be a relatively small percentage when compared against the originally required percentages of Affordable Housing provision set out in this Agreement and as such would require a reduction in the overall number of Affordable Dwellings for the Development as a whole
 - 3.4.5 the sale of part or all of the Affordable Dwellings to the Council
- 3.5 The Borough Council and the Owner acknowledge that in reaching agreement in respect of the Alternative Affordable Housing Provision (i) the agreed Alternative Affordable Housing Provision shall leave the Owner in no worse financial position

than compared to the financial position whereby a willing Affordable Housing Provider would have accepted a transfer of the AHP Affordable Dwellings; and (ii) the Borough Council's preference will be to ensure the delivery of an element of Affordable Housing for Rent whether on site or off site through the use of an Affordable Housing Commuted Sum

- 3.6 The approved Alternative Affordable Housing Provision shall apply to the Development and for the avoidance of doubt where an Affordable Housing Commuted Sum is paid in lieu of on site provision then on the payment of the Affordable Housing Commuted Sum to the Borough Council those Affordable Dwellings to which it relates shall be released from the obligations in this Agreement

4. **Off Site Open Space Contribution**

~~The Owner covenants with the Borough Council to pay the Provision Sum referred to in the definition of Off Site Open Space Contribution herein to the Borough Council prior to Occupation of the first Dwelling~~

Commented [OM7]: Max - this is not agreed by my client. Please see below the suggested triggers. These follow those in the S106 agreement for Newbold Verdon which was agreed recently with HBBC.

- 4.1 The Owner covenants with the Borough Council to pay the Off Site Open Space Contribution as follows:

- 4.1.1 not to Occupy or to permit the Occupation of more than ~~50%~~25 of the Dwellings until the Owner shall have paid to the Borough Council the Provision Sum referred to in the definition of Off Site Open Space Contribution herein

- 4.1.2 not to Occupy or to permit the Occupation of more than ~~75%~~95 of the Dwellings until the Owner shall have paid to the Borough

Council the Maintenance Sum referred to in the definition of Off Site Open Space Contribution herein

Commented [OM8]: Max - amended to reflect the Newbold Verdon agreement.

On Site Open Space Area

- 4.2 The Owner covenants with the Borough Council in respect of the On Site Open Space Area as follows:
- 4.2.1 To submit the On Site Open Space Area Scheme to the Borough Council for written approval contemporaneously with the reserved matters application for Reserved Matters Approval and to obtain the written approval of the Borough Council to the submitted Scheme prior to the Commencement of Development and to serve written notice on the Borough Council confirming whether the Owner wishes to maintain the On Site Open Space Area or whether the Owner intends to transfer the On Site Open Space Area to a Management Company or alternatively to request that the Borough Council or Parish Council maintains the On Site Open Space Area
- 4.2.2 That not more than 75% of the Dwellings shall be Occupied or permitted to be Occupied (or such later trigger as may be proposed by the Owner and agreed by the Borough Council having regard to the construction programme for the Development and health and safety concerns) 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
- 4.2.3 To maintain the On Site Open Space Area for a period of 12 months after notice of practical completion of the works for the On Site Open Space Area in accordance with the provisions of the

approved On Site Open Space Scheme and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the Borough Council

4.2.4 In the event the Owner elects to maintain the On Site Open Space Area pursuant to clause 4.2.1, it shall within 56 days of the service of the notice referred to in clause 4.2.1 hereof 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 On Site Open Space Area Maintenance Scheme

4.2.5 In the event that the Owner elects to transfer the On Site Open Space Area to a Management Company the Owner shall within 56 days of the service of the notice referred to in clause 4.2.1 hereof submit to the Borough Council for approval (such approval not to be unreasonably withheld or delayed) proposals for the Management Company which is to take a transfer of the On Site Open Space Area and shall continue to maintain the On Site Open Space Area in accordance with the On Site Open Space Area Maintenance Scheme until such time that the Borough Council is satisfied that:

a) the Management Company has been incorporated and is functioning and that there is an obligation on the management company to maintain the On Site Open Space Area in accordance

with the maintenance provisions of the On Site Open Space Maintenance Scheme, and

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

AND FOR THE AVOIDANCE OF DOUBT if the Owner elects to maintain the On Site Open Space Area or for a Management Company to maintain the On Site Open Space Area the On Site Open Space Maintenance Contribution shall not be payable

4.2.6 In the event the Owner requests the Borough Council or the Parish Council to maintain the On Site Open Space Area and in the event that the Borough Council or the Parish Council confirms in writing to the Owner that it is willing to maintain the On Site Open Space Area the following provisions shall apply:

4.2.6.1 The Owner shall give the Borough Council or the Parish Council notice in writing that the 12-month period for maintenance in accordance with clause 4.2.3 hereof has expired and subject to the Borough Council or the Parish Council being reasonably satisfied on an inspection that the On Site Open Space Area has been maintained in accordance with the provisions of the On Site Open Space Area Scheme the Borough Council shall issue a certificate to such effect provided that if the Borough Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the On Site Open Space Area and the maintenance period for such land shall be extended until such time as the Borough Council certifies in writing that the outstanding work has been completed or the defects have been

remedied as the case may be

4.2.6.2 The Owner shall transfer to the Borough Council or the Parish Council the On Site Open Space Area for the sum of £1.00 within six months of the issue of the certificate issued pursuant to clause 4.2.6.1 such transfer to be in accordance with the relevant provisions of the Second Schedule and for the avoidance of doubt the Owner shall maintain the On Site Open Space Area in a clean and tidy condition until the transfer to the Borough Council or the Parish Council has been completed

4.2.6.3 The Owner shall pay the On Site Open Space Area Maintenance Contribution to the Borough Council upon transfer of the On Site Open Space Area pursuant to clause 4.2.6.2

Health Care Facilities Contribution

4.3 There shall be no Commencement of Development unless and until the Owner shall have paid 50% of the Health Care Facilities Contribution to the Borough Council and there shall be no first Occupation of the first Dwelling unless and until the Owner shall have paid the remaining 50% of the Health Care Facilities Contribution to the Borough Council

Commented [OM9]: Max - my client will not agree to 100% pre-commencement. This split trigger was proposed as a compromise. Please reconsider.

Borough Council's Legal Fees

- 4.4 The Promoter hereby covenants with the Borough Council to pay its reasonable legal fees upon execution of this Agreement

Borough Council Monitoring Fees Contribution

- 4.5 The Owner covenants with the Borough Council that there shall be no Commencement of Development unless and until the Owner shall have paid the Borough Council Monitoring Fees Contribution to the Borough Council

- 4.6 The Owner covenants with the Borough Council to pay to the Borough Council:

- (a) £219 per inspection of the On Site Open Space Area requested by the Owner pursuant to the terms of this Agreement such inspection fee to be paid to the Borough Council prior to such pre-arranged site inspection visit **PROVIDED THAT** a minimum of two (2) inspections shall be undertaken by the Borough Council:
 - (i) one upon completion of the landscaping works in accordance with the approved On Site Open Space Area Scheme; and
 - (ii) one twelve (12) months following the Borough Council's confirmation that the On Site Open Space Area has been laid out in accordance with the approved On Site Open Space Area Scheme;with further inspections to be undertaken if the Borough Council is not satisfied with the condition or completion of the works; and

- (b) £327 per document approval requested pursuant to the terms of this Agreement and such document approval fee to be paid to the Borough Council upon the submission of such a document to the Borough Council.

5. **THE OWNER'S PLANNING OBLIGATIONS TO THE COUNTY COUNCIL**

Library Facilities Contribution

- 5.1 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

- 5.2 The Owner covenants with the County Council to elect in writing prior to Commencement of Development to either

(a) provide its own Travel Packs and to submit a sample Travel Pack to the County Council together with the County Council's administration fee of Five Hundred Pounds (£500) for approval in writing and not to Occupy any Dwelling until such approval has been given (such approval not to be unreasonably withheld or delayed). The Owner further covenants with the County Council to deliver one Travel Pack directly to each Dwelling upon first Occupation. FOR THE AVOIDANCE OF DOUBT if the County Council has not approved the Travel Pack prior to first Occupation of the first Dwelling then the Owner shall pay the Travel Pack Contribution to the County Council prior to first Occupation of the first Dwelling or

(b) in the alternative elect to comply with clause 5.3 below

- 5.3 If the Owner so elects in accordance with clause 5.2 the Owner covenants with the County Council to pay the Travel Pack Contribution prior to first Occupation of the first Dwelling.
- 5.4 The Owner covenants with the County Council to promptly provide (no later than twenty eight (28) days after receipt of the written request) to the County Council upon written request full documentary evidence detailing Travel Packs issued under clause 5.2 if the Owner elected for option (a) as set out in clause 5.2

Bus Passes

- 5.5 The Owner covenants with the County Council to either (a) provide up to two (2) Bus Passes for each Dwelling who complete and return the application forms provided in the Travel Pack within six (6) months of first Occupation of such Dwelling or in the alternative (b) elect to comply with clause 5.6 below
- 5.6 If the Owner so elects in accordance with clause 5.5 the Owner covenants with the County Council to pay 20% of the Bus Pass Contribution prior to first Occupation of the first Dwelling. Thereafter the remaining 80% of the Bus Pass Contribution shall be paid in 20% tranches on submission of evidence by the County Council to the Owner that all preceding payments of the Bus Pass Contribution have been spent or are about to be spent SAVE THAT the obligation to pay the Bus Pass Contribution shall apply up until the expiry of nine (9) months after the Occupation

of the final Dwelling at which point the Owner shall no longer be obligated to comply with the provisions of this clause 5.6.

- 5.7 The Owner covenants with the County Council to promptly provide (no later than twenty eight (28) days after receipt of the written request) to the County Council upon written request full documentary evidence detailing Bus Passes issued under clause 5.5 if the Owner elected for option (a) as set out in clause 5.5

Travel Plan Monitoring Contribution

- 5.8 The Owner covenants with the County Council to pay the Travel Plan Monitoring Contribution to the County Council prior to first Occupation of the first Dwelling

HWRC Contribution

- 5.9 The Owner covenants with the County Council to pay the HWRC Contribution to the County Council prior to first Occupation of the first Dwelling

Early Years Contribution

- 5.10 The Owner covenants with the County Council to pay the Early Years Contribution to the County Council as follows:
- 5.10.1 10% of the Early Years Contribution prior to first Occupation of the first Dwelling
- 5.10.2 45% of the Early Years Contribution prior to Occupation of the 40th Dwelling

- 5.10.3 45% of the Early Years Contribution prior to Occupation of the 77th Dwelling

SEND Contribution

- 5.11 The Owner covenants with the County Council to pay the SEND Contribution (Primary) to the County Council as follows:
- 5.11.1 10% of the SEND Contribution (Primary) prior to first Occupation of the first Dwelling
- 5.11.2 45% of the SEND Contribution (Primary) prior to Occupation of the 40th Dwelling
- 5.11.3 45% of the SEND Contribution (Primary) prior to Occupation of the 77th Dwelling
- 5.12 The Owner covenants with the County Council to pay the SEND Contribution (Secondary) to the County Council as follows:
- 5.12.1 10% of the SEND Contribution (Secondary) prior to first Occupation of the first Dwelling
- 5.12.2 45% of the SEND Contribution (Secondary) prior to Occupation of the 40th Dwelling
- 5.12.3 45% of the SEND Contribution (Secondary) prior to Occupation of the 77th Dwelling

Secondary School Sector (11-16) Contribution

- 5.13 The Owner covenants with the County Council to pay the Secondary School Sector (11-16) Contribution to the County Council as follows:

- 5.13.1 10% of the Secondary School Sector (11-16) Contribution prior to first Occupation of the first Dwelling
- 5.13.2 45% of the Secondary School Sector (11-16) Contribution prior to Occupation of the 40th Dwelling
- 5.13.3 45% of the Secondary School Sector (11-16) Contribution prior to Occupation of the 77th Dwelling

Post-16 Sector Contribution

- 5.14 The Owner covenants with the County Council to pay the Post-16 Sector Contribution to the County Council as follows:
 - 5.14.1 10% of the Post-16 Sector Contribution prior to first Occupation of the first Dwelling
 - 5.14.2 45% of the Post-16 Sector Contribution prior to Occupation of the 40th Dwelling
 - 5.14.3 45% of the Post-16 Sector Contribution prior to Occupation of the 77th Dwelling

Notice of Occupation

- 5.15 The Owner covenants with the County Council to serve written notice upon them at least seven (7) days in advance of the triggers listed in this clause 5

County Council Monitoring Costs Contribution

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

County Council Legal Fees

- 5.17 The Promoter covenants with the County Council to pay to the County Council legal fees in the sum of Two Thousand One Hundred Pounds (£2,100.00) upon the execution hereof

6. BOROUGH COUNCIL'S COVENANTS TO THE OWNER

Off Site Open Space Contribution

- 6.1 The Borough Council covenants with the Owner as follows:
- 6.1.1 to apply the Off Site Open Space Contribution solely towards the stated purpose and for no other purpose whatsoever and
- 6.1.2 if the Provision Sum has not been expended for the specified purposes within the period of five years from the date of payment of the same to the Borough Council to repay to the person who paid the Provision Sum on written demand thereafter such part of the Provision Sum as has not been so expended and
- 6.1.3 if the Maintenance Sum has not been expended for the specified purposes within fifteen years from the date of payment of the same to the Borough Council to repay to the person who paid the Maintenance Sum on written demand thereafter such part of the Maintenance Sum as has not been so expended

Commented [OM10]: Five years has been agreed previously by HBBC and my client for the provision element of the Off Site Open Space

On Site Open Space Area

- 6.2 The Borough Council covenants with the Owner that in the event the Borough Council receives the On Site Open Space Area Maintenance Contribution pursuant to clause 4.2.6.3 it shall

apply the On Site Open Space Area Maintenance Contribution solely towards the cost of maintaining the relevant On Site Open Space Area(s) and for no other purpose whatsoever

- 6.3 The Borough Council covenants with the Owner that in the event it receives the On Site Open Space Area Maintenance Contribution but does not expend the same it shall return any unspent monies to the person who paid the On Site Open Space Area Maintenance Contribution on demand after a period fifteen years from the date of receipt by the Borough Council of the On Site Open Space Area Maintenance Contribution and completion of the transfer of the On Site Open Space Area

Health Care Facilities Contribution

- 6.4 The Borough Council covenants with the Owner to pay the Health Care Facilities Contribution to the Health Care Body upon receipt of the contribution from the Owner and a covenant from the Health Care Body (addressed and supplied to both the Borough Council and the Owner) confirming that it will apply the Health Care Facilities Contribution for the defined purposes and for no other purposes whatsoever and that should it not spend the Health Care Facilities Contribution within 55-10 (fivetenfive) years of receipt of the final payment of the Health Care Facilities Contribution by the Borough Council or shall fail to provide evidence of such expenditure to the Owner when requested at the end of the 55-10 (fivetenfive) year period then it shall repay to the person who paid the Health Care Facilities Contribution the Health Care Facilities Contribution or so much of it as remains unspent for the purposes specified at the end of the 55

Commented [OM11]: Five years has been agreed previously for healthcare.

10 (fivetenfive) year period 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 contribution to the Health Care Body upon payment of the Health Care Facilities Contribution to the Health Care Body.

Deed of Release

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

7. THE COUNTY COUNCIL COVENANTS

Library Facilities Contribution

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

Bus Pass Contribution

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

- 7.2.1 To apply the Bus Pass Contribution in accordance with the definition hereof and for no other purpose whatsoever
- 7.2.2 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
- 7.2.3 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 person who paid the Bus Pass Contribution any portion of the Bus Pass Contribution which has not been expended or committed

HWRC Contribution

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

Travel Plan Monitoring Contribution

- 7.4 The County Council covenants with the Owner to apply the Travel Plan Monitoring Contribution in accordance with the definition hereof and for no other purpose whatsoever

Early Years Contribution

- 7.5 The County Council covenants with the Owner to apply the Early Years Contribution in accordance with the definition thereof and for no other purpose whatsoever

SEND Contribution

- 7.6 The County Council covenants with the Owner to apply the SEND Contribution (Primary) and the SEND Contribution (Secondary)

in accordance with the respective definitions thereof and for no other purpose whatsoever

Secondary School Sector (11-16) Contribution and Post-16 Sector Contribution

- 7.7 The County Council covenants with the Owner to apply the the Secondary School Sector (11-16) Contribution and the Post-16 Sector Contribution in accordance with the respective definitions thereof and for no other purpose whatsoever

Travel Pack Contribution

- 7.8 The County Council covenants with the Owner that on payment of the Travel Pack Contribution by the Owner under clause 5.2 and 5.3 the County Council shall produce and distribute the Travel Packs to the first occupiers on the first Occupation of each Dwelling

Repayment

- 7.9 In the event that any monies payable to the County Council under clause 5 (save for the Bus Pass Contribution which is dealt with separately at clause 7.2) of this Agreement have not been allocated expended or committed on the purposes specified in this Agreement 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 person who paid the relevant contribution such unexpended or uncommitted contribution along with interest thereon (if any has accrued)

7.10 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 reasonable written request for the same from the Owner save that such requests shall be limited to a maximum of two (2) in any calendar year

Deed of Release

7.11 Upon request where compliance with an obligation in this Agreement has been fulfilled the County Council covenants to certify compliance with such obligation and if so requested the County Council covenants with the Owner to execute a Deed of Release (or partial release) from the relevant obligation

THE FIRST SCHEDULE

INDEXATION PROVISIONS

1. In this Schedule:-

- "Index" means the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institution 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 Sector Contribution, the SEND Contribution and the Secondary School Sector (11-16) Contribution for which it means 1 July 2021 and the Early Years Contribution for which it means 1 June 2023
- "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 due

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

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

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any 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 for the Base Index Date 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 BCIS, or any Index previously substituted therefor 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 therefor on the other hand

THE SECOND SCHEDULE

TRANSFER OF THE ON SITE OPEN SPACE AREA

1. GENERAL

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

- 1.1 The transfer shall be in accordance with the Law Society's Standard Conditions of Sale (5th Edition) "Standard Conditions" in so far as they are not inconsistent with the terms of this Agreement
- 1.2 Standard Conditions 2.1, 2.2, 2.3, 4.3, 5.2 and 6.1 shall not apply to the transfer
- 1.3 The transferor shall grant all reasonable easements and rights to allow the development and use of the On Site Open Space Area for the purposes specified in this Agreement.
- 1.4 The transferor shall make such reservations of rights as are reasonable in favour of the remainder of the Development including but not limited to the right to lay new services and build even if the passage of light and air to the On Site Open Space Area transferred is affected.
- 1.5 The transfer shall include a nuisance clause providing that the transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the Owner or occupiers of the remainder of the Development
- 1.6 No unduly restrictive or burdensome covenant or clause shall be imposed upon the transferee in addition to the provisions contained in this Schedule

- 1.7 The On Site Open Space Area will be transferred subject to:
- a) all local land charges, whether or not registered before the date of this Agreement, and all matters capable of registration as local land charges whether or not actually registered;
 - b) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;
 - c) all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the On Site Open Space Area;
 - d) all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of the Owner affecting the On Site Open Space Area, and all liability to repair or covenants to repair paths, ways, passages, fences, and other like matters;
 - e) any interests overriding the title to the On Site Open Space Area; and
 - f) an express right of way over the On Site Open Space Area for the Owner to access any of its retained land (if required (depending on the location of the On site Open Space Area)) and with the route of such right of way being agreed with the transferee
- 1.8 An indemnity from the transferee to the Owner to observe and perform the covenants affecting the title to the On Site Open

Space Area as at the date of the Transfer will be included in the Transfer.

1.9 The following restrictive and/or positive covenants will be included in the transfer for the benefit of the Owner's retained land:

- a) a restriction preventing use for any purpose other than public open space
- b) a covenant not to use the On Site Open Space Area for any trade or business
- c) a covenant not to use the On Site Open Space Area for residential purposes
- d) a covenant to keep the On Site Open Space Area in good repair and condition
- e) a covenant not to obstruct public highway
- f) a covenant to keep and properly maintain the boundaries in good repair and condition
- g) a covenant to properly keep and maintain any landscaping
- h) a covenant to keep and maintain the On Site Open Space Area in a clean and tidy condition
- i) a covenant not to cause or knowingly permit any nuisance on the On Site Open Space Area
- j) a covenant on any transfer of the On Site Open Space Area or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner/Owner of the whole or relevant parts of the retained land to observe and perform these covenants

- k) a covenant not to erect any buildings or other erections on the On Site Open Space Area except equipment ancillary to the purpose for which the land is transferred

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

SIGNED as a **DEED** by
LESLIE ALAN JAMES

In the presence of: -

Signature of Witness

Name (in block capitals)

Address

SIGNED as a **DEED** by
CLIVE VERO

In the presence of: -

Signature of Witness

Name (in block capitals)

Address

SIGNED as a **DEED** by
GEOFFREY MALCOLM VERO

In the presence of: -

Signature of Witness

Name (in block capitals)

Address

SIGNED as a **DEED** by
KATHLEEN ANN SHEPPARD

In the presence of: -

Signature of Witness

Name (in block capitals)

Address

Executed as a Deed by

**RICHBOROUGH ESTATES
GROUP LIMITED**

acting by a Director

In the presence of: -

Signature of Witness

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: -

Authorised signatory

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

Authorised Signatory