

DATED 18 June 2021

**(1) SYBIL DOROTHY FURNISS ANNA LOUISE FURNISS and
IRENE RUTH MILMOE**

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 the erection of up to 65 dwellings including public open space landscaping and associated infrastructure (outline-access only) on Land east of Roseway Stoke Golding

Hinckley and Bosworth Borough Council

Legal Services

The Hub

Rugby Road

Hinckley

THIS AGREEMENT by way of Deed is made the **18** day of June Two Thousand and Twenty One

BETWEEN:

- 1 SYBIL DOROTHY FURNISS and ANNA LOUISE FURNISS** all of 3, Merton Close, Broughton Astley, LE9 6QP and **IRENE RUTH MILMOE** c/o Michael Hill Partnership Limited of Top Hat Terrace 119 London Road Leicester LE2 0Q7 ("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 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 and library facilities for the area in which the Application Land is situated
- D. The Owner is the freehold owner of that part of the Application Land registered at HM Land Registry with title absolute under title number LT496957

- E. The Planning Application has been made to the Borough Council by the Owner 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 their interest in the Application Land shall be subject to the covenants and obligations entered into by them and with the intention that the covenants and obligations entered into by them should create planning obligations pursuant to Section 106 of the Act in the manner hereinafter appearing.
- 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)
"Accessibility and Natural Green Space"	means open space to be provided as publicly accessible woodlands 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 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; and
- (ii) 25% Intermediate Affordable Dwellings

"Affordable Housing"

has the meaning given to it in Annex 2 of the National Planning Policy Framework published by The Ministry of Housing Communities and Local Government in February 2019 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 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 location of the Affordable Dwellings the house types and size and tenure of the Affordable Dwellings 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 meets one or more 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 two adult bus passes entitling the holder of each bus pass to travel free of charge on local bus services over a period of six 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 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 3.7
"Bus Stop Improvements Contribution"	means the sum of One Hundred Pounds (£100.00) adjusted in accordance with the provisions contained in the First Schedule payable by the Owner to the County Council towards the provision of Bus Stop Improvements being a new flags at the two nearest bus stops at a cost of Fifty Pounds (£50.00) per flag
"Civic Amenity Contribution"	means the sum of Three Thousand Two Hundred and Nineteen Pounds (£3,219.00) payable in accordance with the provisions of clause 3.9 and adjusted

in accordance with the provisions contained in the First Schedule payable by the Owner to the County Council towards civic amenity facilities at Barwell Civic Amenity Site

"Commencement of Development"

the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of Section 56 (4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development

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

	boundary fencing or hoardings
	vii. construction of access or highway works or provision of services (including drainage and media)
	viii. any other preparatory works agreed in writing with the Borough Council
"County Council Monitoring Contribution"	means the sum of Three Hundred Pounds (£300.00) or 0.5% of the value of any contribution due to the County Council (whichever is the greater) per planning obligation owed to the County Council adjusted in accordance with the provisions of the First Schedule payable by the Owner to the County Council as a contribution towards the costs of the County Council in monitoring compliance with obligations owed to it contained herein
"Default Interest Rate"	means a rate 4% 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
"Equipped Open 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 400 square metres

"Health Facilities Contribution"

means the sum of Thirty Two Thousand Nine Hundred and Ten Pounds and Thirty One Pence (£32,910.31) payable by the Owner to the Borough Council in accordance with the provisions of clause 3.4 and adjusted in accordance with the provisions of the First Schedule towards improvements at the Pine Close Stoke Golding branch of the Castle Mead Medical Centre as a result of the Development

"Health Care Body"

means the West Leicestershire Clinical Commissioning Group or any successor body

"Informal Open Space"

means 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 Dwelling

"Intermediate Affordable Dwellings"

means housing for sale and rent provided at a price above Social Rent but below open market value and may include Shared Ownership Dwellings and other low cost homes for sale and rent to

	buy which includes a period of intermediate rent
"Library Facilities Contribution"	means the sum of One Thousand Eight Hundred and Ninety Pounds (£1,890.00) adjusted in accordance with the provisions contained in the First Schedule payable by the Owner to the County Council towards the provision of facilities at Hinckley library
"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 First Schedule

hereof towards the provision and maintenance of Outdoor Sports Provision at Hall Drive Park Stoke Golding in lieu of provision on site and calculated as follows;

The sum of Twenty Two Thousand Five Hundred and Eighty Eight Pounds and Eighty Pence (£22,588.80) towards the provision of the same ("the Provision Sum") and the sum of Ten Thousand Seven Hundred and Thirty Two Pounds and Eighty Pence (£10,732.80) towards the maintenance of the same ("the Maintenance Sum")

"On Site Open Space Area"

means together the Equipped Open Space the Informal Open Space and the Accessible Natural Green Space

"On Site Open Space Area Maintenance Contribution"

means such sum as shall be calculated as follows:

- a) in respect of Equipped Open Space (based on a requirement of the provision of 3.6 square metres per Dwelling) a sum calculated at £175.60 per square metre;
- b) in respect of Informal Open Space (based on a requirement of 16.8 square metres per Dwelling) a sum calculated at £10.80 per

square metre; and

- c) in respect of Accessibility and Natural Green Space (based on a requirement of 40 square metres per Dwelling) a sum calculated at £14.20 per square metre

such sums to be adjusted in accordance with the provisions contained in the First Schedule in relation to the maintenance of any On Site Open Space Area provided on the Application Land where such On Site Open Space Area is transferred to either the Borough Council or to Stoke Golding 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 3.3.5

"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 3.3.1

"Plan"

means the plan attached hereto and labelled the Plan

37919 (c)



ophir architecture ltd

Client:	Glenwood Developments	Scale:	1:1250	Drawing Size:	A3
Project:	Stone Gidding	Project No:	GD001	Drawing No:	SK000
Drawing:	Location Plan	Date:	July 2020	Revision:	A
					NORTH

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"Planning Application"	means the Planning Application submitted to the Borough Council and allocated reference number 20/00779/OUT applying for (outline) planning permission for residential development of up to 65 dwellings including public open space landscaping and associated infrastructure
"Planning Permission"	means the planning permission granted pursuant to the Planning Application
"Primary School Contribution"	means the sum of Two Hundred and Sixty Two Thousand Six Hundred and Fifty Six Pounds (£262,656.00) payable in accordance with the provisions of clause 3.10 adjusted in accordance with the First Schedule to be paid by the Owner to the County Council to be used to improve remodel or enhance facilities at St. Margaret's Church of England Primary School Stoke Golding or any other primary school which shall comprise a catchment school 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 25% of the equity initially sold to the purchaser by the Affordable Housing Provider with flexibility to increase their degree of

ownership if they so wish

"Working Day"

means any day except Saturday Sunday or a bank or public holiday in England and "Working Days" shall be construed accordingly

- 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

Liability

2.4 The covenants given by the Owner contained herein are made with the intent that the covenants will bind their interest in the Application Land and be binding on and enforceable against their successors in title or assignees and subject to clauses 2.5 and 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 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 s

- 2.6 The covenants contained in this Agreement 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 twenty-eight days of such disposal give written notice of the name and address of its successors in title to the Borough Council and the County Council together with sufficient details of the land included in the disposal to allow its identification

Contingencies

- 2.8 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties
- 2.9 Save for the provisions of clause 2.17 (Exclusion of Third Party Rights) clause 2.11 (Commencement of Development) and Clauses 3.5 and

3.13 (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

2.10 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission prior to the Commencement of Development the obligations 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

2.11 The Owner shall give the Borough Council seven days notice in advance of the Commencement of Development and shall send a copy of such notice to the Head of Planning and Historic and Natural Environment of 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

2.12 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner the Borough Council or the County Council (or any of them) concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert

as they may agree or (in default of agreement within 20 Working Days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms

- 2.12.1 The person to be appointed pursuant to Clause 2.12 shall if possible be a person having ten years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute
- 2.12.2 The reference to the expert shall be on terms that:
 - 2.12.2.1 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;
 - 2.12.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
 - 2.12.2.3 the expert shall be bound to have regard to the said submissions and representations;
 - 2.12.2.4 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;
 - 2.12.2.5 the expert shall be limited in his findings to the proposals put by either party and
 - 2.12.2.6 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

- 2.13 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

- 2.14 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

- 2.15 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
- 2.16 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 Head of Planning and Historic and Natural Environment

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

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

Application of this Agreement

- 2.18 If the Borough Council approves an application under Section 73 of the Act the effect of which is to grant planning permission subject to conditions different from those granted in the Planning Permission or if any such permission is granted on appeal under section 78 of the Act or if the Borough Council and/or the County Council agree to any variation of the terms of this deed they shall enter into a deed of variation with the Owner pursuant to section 106A of the Act to effect the changes to this deed.

No Fetter of Discretion

- 2.19 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

- 2.20 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

- 2.21 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

- 2.22 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

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 of the Borough Council to the Affordable Housing Scheme for the provision of the Affordable Dwellings on the Application Land

- 3.1.2 To provide the Affordable Dwellings in accordance with the Affordable Housing Scheme or any variations thereto approved in advance in writing by the Borough Council
- 3.1.3 To construct or procure the construction of the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Scheme or any variations thereto approved in advance in writing by the Borough Council
- 3.1.4 Not to Occupy or to permit the Occupation of more than 70 % of the Market Dwellings until the Affordable Dwellings have been constructed ready for Occupation and the freehold interest in them has been transferred to an Affordable Housing Provider
- 3.1.5 Any transfers under clause 3.1.4 shall contain the following provisions:
 - 3.1.5.1 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
 - 3.1.5.2 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
- 3.1.6 To notify the Borough Council within fourteen days of the transfer of any of the 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 Affordable Dwelling was transferred
- 3.1.7 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 parish of Stoke Golding and being such persons as shall be agreed between the Borough Council and the relevant Affordable Housing Provider who satisfy the Parish/Village connection within the Local Connections criteria as defined in the HAP.

3.1.8 In the event that there is no person/s who satisfy the Parish/Village connection within the Local Connections criteria as defined within the HAP such other person/s in need of affordable housing within the Borough of Hinckley and Bosworth and being such person/s as shall be agreed between the Borough Council and the relevant Affordable Housing Provider who satisfy the District connection within the Local Connections criteria as defined within the HAP

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

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

- a) A mortgagee or charge or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) of the whole or part of the Affordable Dwellings or any person or

bodies deriving title through such mortgagee or chargee or receiver PROVIDED THAT

- i) Such mortgagee or chargee or receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Affordable Housing Provider or to the Borough Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses , and
 - ii) If such disposal is not completed within the three-month period the mortgagee chargee or receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this 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 (e) above

Off Site Open Space Contribution

- 3.2 The Owner covenants with the Borough Council to pay the Off Site Open Space Contribution as follows:
 - 3.2.1 Not to Occupy or to permit the Occupation of more than 75 % 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
 - 3.2.2 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

On Site Open Space Area

- 3.3 The Owner covenants with the Borough Council in respect of the On Site Open Space Area as follows:
 - 3.3.1 To submit the On Site Open Space Area Scheme to the Borough Council for written approval prior to the Commencement of Development
 - 3.3.2 Not more than 75% 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
 - 3.3.3 Following the laying out of the On Site Open Space Area in accordance with the On Site Open Space Area Scheme the Owner shall serve written notice of practical completion of the On Site Open Space Area on the Borough Council ("the Notice of Practical Completion")
 - 3.3.4 To maintain the On Site Open Space Area for a period of 12 months after Notice of Practical Completion of the On Site Open Space Area is served on the Borough Council 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

3.3.5 At the end of the maintenance period referred to in clause 3.3.4 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 the Borough Council's nominee) or Stoke Golding Parish Council ("the Parish Council") maintains the On Site Open Space Area

3.3.6 In the event the Owner elects to maintain the On Site Open Space Area pursuant to clause 3.3.5 it shall within 56 days of the service of the notice pursuant to clause 3.3.5 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

3.3.7 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 pursuant to clause 3.3.5 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 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

3.3.8 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 confirm in writing to the Owner that it is willing to maintain the On Site Open Space Area the following provisions shall apply:

3.3.8.1 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 3.3.4 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

3.3.8.2 The Owner shall transfer to the Borough Council or the Parish Council the On Site Open Space Area for the sum of One Pound (£1.00) within

six months of the issue of the certificate issued pursuant to clause 3.3.8.1 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 has been completed

- 3.3.8.3 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 3.3.8.2

Health Facilities Contribution

- 3.4 The Owner hereby covenants with the Borough Council to pay the Health Facilities Contribution to the Borough Council prior to the first Occupation of the first Dwelling.

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

Bus Pass Contribution

- 4.2 The Owner covenants with the County Council to pay the Bus Pass Contribution in accordance with the following:-

4.2.1 The Owner shall not allow or permit the first Occupation of the first Dwelling until 25% of the Bus Pass Contribution has been paid to the County Council

4.2.2 The Owner shall not allow or permit the first Occupation of 25% of the Dwellings until the remaining 75% of the Bus Pass Contribution (taking into account any unspent monies paid under clause 4.2.1) has been paid in full to the County Council EXCEPT that the County Council and the Owner may by agreement defer the payment to a later date

Bus Stop Improvements Contribution

4.3 The Owner covenants with the County Council to pay the Bus Stop Improvements Contribution to the County Council prior to the first Occupation of the first Dwelling

Civic Amenity Contribution

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

Primary School Contribution

4.5 The Owner covenants with the County Council to pay the Primary School Contribution to the County Council as follows:

4.5.1 10% prior to the Commencement of Development and;

4.5.2 the remaining 90% prior to first Occupation of the 39th Dwelling

Notice of Occupation

4.6 The Owner covenants with the County Council to serve written notice upon them at least 7 days in advance of the following events – namely the first Occupation of first 39th and final Dwelling comprising part of the Development

County Council Monitoring Contribution

- 4.7 The Owner covenants with the County Council not to Commence Development unless and until the County Council Monitoring Contribution is paid to the County Council in full

County Council Legal Fees

- 4.8 The Owner covenants with the County Council to pay to the County Council 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/S

On Site Open Space Area

- 5.1 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 3.3.8.3 it shall apply the On Site Open Space Area Maintenance Contribution solely towards the cost of maintaining the On Site Open Space Area and for no other purpose whatsoever
- 5.2 The Borough Council covenants with the Owner that in the event it receives the On Site Open Space Area Maintenance Contribution it shall return any unspent monies to the Owner on demand after a period of twenty years from the date of receipt by the Borough Council of the On Site Open Space Area Maintenance Contribution

Health Facilities Contribution

- 5.3 The Borough Council covenants with the Owner
- 5.3.1 To pay the Health Facilities Contribution to the Health Care Body upon receipt of the contribution from the Owner and a document from the Health Care Body covenanting to the Owner and the Borough Council that it will apply the Health Facilities Contribution for the purposes set out in the definition of Health Facilities Contribution and

for no other purposes whatsoever and further if the Health Facilities Contribution has not been expended for the defined purposes within a period of seven years from the date of payment of the Health Facilities Contribution to the Health Care Body by the Borough Council to refund directly to the Owner any unspent portion of the Health Care Contribution PROVIDED ALWAYS that the Borough Council shall be under no obligation to the Owner:

- i) to ensure that the Health Facilities Contribution is so applied by the Health Care Body; or
- ii) to pursue the Health Care Body for the repayment of any such unspent portion of the Health Facilities Contribution; or
- iii) to verify the accuracy of the unspent contribution in the event that any such sum is repaid to the Borough Council

Off Site Open Space Contribution

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

Deed of Release

- 5.5 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 COVENANTS

Library Facilities Contribution

- 6.1 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

- 6.2 The County Council covenants with the Owner as follows:-
- 6.2.1 To apply the Bus Pass Contribution in accordance with the definition hereof 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 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 definition hereof and for no other purpose whatsoever

Bus Stop Improvements Contribution

- 6.4 The County Council covenants with the Owner to apply the Bus Stop Improvements Contribution in accordance with the definition hereof and for no other purpose whatsoever

Primary School Contribution

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

Repayment

- 6.6 In the event that any monies payable pursuant to the County Council (save for the Bus Pass Contribution which is dealt with separately at clause 6.2.3) of this Agreement that are not applied to the purposes specified within five 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 calculated at the base rate of HSBC plc from time to time from the date of any payment until the date of repayment

- 6.7 The County Council covenants with the Owner to produce full details of the expenditure of all monies paid pursuant to the provisions of this Agreement which details shall be provided following receipt of a written request for the same from the Owner

Deed of Release

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

THE FIRST SCHEDULE

INDEXATION PROVISIONS

1. In this Schedule:-

"Index" means 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

"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:-

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 change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made
4. If any substitution for the said the BCIS, or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the BCIS or any index previously substituted therefore on the other hand

THE SECOND SCHEDULE

TRANSFER OF THE ON SITE OPEN SPACE AREA

1. GENERAL

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

- 1.1 The transfer shall be in accordance with the Law Society's Standard Conditions of Sale (Fifth Edition – 2018 Revision) "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 granting all reasonable easements and rights to allow the development and use of the land for the purposes specified in this Agreement.
- 1.4 The Transferor making such reservations of rights as are reasonable in favour of the remainder of the development including but not limited to the right to lay new services and build even if the passage of light and air to the land transferred is affected.
- 1.5 The inclusion of a nuisance clause providing that the transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the Owner or occupiers of the remainder of the Development
- 1.6 No unduly restrictive or burdensome covenant or clause being imposed upon the transferee in addition to the provisions contained in this Schedule
- 1.7 The land will be transferred subject to:

- a) all local land charges, whether or not registered before the date of this agreement, and all matters capable of registration as local land charges whether or not actually registered;
- b) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this agreement;
- c) all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the Property;
- d) all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining Owner affecting the Property, and all liability to repair or covenants to repair paths, ways, passages, fences, and other like matters,; and
- e) any interests overriding the title to the land

1.8 An indemnity from the transferee to observe and perform the covenants affecting the title to the land as at the date of the Transfer will be included in the Transfer.

1.9 The following restrictive covenants will be included in the Transfer for the benefit of the Owner's retained land

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

- g) to properly keep and maintain any landscaping
- h) to keep and maintain the land in a clean and tidy condition
- i) not to cause or knowingly permit any nuisance on the land
- j) on any transfer of the land or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner/Owner or the whole or relevant parts of the retained land to observe and perform these covenants
- k) not to erect any buildings or other erections except equipment ancillary to the purpose for which the land is transferred

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

THE COMMON SEAL OF

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

was hereunto affixed in the presence of: -



Authorised signatory



12452

THE COMMON SEAL of **LEICESTERSHIRE**

COUNTY COUNCIL was hereunto

affixed in the presence of: -



Authorised Officer



37919(b)

SIGNED as a **DEED** by

SYBIL DOROTHY FURNISS

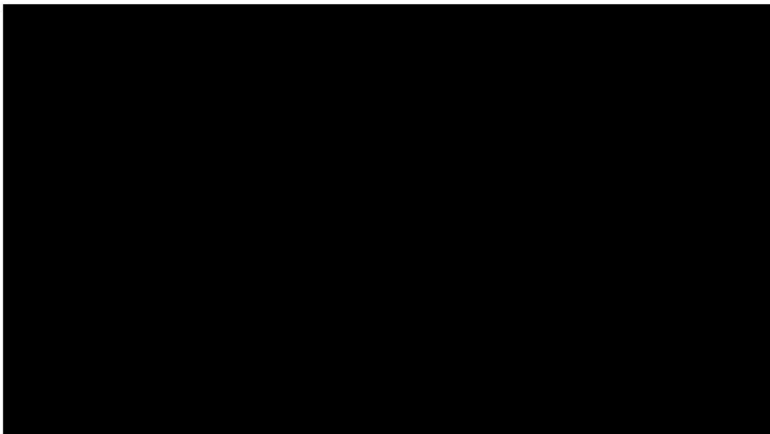
In the presence of



In the presence of: -



Signature of Witness



Address

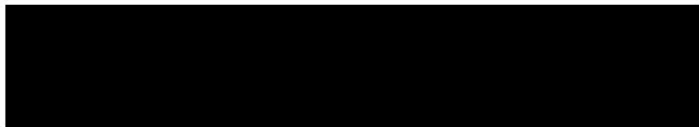
SIGNED as a **DEED** by

ANNA LOUISE FURNISS

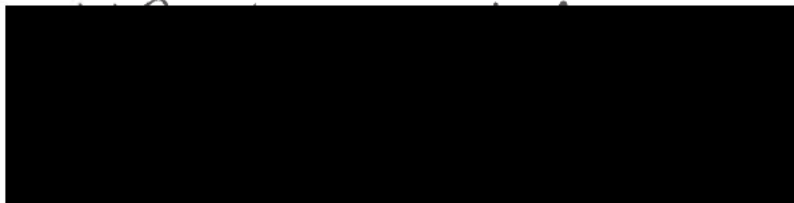
In the presence of



In the presence of: -



Name (in block capitals)



Address

SIGNED as a **DEED** by

IRENE RUTH MILMOE

In the presence of



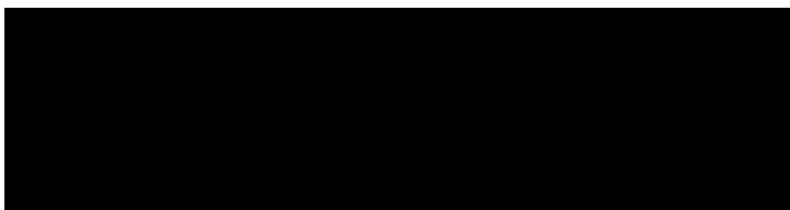
In the presence of: -



Signature of Witness



Name (in block capitals)



Address