DATED 28 November 2012

JOAN FLORENCE STUBLEY
WILLIAM STUBLEY (1)

- and -

BDW TRADING LIMITED (2)

- and -

HINCKLEY & BOSWORTH BOROUGH COUNCIL (3)

- and -

LEICESTERSHIRE COUNTY COUNCIL (4)

PLANNING AGREEMENT

Pursuant to Section 106 Town and Country Planning Act 1990
relating to residential development on land
at 261 Main Street, Stanton under Bardon, Leicestershire LE67 9TQ

Marrons
Solicitors
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY
Ref: PAW 194-278-2

THIS AGREEMENT is made the 28th day of November Two Thousand and Twelve

BETWEEN:

1. **JOAN FLORENCE STUBLEY** and **WILLIAM STUBLEY** of 261 Main Street Stanton Under Bardon Leicestershire LE67 9TQ ("the Owners"); and

2. **BDW TRADING LIMITED** (Company Registration Number 03018173) whose registered office is situated at Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("the Developer")

3. **HINCKLEY & BOSWORTH BOROUGH COUNCIL** of Council Offices Argents Mead Hinckley Leicestershire, LE10 1BZ ("the Borough Council")

4. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield Leicester, LE3 8RA ("the County Council")

RECITALS:

A. By means of the Planning Application planning permission was sought from the Borough Council to carry out the Development

B. The Borough Council is the Local Planning Authority for the purposes of the Act for the Borough of Hinckley & Bosworth within which the Land is situated

C. The Borough Council and the County Council are both Principal Councils within the meaning of the Local Government Act 1972

D. The County Council is a local planning authority and is responsible for the provision of civic amenities library facilities and highways for the area in which the Land is situated

E. The Owners are the freehold owners of the Land which is registered at the Land Registry under Title Number LT256344

F. The Developer has a conditional contract with the Owners to purchase the Land

G. The Borough Council refused to grant planning permission for the Planning Application on 26 June 2012

H. The Owners via their agent have made the Planning Appeal to the Secretary of State against that refusal

I. The Owners and the Developer have agreed to enter into this Agreement with the intent that their interests in the Land shall be subject to the covenants and obligations entered into by it and with the intention that the covenants and obligations entered into by it should create planning obligations pursuant to Section 106 of the Act in the manner hereinafter appearing in the event the Appeal Permission is granted

J. The obligations contained herein are conditional upon them being required by the Appeal Permission and are also conditional upon the provisions of clauses 2.7 and 2.8 of this Agreement

OPERATIVE PROVISIONS:

1. **DEFINITIONS AND INTERPRETATION**

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

"Act"	the Town & Country Planning Act 1990
"Affordable Dwelling/s"	means the eight units comprising four 2 bed units and four 3 bed units to be constructed as part of the Development provided in accordance with the following: i) 6 of the Affordable Dwellings (comprising three 2 bed units and three 3 bed units) as Social Rented Dwellings; and ii) 2 of the Affordable Dwellings (comprising one 2 bed unit and one 3 bed unit) as Intermediate Dwellings
"Affordable Housing"	has the meaning given to it in Annex 2 of the National Planning Policy Framework March 2012 or any guidance which may replace it
"Affordable Housing Provider"	means either: i) a social landlord registered with the Homes and Communities Agency (formerly the Housing

Corporation) under the Housing and Regeneration Act 2008; or

ii) any other housing provider approved in writing by the Council

"Appeal Permission" means the planning permission granted pursuant to the Planning Appeal

"Bus Passes" means two adult bus passes entitling the holder of the bus pass to travel free of charge on local bus services for a period of six months

"Bus Pass Contribution" means the sum of Eighteen Thousand Five Hundred and Forty Seven Pounds Twenty Pence (£18,547.20) payable by the Owners to the County Council in accordance with Clause 4.1.3 and 4.1.4 towards the provision of Bus Passes

"Bus Stop Contribution" means the sum of Six Thousand Five Hundred and Eighty Eight Pounds (£6,588.00) payable by the Owners to the County Council in accordance with Clause 4.1.5 for the purposes of the Bus Stop Works

"Bus Stop Works" means the works to the nearest bus stop and creation of a new bus stop to include at each a bus shelter, raised and dropped kerbs and passenger information

"Civic Amenities Contribution" means a contribution of One Thousand Seven Hundred and Forty One Pounds (£1,741.00) payable by the Owner to the County Council in accordance with clause 4.1.1 towards the provision of improved facilities at the Coalville 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 Land, site survey work, or works of remediation
ii) archaeological investigations on the 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 boundary fencing or hoardings
vii) construction of access or highway works (including drainage and media)
viii) any other preparatory works agreed in writing with the Council

"County Council Monitoring Costs Contribution"	means £250.00 (Two Hundred and Fifty Pounds) or 0.5% of the value of the total contribution (whichever is the greater) per obligation in favour of the County Council towards the County Council's costs of monitoring compliance with the obligations contained in this Agreement
"Development"	the development described in the Planning Application and to be carried out pursuant to the Appeal Permission
"Dwelling/s"	means any dwelling built pursuant to the Appeal Permission and whether an Affordable Dwelling or otherwise and whether a house or a flat or otherwise
"Intermediate Dwellings"	means homes for sale and rent provided at a cost above social rented but below market levels subject to the criteria of Affordable Housing contained within in Annex 2 of the National Planning and Policy Framework (March 2012). It can include shared equity and other low cost homes for sale and intermediate rent but not affordable rented housing (as defined in Annex 2 of the National Planning and Policy Framework (March 2012))
"Land"	the land to which the Planning Appeal relates shown for identification purposes only as edged red on the Plan
"Leicestershire Choice Based Lettings Scheme"	means the property letting scheme utilised by the Partnership to advertise for let all its vacant council and housing association properties within Leicestershire
"Libraries Contribution"	means a contribution in the sum of One Thousand Seven Hundred and Twenty Pounds (£1,720.00) payable by the Owner to the County Council in accordance with Clause 4.1.2 for the provision and/or improvement of additional resources at Markfield Library
"Market Dwelling/s"	means any dwelling constructed as part of the Development for sale lease or other disposal on the open market which is not an Affordable Dwelling
"National Forest Company"	means the non-departmental public body sponsored by the Department for Environment Food and Rural Affairs ('DEFRA') which leads the creation of the National Forest across Central England or any successor body or other body as appointed by DEFRA
"National Forest Contribution"	means the sum of Three Thousand Three Hundred and Sixty Pounds (£3,360.00) towards planting and landscaping within the vicinity of the Development as required to comply with the government targets as detailed in the National Forest's Guide for Developers and Planners (3rd Edition, 2005)

"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 contribution of Twenty Nine Thousand One Hundred and Thirty Pounds (£29,130.00) comprising Nineteen Thousand Five Hundred and Eighty Five Pounds and Fifty Pence (£19,585.50) ("the Provision Sum") and Nine Thousand Five Hundred and Forty Four Pounds and Fifty Pence (£9,544.50) ("the Maintenance Sum") towards the provision and/or improvement and/or maintenance of public open and play facilities at Stanton-Under-Bardon Primary School
"Parish"	means the parish of Stanton under Bardon
"Parish Council"	means the Stanton under Bardon Parish Council
"Partnership"	means the 7 local authorities in Leicestershire and local affordable housing providers all of whom have entered into an agreement to let vacant properties via the Leicestershire Choice Based Lettings System
"Plan"	means the plan attached hereto
"Planning Application"	the Planning Application submitted to the Council and allocated reference number 11/00582/FUL applying for residential development comprising erection of 28 dwellings and garaging including demolition of 261 Main Street
"Planning Appeal"	means the planning appeal made by the Owner to the Secretary of State and ascribed reference APP/K2420/A/12/2180699/NWF against the decision by the Council to refuse to grant planning permission for the Planning Application
"Social Rented Dwellings"	means housing owned by a local authority and/or an

All Proposed Trees & Hedges are indicative. This Layout is to be read in Conjunction with the soft landscaping Layout.

Existing Local Playing Fields.

Access as per BWB Consulting -Proposed Access Arrangement detail Drawing No: NTT/B5002 Rev P1.

Existing Buffer Landscaping

Existing Buffer Landscaping

Main Street

Old Thatched Cottage

MEADOW LANE

Legend:

Existing trees \ Hedges to be Retained	
Existing trees \ Hedges to be removed	
Indicative Trees \ Hedge Planting Refer to detailed Soft Landscaping plan for details	
1.8m high Close boarded fence	
0.45m Timber Knee Rail	
Decorative Glass Reinforced Panel to Acoustic Barrier	
Soft Landscaping	
3 Bed Detached House type (Optional Dormer)	
Shared Ownership Affordable Dwellings (Optional Dormer)	

Affordable House Type Schedule:

No.	House Type	Bedroom	Area
2no.	2 Bed Affordable House type		2500
2no.	3 Bed Affordable House type		2638
2no.	3 Bed Affordable House type		4500
2no.	3 Bed Affordable House type		4263
2no.			6500

House Type Schedule:

No.	House Type	Bedroom	Area
2no.	3 Bed Detached House type		6733
1no.	4 Bed Detached House type		8211
1no.	4 Bed Detached House type		8400
2no.	4 Bed Detached House type		8433
1no.	4 Bed Detached House type		8438
2no.	4 Bed Detached House type		8438
1no.	4 Bed Detached House type		8452
1no.	4 Bed Detached House type		8452
2no.	4 Bed Detached House type		8469
2no.	4 Bed Detached House type		8482
1no.	4 Bed Detached House type		8484

Client: Taylor Wimpey UK Ltd

Project: Land off Main Street, Stanton Under Bardon, Leicestershire.

Drawing Title: Planning Layout

Scale: 1:500 @ A1

Date: June 2017

Drawn: MCH

Job No: SSR/10/009

DAVID WILSON HOMES

DAVID WILSON HOMES (EAST MIDLANDS) LTD
PROJECT DIRECTOR'S OFFICE
TEL: 01509 672772
FAX: 01509 674499
EMAIL: info@dwhomes.co.uk

Revisions:

No.	Description	Date
A	Layout amended to suit Highway Authority comments	13.06.17
B	Layout amended to suit Highway Authority comments	19.06.17
C	Layout amended to suit Highway Authority comments	27.06.17
D	Layout amended to suit Highway Authority comments	04.07.17
E	Layout amended to suit Highway Authority comments	07.07.17
F	Layout amended to suit Highway Authority comments	10.07.17
G	Layout amended to suit Highway Authority comments	11.07.17
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MP	Layout amended to suit Highway Authority comments	28.08.18
MQ	Layout amended to suit Highway Authority comments	29.08.18
MR	Layout amended to suit Highway Authority comments	30.08.18
MS	Layout amended to suit Highway Authority comments	31.08.18
MT	Layout amended to suit Highway Authority comments	03.09.18
MU	Layout amended to suit Highway Authority comments	04.09.18
MV	Layout amended to suit Highway Authority comments	05.09.18
MW	Layout amended to suit Highway Authority comments	06.09.18
MX	Layout amended to suit Highway Authority comments	07.09.18
MY	Layout amended to suit Highway Authority comments	10.09.18
MZ	Layout amended to suit Highway Authority comments	11.09.18
NA	Layout amended to suit Highway Authority comments	12.09.18
NB	Layout amended to suit Highway Authority comments	13.09.18
NC	Layout amended to suit Highway Authority comments	14.09.18
ND	Layout amended to suit Highway Authority comments	17.09.18
NE	Layout amended to suit Highway Authority comments	18.09.18
NF	Layout amended to suit Highway Authority comments	19.09.18
NG	Layout amended to suit Highway Authority comments	20.09.18
NH	Layout amended to suit Highway Authority comments	21.09.18
NJ	Layout amended to suit Highway Authority comments	24.09.18
NK	Layout amended to suit Highway Authority comments	25.09.18
NL	Layout amended to suit Highway Authority comments	26.09.18
NM	Layout amended to suit Highway Authority comments	27.09.18
NN	Layout amended to suit Highway Authority comments	28.09.18
NP	Layout amended to suit Highway Authority comments	01.10.18
NQ	Layout amended to suit Highway Authority comments	02.10.18
NR	Layout amended to suit Highway Authority comments	03.10.18
NS	Layout amended to suit Highway Authority comments	04.10.18
NT	Layout amended to suit Highway Authority comments	05.10.18
NU	Layout amended to suit Highway Authority comments	08.10.18
NV	Layout amended to suit Highway Authority comments	09.10.18
NW	Layout amended to suit Highway Authority comments	10.10.18
NX	Layout amended to suit Highway Authority comments	11.10.18
NY	Layout amended to suit Highway Authority comments	12.10.18
NZ	Layout amended to suit Highway Authority comments	15.10.18
PA	Layout amended to suit Highway Authority comments	16.10.18
PB	Layout amended to suit Highway Authority comments	17.10.18
PC	Layout amended to suit Highway Authority comments	18.10.18
PD	Layout amended to suit Highway Authority comments	19.10.18
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PG	Layout amended to suit Highway Authority comments	24.10.18
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PQ	Layout amended to suit Highway Authority comments	05.11.18
PR	Layout amended to suit Highway Authority comments	06.11.18
PS	Layout amended to suit Highway Authority comments	07.11.18
PT	Layout amended to suit Highway Authority comments	08.11.18
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PV	Layout amended to suit Highway Authority comments	12.11.18
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PZ	Layout amended to suit Highway Authority comments	16.11.18
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QD	Layout amended to suit Highway Authority comments	22.11.18
QE	Layout amended to suit Highway Authority comments	23.11.18
QF	Layout amended to suit Highway Authority comments	26.11.18
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QL	Layout amended to suit Highway Authority comments	03.12.18
QM	Layout amended to suit Highway Authority comments	04.12.18
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QP	Layout amended to suit Highway Authority comments	06.12.18
QQ	Layout amended to suit Highway Authority comments	07.12.18
QR	Layout amended to suit Highway Authority comments	10.12.18
QS	Layout amended to suit Highway Authority comments	11.12.18
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QV	Layout amended to suit Highway Authority comments	14.12.18
QW	Layout amended to suit Highway Authority comments	17.12.18
QX	Layout amended to suit Highway Authority comments	18.12.18
QY	Layout amended to suit Highway Authority comments	19.12.18
QZ	Layout amended to suit Highway Authority comments	20.12.18
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RK	Layout amended to suit Highway Authority comments	03.01.19
RL	Layout amended to suit Highway Authority comments	04.01.19
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RP	Layout amended to suit Highway Authority comments	09.01.19
RQ	Layout amended to suit Highway Authority comments	10.01.19
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RU	Layout amended to suit Highway Authority comments	16.01.19
RV	Layout amended to suit Highway Authority comments	17.01.19
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RX	Layout amended to suit Highway Authority comments	21.01.19
RY	Layout amended to suit Highway Authority comments	22.01.19
RZ	Layout amended to suit Highway Authority comments	23.01.19
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SG	Layout amended to suit Highway Authority comments	01.02.19
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SJ	Layout amended to suit Highway Authority comments	05.02.19
SK	Layout amended to suit Highway Authority comments	06.02.19
SL	Layout amended to suit Highway Authority comments	07.02.19
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SR	Layout amended to suit Highway Authority comments	14.02.19
SS	Layout amended to suit Highway Authority comments	15.02.19
ST	Layout amended to suit Highway Authority comments	18.02.19
SU	Layout amended to suit Highway Authority comments	19.02.19
SV	Layout amended to suit Highway Authority comments	20.02.19
SW	Layout amended to suit Highway Authority comments	21.02.19
SX	Layout amended to suit Highway Authority comments	22.02.19
SY	Layout amended to suit Highway Authority comments	25.02.19
SZ	Layout amended to suit Highway Authority comments	26.02.19
TA	Layout amended to suit Highway Authority comments	27.02.19
TB	Layout amended to suit Highway Authority comments	28.02.19
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TG	Layout amended to suit Highway Authority comments	07.03.19
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TR	Layout amended to suit Highway Authority comments	20.03.19
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UB	Layout amended to suit Highway Authority comments	03.04.19
UC	Layout amended to suit Highway Authority comments	04.04.19
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UG	Layout amended to suit Highway Authority comments	10.04.19
UH	Layout amended to suit Highway Authority comments	11.04.19
UJ	Layout amended to suit Highway Authority comments	12.04.19
UK	Layout amended to suit Highway Authority comments	15.04.19
UL	Layout amended to suit Highway Authority comments	16.04.19
UM	Layout amended to suit Highway Authority comments	17.04.19
UN	Layout amended to suit Highway Authority comments	18.04.19
UP	Layout amended to suit Highway Authority comments	19.04.19
UQ	Layout amended to suit Highway Authority comments	22.04.19
UR	Layout amended to suit Highway Authority comments	23.04.19
US	Layout amended to suit Highway Authority comments	24.04.19
UT	Layout amended to suit Highway Authority comments	25.04.19
UU	Layout amended to suit Highway Authority comments	26.04.19
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UX	Layout amended to suit Highway Authority comments	01.05.19
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UZ	Layout amended to suit Highway Authority comments	03.05.19
VA	Layout amended to suit Highway Authority comments	06.05.19
VB	Layout amended to suit Highway Authority comments	07.05.19
VC	Layout amended to suit Highway Authority comments	08.05.19
VD	Layout amended to suit Highway Authority comments	09.05.19
VE	Layout amended to suit Highway Authority comments	10.05.19
VF	Layout amended to suit Highway Authority comments	13.05.19
VG	Layout amended to suit Highway Authority comments	14.05.19
VH	Layout amended to suit Highway Authority comments	15.05.19
VJ	Layout amended to suit Highway Authority comments	16.05.19
VK	Layout amended to suit Highway Authority comments	17.05.19
VL	Layout amended to suit Highway Authority comments	20.05.19
VM	Layout amended to suit Highway Authority comments	21.05.19
VN	Layout amended to suit Highway Authority comments	22.05.19
VP	Layout amended to suit Highway Authority comments	23.05.19
VQ	Layout amended to suit Highway Authority comments	24.05.19
VR	Layout amended to suit Highway Authority comments	27.05.19
V

	affordable housing provider (as defined in section 80 of the Housing and Regeneration Act 2009) for which guideline target rents are determined through the national rent regime.
"Travel Packs"	means a pack of information containing details of local walking and cycling routes, local bus services/stops/timetables, Bus Pass application forms, shops and other local amenities in the vicinity of the Development
"Travel Pack Contribution"	means the sum of One Thousand Four Hundred and Five Pounds and Four Pence (£1,405.04) payable by the Owners to the County Council in accordance with Clause 4.1.6 for the provision of Travel Packs

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 or Schedule such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of this Agreement

1.6 Covenants made hereunder:

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

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

1.7 The expression Owners 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 Owners contained herein are planning obligations and are made pursuant to Section 106 of the Act and the Agreement is entered into by the Borough Council and the County Council pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000

2.2 The covenants by the Owners 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

Liability

2.3 The covenants given by the Owners contained herein are made with the intent that the covenants will bind the Land and be binding on and enforceable against its successors in title or assigns and subject to clause 2.5 those deriving title under the Owners 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

2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Appeal 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 PROVIDED THAT the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Appeal Permission as herein defined by agreement between the Owners the Developer the Borough Council and the County Council as evidenced by a memorandum endorsed on this Agreement although for the avoidance of doubt the need to enter into a memorandum shall not apply to any application

under s.73 of the Act or by appeal under s.78 of the Act which shall instead be governed by the provisions of Clause 2.20 of this Agreement

2.5 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Land constructed pursuant to the Appeal 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 Land acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of the benefit of an easement or covenant

2.6 In the event that the Owners dispose of their interest in the Land or any part thereof (other than a disposal to a purchaser of an individual Dwelling) they 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

2.7 Save for the provisions of clause 2.17 (Exclusion of Third Party Rights) clause 3.1.12 (The Borough Council's Legal Costs) and clause 4.1.8(The County Council's Legal Costs) which shall come into effect on the date hereof the provisions of this Agreement shall be conditional upon their terms being determined by the Inspector to meet the statutory tests set out in Regulation 122(2) of The Community Infrastructure Levy Regulations 2010 and therefore being required by the Appeal Permission in whole or part

2.8 The covenants contained in clauses 3 and 4 (save for clause 3.1.10.1, 3.1.12 and 4.1.8) shall be conditional upon the Commencement of Development

2.9 In the event of the Appeal Permission expiring or in the event of the revocation of the Appeal Permission the obligations under this Agreement shall cease absolutely and the Borough Council shall procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon written request from the Owner

Commencement of Development

2.10 The Owners 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 County Solicitor of the County Council and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owners and the Borough Council and the County Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not mean that Commencement of Development is deemed not to have occurred for the purposes of this agreement

Determination by Expert

2.11 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owners the Developer 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

2.11.1 The person to be appointed pursuant to Clause 2.11 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

2.11.2 The reference to the expert shall be on terms that:

2.11.2.1 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;

2.11.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;

2.11.2.3 the expert shall be bound to have regard to the said submissions and

representations;

2.11.2.4 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;

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

2.11.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owners the Developer the Borough Council and the County Council save that the parties retain the right to refer to the Courts on a matter of law

VAT

2.12 In the event that the provision by the Owners to the Borough Council the County Council or other body of any land or buildings or infrastructure or matters pursuant to this Agreement is a taxable supply for the purposes of the legislation relating to Value Added Tax in respect of which any Value Added Tax should become payable then the Borough Council the County Council or other body in receipt of such supply shall pay to the Owner all such Value Added Tax upon receipt from the Owner of a Value Added Tax invoice therefore and the Owner shall endeavour to ensure that the timing of such invoice or invoices within any four week period shall be such as to minimise the period between settlement of the invoice and recovery of the tax

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 Owners 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 and:

2.15.1 in the case of the Borough Council addressed to the Head of Planning

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

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

Void Provisions

2.18 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

Application of this Agreement

2.19 If the Borough Council agrees pursuant to an application under Section 73 of the Town and Country Planning Act 1990 to any variation or release of any condition contained in the Appeal Permission or if any such condition is varied or released following an appeal under Section 78 of the Town and Country Planning Act 1990 the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission

No Fetter of Discretion

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

Effect of any Waiver

2.21 No waiver (whether express or implied) by the Borough Council and/or the County Council of any breach or default by the Owners 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 Owners

General Requirement to Co-operate

2.22 Without prejudice to its statutory duties the Borough Council the County Council and the Owners 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

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

3.1 The Owner covenants with the Borough Council:

Affordable Housing

3.1.1 To ensure that 8 of the Dwellings are Affordable Dwellings

3.1.2 To construct or procure the construction of the Affordable Dwellings as part of the Development in accordance with the details submitted as part of the Planning Application or any variations thereto approved in advance in writing by the Borough Council

3.1.3 Not to permit the Occupation of more than 40% of the Market Dwellings until 50% of the Affordable Dwellings have been constructed ready for occupation and a binding contact to transfer the same to an Affordable Housing Provider has been entered into in accordance with the provisions of clause 3.1.5

3.1.4 Not to permit the Occupation of more than 80% of the Market Dwellings until the remaining 50% of the Affordable Dwellings have been constructed ready for occupation and a binding contact to transfer the same to an Affordable Housing Provider has been entered into in accordance with the provisions of clause 3.1.5

3.1.5 The Owners shall use all reasonable endeavours to ensure that it enters into a binding contract with an Affordable Housing Provider for the transfer of the Affordable Dwellings in accordance with clauses 3.1.3 and 3.1.4 to the said Affordable Housing Provider such a transfer being subject to the following provisions of clause 3.1.6

3.1.6 Any transfers under clauses 3.1.3 and/or 3.1.4 shall contain the following provisions:

3.1.6.1 the grant and reservation by the Owners 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

3.1.6.2 the imposition of such covenants as the Owners shall reasonably require as are consistent with the sale of any Dwellings within the Development

3.1.7 To provide that the Affordable Dwellings shall remain available as Intermediate Dwellings and Social Rented Dwellings provided that this provision shall not be binding on:

a) any present or future mortgagee of the Affordable Dwellings

b) any receiver appointed by such a mortgagee or chargee

c) any person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire the said Affordable Dwelling

d) 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

e) a person who has staircased under a Shared Ownership lease of an Affordable Dwelling to acquire the freehold of the said Affordable Dwelling or a mortgagee or chargee of such an Affordable Dwelling

f) any person deriving title from any such person as is mentioned in (a) to (e) (inclusive) above

3.1.8 The Owner and/or Developer shall notify the Council in writing;

i. within 14 days of the date the date when 40% of the Market Dwellings have been occupied; and

ii. within 14 days of the date when 80% of the Market Dwellings have been occupied; and

iii. within 14 days of each transfer of an Affordable Dwelling(s) of the date of such transfer and the Affordable Housing Provider to whom the Affordable Dwelling(s) was transferred

3.1.9 Subject to the provisions of this Deed no Social Rented Dwellings shall be used for any purpose other than for the provision of Social Rented Dwellings for rent via the Leicestershire Choice Based Lettings Scheme to persons in need of Affordable Housing within the Borough of Hinckley and Bosworth

and being such person(s) as shall be agreed between the relevant Affordable Housing Provider and the Borough Council as being persons who satisfy one of the following:

i. Was/were born in the Parish

ii. Previously lived in the Parish for 10 years or more

iii. Has resided in the Parish for the last 5 years

iv. Used to live in the Parish but has/have been forced to move away through lack of Affordable Housing;

v. Is/are employed in the Parish;

vi. Has/have local connections with the Parish for at least 5 years;

vii. Such other person(s) in the absence of persons qualifying under i to v above who have applied for housing via the Leicestershire Choice Based Lettings Scheme and are persons who satisfy any one of the criteria set out in i to v above where those criteria are deemed to apply to the remainder of the administrative area of the Borough Council and not to the Parish

PROVIDED THAT

If within 56 days of the Affordable Housing Provider notifying the Borough Council in writing of an Affordable Dwelling becoming vacant no such qualifying person or persons can be found to occupy the Affordable Dwelling the relevant Affordable Housing Provider may let the Affordable Dwelling to any person who satisfies their normal letting criteria

AND FURTHER PROVIDED THAT

i. nothing herein shall prevent the Owners from using the Affordable Dwellings for any purposes connected with the Development whilst the Owners are carrying out residential development thereof provided the triggers for the provision of the same under clauses 3.1.3 and 3.1.4 have not been met; and

ii. nothing shall prevent the Affordable Housing Provider to whom the

Affordable Dwellings are transferred from disposing of the Affordable Dwellings or any part thereof under Section 16 of the Housing Act 1996 and following such disposal of the freehold of any part of the Affordable Dwellings such part shall be free of the covenants in this paragraph

Off Site Open Space Contribution

3.1.10 The Owners hereby covenant with the Borough Council to pay the Off Site Open Space Contribution adjusted in accordance with the First Schedule to the Borough Council in accordance with the following:

3.1.10.1 50% prior to the Commencement of Development;

3.1.10.2 The remaining 50% prior to first Occupation of the first Dwelling to be Occupied

National Forest Contribution

3.1.11 To pay the National Forest Contribution to the Borough Council prior to the first Occupation of the first Dwelling to be Occupied

The Borough Council Legal Costs

3.1.12 The Owners hereby covenant to pay to the Borough Council's reasonable legal costs up to the sum of One Thousand Two Hundred Pounds (£1,200.00) in respect of the preparation of this Agreement on its execution

4. THE OWNERS' PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

4.1 The Owners covenant with the County Council:

Civic Amenities Contribution

4.1.1 To pay the Civic Amenities Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the first Dwelling to be Occupied

Libraries Contribution

4.1.2 To pay the Libraries Contribution adjusted in accordance with the First

Schedule to the County Council prior to the first Occupation of the first Dwelling to be Occupied

Bus Pass Contribution

4.1.3 To pay 50% Bus Pass Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the first Dwelling to be Occupied

4.1.4 To pay the remaining 50% of the Bus Pass Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the fifteenth Dwelling to be Occupied EXCEPT THAT the County Council and the Owner may by agreement defer the payment to a later date

Bus Stop Contribution

4.1.5 To pay the Bus Stop Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the first Dwelling to be Occupied

Travel Pack Contribution

4.1.6 To pay the Travel Pack Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the first Dwelling to be Occupied

County Council Monitoring Costs Contribution

4.1.7 To pay the County Council Monitoring Costs Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the first Dwelling to be Occupied

The County Council Legal Costs

4.1.8 The Owners covenant to pay the County Council's reasonable legal costs in respect of the preparation of this agreement on its execution in the sum of Seven Hundred and Fifty Pounds (£750.00)

5. THE BOROUGH COUNCIL'S COVENANTS

5.1 The Borough Council covenants with the Owners as follows: -

Off Site Open Space Contribution

5.1.1 To hold the Off Site Open Space Contribution and notify the Parish Council within 10 working days of receipt that the Borough Council is in receipt of the Off Site Open Space Contribution

5.1.2 To pay the Off Site Open Space Contribution to the Parish Council upon receipt of a satisfactory application demonstrating that the monies sought will be utilised in accordance with this agreement.

5.1.3 To produce full details of the expenditure of the Off Site Open Space Contribution pursuant to the provisions of this Agreement which details shall be provided following receipt of a request for the same from the Owners

5.1.4 To repay to the payee all or any part of the Provision Sum that has not been paid to the Parish Council by the Borough Council pursuant to clause 5.1.2 within 5 years receipt along with any interest accrued

5.1.5 To repay to the payee all or any part of the Maintenance Sum that has not been paid to the Parish Council by the Borough Council pursuant to clause 5.1.2 within 10 years receipt along with any interest accrued

National Forest Contribution

5.1.6 To hold the National Forest Contribution and notify the National Forest Company within 10 working days of receipt that the Borough Council is in receipt of the National Forest Contribution

5.1.7 To pay the National Forest Contribution to the National Forest Company upon receipt of an undertaking from National Forest Company that they will:-

5.1.7.1 apply the National Forest Contribution for all or any of the specified purposes only; and

5.1.7.2 return any unspent part of the National Forest Contribution to the Borough Council after the expiry of five years from the date of receipt from the Borough Council

5.1.8 To repay to the payer any unspent monies received by them pursuant to clause 5.1.7.2 within 28 working days of receipt from National Forest Company

5.1.9 In the event that an undertaking in the form required by clause 5.1.7 above is not received following the expiry of five years from the date of receipt of the National Forest Contribution then the Borough Council's obligation to pay the National Forest Contribution to National Forest Company shall cease absolutely and the Borough Council shall refund to the payer any unexpended contribution along with any interest accrued within 28 days of a written request from the payer to do so

5.1.10 Upon written request from the Owners to furnish the Owners with full details of expenditure by the Borough Council of all monies paid to the Borough Council by the Owners pursuant to the National Forest Contribution which details shall be provided following receipt of a request for the same from the Owners

Deed of Release

5.1.11 Upon written request where compliance with an obligation in this Agreement has been fulfilled to certify compliance with such obligation and if so requested 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. **COUNTY COUNCIL COVENANTS**

6.1 The County Council covenants with the Owners as follows: -

6.1.1 To apply the Civic Amenities Contribution solely towards provision of facilities at Coalville Civic Amenity site and for no other purpose whatsoever

6.1.2 To apply the Libraries Contribution solely towards the cost of providing and/or improving and/or enhancing library stock and facilities at Markfield Library and for no other purpose whatsoever

6.1.3 To apply the Bus Pass Contribution solely towards the provisions of Buss Passes and for no other purpose whatsoever

6.1.4 To apply the Bus Stop Contribution solely towards the provision of the Bus Stop Works and for no other purpose whatsoever

6.1.5 To apply the Travel Pack Contribution solely towards the provision of Travel Packs and for no other purpose whatsoever

6.1.6 To apply the County Council Monitoring Costs Contribution solely towards monitoring compliance with the obligations contained in this Agreement and for no other purpose whatsoever

6.1.7 That in the event that any monies payable pursuant to clauses 4.1.1, 4.1.2, 4.1.5, and 4.1.6 of this Agreement are not applied to the purposes specified within five years of the receipt of the final tranche of the contribution to refund to the payer any 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 SAVE FOR THE Bus Pass Contribution where that in the event that any of the Bus Pass Contribution payable pursuant to this Agreement that has not been applied for the purpose specified within 9 months of the first Occupation of the final Dwelling to be Occupied the County Council will refund to the payer any 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

6.1.8 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 Owners

THE FIRST SCHEDULE

INDEXATION PROVISIONS

1. In this Schedule:-

"Index"	means in the case of the Civic Amenity Contribution the Libraries Contribution the Bus Pass Contribution the Bus Stop Contribution the Travel Pack Contribution the County Council Monitoring Costs Contribution the Off Site Open Space Contribution and the National Forest Contribution the All in Tender Price Index of Building Cost Information Service ("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 or the date of the grant of planning permission whichever is the earlier.
"Base Index Figure"	means the figure published in respect of the Index immediately prior to the Base Index Date
"Final Index Figure"	means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid

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

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

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 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

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

EXECUTED AS A DEED by)
JOAN FLORENCE STUBLEY)
in the presence of:)

Witness signature .....

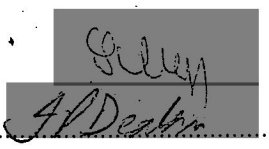
Witness name ...John Deakin.....

Witness address ...David Wilson Homes.....

...Est Midlands.....

Witness occupation ...Planning Manager...

EXECUTED AS A DEED by)
WILLIAM STUBLEY)
in the presence of:)



Witness signature .....

Witness name ..... John Deakin .....

Witness address ..... David Wilson Homes

East Midlands .....

Witness occupation ..... Planning Manager .....

EXECUTED as a **DEED** by **BDW**)
TRADING LIMITED by two of)
its Attorneys appointed under a Power of)
Attorney dated 4 July 2012)



Attorney .....



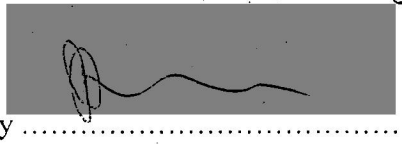
Witness signature .....

Witness name ..... JOHN DEAKIN .....

David Wilson Homes

Witness address ..... East Midlands .....

Witness occupation ..... Planning Manager .....



Attorney .....



Witness signature .....

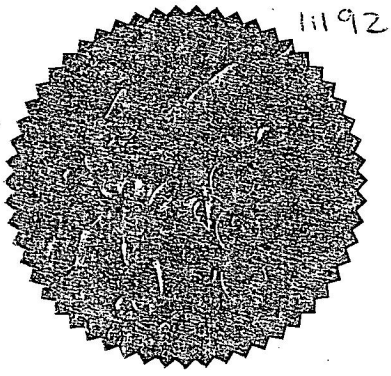
Witness name ..... JOHN DEAKIN .....

David Wilson Homes

Witness address ..... East Midlands .....

Witness occupation ..... Planning Manager .....

THE COMMON SEAL OF **HINCKLEY & BOSWORTH BOROUGH COUNCIL** was hereunto affixed in the presence of: -)



Authorised Officer

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



Authorised Officer