

DATED 1st March 2023

(1) CENTRAL MIDLANDS ESTATES LIMITED
and
(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL
and
(3) LEICESTERSHIRE COUNTY COUNCIL

AGREEMENT

under section 106 Town and Country Planning Act 1990
relating to Workhouse Lane, Burbage
(Planning application number: 20/01012/OUT)
(Appeal reference number: APP/K2420/W/22/3311038)

SHOOSMITHS

THIS AGREEMENT is made on

1st March

2023

BETWEEN:-

- (1) **CENTRAL MIDLANDS ESTATES LIMITED** (Company Reg. No. 25095R) whose registered office is at Central House, Hermes Road, Lichfield, Staffordshire WS13 6RH (the "**Owner**");
- (2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley LE10 0FR (the "**Borough Council**"); and
- (3) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicestershire LE3 8RA (the "**County Council**").

WHEREAS:-

- (A) The Borough Council is the local planning authority for the purposes of the 1990 Act for the administrative area in which the Land is situated.
- (B) The County Council is the local highway authority and is responsible for the provision of library and civic amenity facilities.
- (C) The Owner is the registered freehold proprietor with absolute title of the Land registered at HM Land Registry under Title Number LT299469.
- (D) The Owner submitted the Application.
- (E) The Appeal has been lodged with the Secretary of State against the Borough Council's refusal of the Application and the planning obligations in this Agreement are intended to only take effect in the event that the Secretary of State allows the Appeal and grants the Planning Permission and the Development is Commenced.
- (F) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Borough Council and County Council pursuant to section 106 of the 1990 Act.
- (G) The parties to this Agreement have given due consideration to the provisions of Regulation 122 of the CIL Regulations (to the extent relevant to the obligations in this Agreement) and the advice set out in paragraph 57 of the NPPF.

1 DEFINITIONS AND INTERPRETATION

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

"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"Accessible Green Space"	means the open space to be provided as publicly accessible scrub grasslands and/or woodlands and/or urban forestry on the Land;
"Additional On Site Open Space"	means any Equipped Open Space and/or Casual/Informal Open Space and/or Outdoor Sports Open Space that the Owner elects to provide on the Land;

"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition set out in the NPPF or any future guidance or document that may replace it;
"Affordable Housing Land"	means those part(s) of the Land on which the Affordable Housing Units (including (as relevant) related accesses, car parking and services/utilities) are to be constructed;
"Affordable Housing Units"	means those Dwellings to be constructed as Affordable Housing in accordance with the Affordable Housing Scheme;
"Affordable Housing Scheme"	<p>means the scheme to be submitted in accordance with paragraphs 1 and 2 of Schedule 1 and which shall include the following in relation to the Development:</p> <ul style="list-style-type: none"> • the location of the Affordable Housing Land with reference to a plan; • confirmation of the number of Affordable Housing Units to be provided (which shall represent a minimum of 20% of the total number of Dwellings) and shall comprise within that %: <ul style="list-style-type: none"> ○ 25% (twenty five percent) as First Homes (rounded up or down to the nearest whole number accordingly) in accordance with Schedule 2 of this Agreement; ○ 50% (fifty percent) as Affordable Housing for Rent (rounded up or down to the nearest whole number accordingly); and ○ 25% (twenty five percent) as Shared Ownership Housing (rounded up or down to the nearest whole number accordingly) • details of the types, size and tenure of the Affordable Housing Units • details of the Registered Provider which the Owner anticipates shall ultimately be responsible for the management of the Affordable Housing Units
"Affordable Housing for Rent"	means a rented housing unit built pursuant to the Planning Permission which is within the definition of 'Affordable Housing for Rent' set out in Annex 2 of the NPPF and "Affordable Housing for Rent Unit" shall be construed accordingly;
"Appeal"	means the appeal (Planning Inspectorate Reference APP/K2420/W/22/3311038) to the Secretary of State against the Borough Council's refusal of the Application;

"Application"	means the outline planning application (reference number 20/01012/OUT) registered by the Borough Council on 19 October 2020 for the residential development of up to 40 dwellings, public open space and associated infrastructure;
"Borough Council Monitoring Contribution"	means £419 per obligation to be paid by the Owner to the Borough Council which shall be used by the Borough Council to fund the monitoring of the Owner's obligations owed to the Borough Council contained in this Agreement;
"Bus Pass"	means an adult bus pass entitling the holder of the bus pass to travel free of charge on local bus services for a period of six (6) months commencing from receipt of the Bus Pass and 'Bus Passes' shall be construed accordingly;
"Bus Pass Contribution"	means the sum of £360 per pass up to a maximum of £28,800 (Index Linked) towards the provision of Bus Passes;
"Casual/Informal Open Space"	means casual/informal open space to be provided on the Land or within the vicinity of the Development (as the context requires);
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended);
"Commencement of Development"	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing to the site boundary and "Commence Development" shall be construed accordingly;
"County Council Monitoring Contribution"	means the sum of £300 or 0.5% (whichever is the greater) per contribution to be paid by the Owner to the County Council which shall be used by the County Council to fund the monitoring of the Owner's obligations owed to the County Council contained in this Agreement;
"Development"	means the development of the Land in accordance with the Planning Permission;
"Dwellings"	means the residential units that may be built on the Land as part of the Development and "Dwelling" shall be construed accordingly;
"Equipped Open Space"	means equipped play space to be provided on the Land or within the vicinity of the Development (as the context requires);

"Expert"	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties to this Agreement or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society;
"Healthcare Contribution"	means the sum of £20,252.50 (Index Linked) payable to the Borough Council;
"Index Linked"	means such increase to any sum or sums payable under this Agreement on an annual basis or pro rata per diem from the grant of Planning Permission to the date of payment (or calculation as the case may be) based upon the relevant Index last published before the date of the decision to approve the grant of Planning Permission as set out in Schedule 5 of this Agreement and "Indexation" shall be construed accordingly;
Interest	means interest at 4% (four per cent) above the base lending rate of the Bank of England from time to time;
"Land"	means all that land situate at Workhouse Lane, Burbage shown edged red on the Plan;
"Library Contribution"	<p>means the sum to be used at Burbage Library to provide improvements to the library and its facilities, including, but not limited to, books, materials, or associated equipment or to reconfigure the internal or external library space to account for additional usage of the venue arising from an increase in members to the library as a result of the Development calculated in accordance with the following formula:</p> $(A \times 1.157 \times 8.70 \times 3) + (B \times 1.157 \times 8.70 \times 1.5) + (C \times 1.157 \times 8.70 \times 1) = D$ <p>Where:</p> <p>A = total no. of Dwellings which comprise two or more bedrooms</p> <p>B = total no. of Dwellings which comprise one bedroom</p> <p>C = total no. of student bed Dwellings</p> <p>D = total libraries contribution payable (Index Linked)</p> <p>and being no more than £1,210.00 (Index Linked) payable by the Owner to the County Council;</p>
"NPPF"	means the National Planning Policy Framework published by the Ministry of Housing Communities and Local Government in July 2021 or any successive provision which may be

	introduced from time to time including for the avoidance of doubt changes in policy or legislative change;
"Occupation"	means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operations and "Occupy" "Occupant" and "Occupier" shall be construed accordingly;
"Off Site Open Space Contribution"	means the Off Site Equipped Open Space Provision Contribution, the Off Site Equipped Open Space Maintenance Contribution, the Off Site Casual/Informal Open Space Provision Contribution, the Off Site Casual/Informal Open Space Maintenance Contribution, the Off Site Outdoor Sports Open Space Provision Contribution and the Off Site Outdoor Sports Open Space Maintenance Contribution (each an "element" of the Off Site Open Space Contribution) totalling a maximum of £65,959.20 (Index Linked) towards the provision and maintenance for improvements and or new facilities for equipped, casual and outdoor sports facilities within the vicinity of the Development in lieu of providing them on site;
"Off Site Equipped Open Space Provision Contribution"	means a contribution calculated as 3.6sqm per dwelling @ £181.93 per m2 towards the provision of Equipped Open Space (being a maximum of £26,197.92 excluding Indexation);
"Off Site Equipped Open Space Maintenance Contribution"	means a contribution calculated as 3.6sqm per dwelling @ £87.80 per m2 for the associated maintenance of Equipped Open Space (being a maximum of £12,643.20 excluding Indexation);
"Off Site Casual/Informal Open Space Provision Contribution"	means 16.8sqm per dwelling @ £4.44 per m2 for provision of Casual/Informal Open Space (being a maximum of £2,983.68 excluding Indexation);
"Off Site Casual/Informal Open Space Maintenance Contribution"	means 16.8sqm per dwelling @ £5.40 per m2 for the associated maintenance of the Casual/Informal Open Space (being a maximum of £3,628.80 excluding Indexation);
"Off Site Outdoor Sports Open Space Provision Contribution"	means 38.4sqm per dwelling @ £9.05 per m2 for provision of Outdoor Sports Facilities (being a maximum of £13,900.80 excluding Indexation);
"Off Site Outdoor Sports Open Space Maintenance Contribution"	means 38.4sqm per dwelling @ £4.30 per m2 for the associated maintenance of the Outdoor Sports Facilities (being a maximum of £6,604.80 excluding Indexation);
"On Site Open Space"	means the Accessible Green Space and any Additional On Site Open Space to be provided on the Land in accordance with Schedule 3;

"On Site Open Space Maintenance Scheme"	means a scheme to be approved by the Borough Council for the maintenance and management of the On Site Open Space;
"On Site Open Space Scheme"	means a scheme to be approved by the Borough Council detailing the layout and design of the On Site Open Space;
"Open Market Dwellings"	means all those Dwellings which are not Affordable Housing Units;
"Outdoor Sports Open Space"	means outdoor sports facilities to be provided on the Land or within the vicinity of the Development (as the context requires);
"Plan"	means the plan appended to this Agreement at Appendix 1;
"Planning Permission"	means a planning permission which may be granted pursuant to the Appeal;
"Registered Provider"	means a registered provider which is registered with the Regulator of Social Housing pursuant to Section 80 of the Housing & Regeneration Act 2008 (as amended) or any statutory modification thereto and has not been removed from the register;
"RP Mortgagee"	means a mortgagee or chargee or any other body advancing loan finance to a Registered Provider of any of the Affordable Housing for Rent or Shared Ownership Housing or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee and/or appointed pursuant to the Law of Property Act 1925 or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security and any administrator (howsoever appointed) including a housing administrator;
"Secretary of State"	means the Secretary of State for Levelling-Up, Housing and Communities (including any successor in function) or any inspector appointed by him to determine the Appeal;
"Shared Ownership Housing"	<p>means Affordable Housing provided by a Registered Provider and let on a shared ownership basis pursuant to a leaseholder of Shared Ownership where:</p> <ul style="list-style-type: none"> (a) the initial percentage of equity sold is between 10% and 75% of the equity in the relevant Shared Ownership Housing Unit which shall be calculated with the intention that Shared Ownership Housing Units are affordable to those in housing need with regard to local incomes and local house prices; and (b) rent on unsold equity is initially set at no more than 2.5%; and

	(c) charges for services are levied in accordance with the good practice guidance issued by Homes England and "Shared Ownership Housing Unit" shall be construed accordingly;
"Travel Pack"	means a travel pack detailing what sustainable travel choices are in the surrounding area including incentives to encourage changes in travel behaviour towards the greater use of sustainable travel modes;
"Travel Pack Contribution"	means the sum of £52.85 per Dwelling up to £2,114 (Index Linked) payable to the County Council towards the provision of Travel Packs;
"Travel Pack Review Fee"	means the sum of £500 (Index Linked) payable to the County Council towards the costs of reviewing and approving a draft Travel Pack;
"Waste Services Contribution"	means the sum of £49.53 per Dwelling (Index Linked) up to a maximum contribution of £1,981.00 (Index Linked) to be paid by the Owner to the County Council to facilitate additional capacity at the Barwell Household Waste and Recycling Centre in order to meet the additional demands created by the Development;
"Working Days"	means any day of the week save for Saturday, Sunday and any day designated as a bank/public holiday in England.

1.2 Where the context so requires:-

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.2.2 references to any party or body in this Agreement shall mean any of the parties who have entered into this Agreement and shall include the successors in title and assigns of that party and in the case of the Borough Council and the County Council shall include any successor local planning authority exercising planning powers under the 1990 Act and in the case of the County Council means any successor body exercising its highway, library and civic amenity functions
- 1.2.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;
- 1.2.5 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;

1.2.6 references to clauses, paragraphs, and schedules are references to clauses, paragraphs, and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;

1.2.7 the headings and contents list are for reference only and shall not affect construction.

2 OPERATIVE PROVISIONS

2.1 This Agreement is a deed made pursuant to Section 106 of the 1990 Act.

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act and (subject to clause 15 of this Agreement) are enforceable by the Borough Council as local planning authority and by the County Council against the Owner.

2.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 (as amended) and Sections 1 to 8 of the Localism Act 2011 (as amended) and all other enabling powers.

3 CONDITIONALITY

Clause 4.1 below is conditional upon: -

3.1 the Appeal being allowed by the Secretary of State;

3.2 the grant of the Planning Permission; and

3.3 the Commencement of Development (save for any pre-Commencement obligations).

4 PLANNING OBLIGATIONS

4.1 The Owner covenants with the Borough Council to observe and perform the obligations and restrictions contained in Schedules 1 and 2 (Affordable Housing) and Schedule 3 (Borough Council Contributions).

4.2 The Owner covenants with the County Council to observe and perform the obligations and restrictions contained in Schedule 4 (County Council Contributions).

5 MISCELLANEOUS

5.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement: -

5.1.1 occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest) save for any First Homes Owner who shall be responsible for paying the Additional First Homes Contribution (where applicable) even after parting with its interest in the Land;

5.1.2 if he or it shall be an owner-occupier or tenant of any of the Dwellings save for any occupancy restrictions set out in Schedule 1 (or a mortgagee of an individual Dwelling lending money to such owner-occupier or tenant save for a mortgagee of a First Home whose liability shall be construed in accordance with paragraph 7 of Schedule 2 to this Agreement);

- 5.1.3 if it is a statutory undertaker which has an interest in any part of the Land for the purposes of its undertaking.
- 5.2 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 5.3 The obligations hereby created shall be registered as a Local Land Charge by the Borough Council.
- 5.4 Within 28 (twenty-eight) days of a request from the Owner the Borough Council and/or the County Council will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply.
- 5.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Borough Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 5.6 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure (save in relation to any modification made pursuant to Clauses 5.8 and 5.9 below) or expires prior to the Commencement of Development.
- 5.7 If pursuant to Clause 5.6 this Agreement shall terminate and cease to have effect the Borough Council shall upon request remove any entry relating to this Agreement from the Register of Local Land Charges.
- 5.8 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 5.9 If the Borough Council approves an application under Section 73 of the 1990 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 1990 Act or if the Borough Council and/or the County Council agree to any variation of the terms of this Agreement they shall enter into a deed of variation with the Owner pursuant to section 106A of the 1990 Act to effect the changes to this Agreement.
- 5.10 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- 5.11 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 one relating to the Development as specified in the Application) granted after the date of this Agreement.
- 5.12 Nothing in this Agreement shall be construed as restricting the exercise by the Borough Council and the County Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Borough Council and the County Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 5.13 Any future mortgagee or chargee of any part of the Land shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the

mortgagee or chargee is in possession of all or any part of the Land **PROVIDED THAT** a mortgagee or chargee shall only remain liable for the part of the Land for which it has an interest.

6 NOTIFICATION

- 6.1 Any notice given under this Agreement shall in the case of the Borough Council be sent to the relevant departmental head at the address stated herein or to such other person/such other address as the Borough Council may at any time advise and in the case of the County Council shall be sent to the Planning Obligations Manager, Planning, Historic and Natural Environment Department at the address stated herein or to such other person/such other address as the County Council may at any time advise.
- 6.2 Notices shall be sent by first class recorded post and will be deemed to have been received the next Working Day after the day that they were sent unless sent after 4pm, in which case they shall be deemed to have been received on the day being two (2) Working Days after the day that they were sent.

7 THIRD PARTIES

- 7.1 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 (as amended) **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Borough Council the County Council or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Borough Council the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 LEGAL COSTS

- 9.1 The Owner shall pay to the Borough Council and the County Council their reasonable and proper legal fees prior to completion of this Agreement and such legal fees shall in the case of the Borough Council be the sum of Two Thousand Pounds (£2,000.00) and in the case of the County Council the sum of One Thousand Five Hundred Pounds (£1,500.00).

10 OWNERSHIP

- 10.1 The Owner covenants with the Borough Council and the County Council to give the Borough Council and the County Council immediate written notice of any change in ownership of any of their interests in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan **SAVE THAT** this clause 10 shall not relate to the sale of any individual Dwelling constructed pursuant to the Planning Permission.

11 INDEXATION

- 11.1 All the contributions in this Agreement shall be Index Linked (save where specified otherwise).

12 LATE PAYMENT INTEREST

12. If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date that payment is received.

13 VAT

- 13.1 All consideration given in accordance with the terms of this Agreement all be exclusive of any Value Added Tax properly payable.

14 DISPUTE PROVISIONS

- 14.1 Any dispute arising between the parties relating to any matter contained in this Agreement may be referred to the Expert by any party.
- 14.2 The Expert will act as an expert and not as an arbitrator.
- 14.3 Each party will bear its own costs and the Expert's costs will be paid as determined by her.
- 14.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to him/her written representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision.
- 14.5 The Expert's decision will be given in writing as expediently as possible with reasons and in the absence of manifest error will be final and binding on the parties.

15 APPEAL

If the Secretary of State, in his decision letter for the Appeal, concludes that any of the planning obligations secured by this Agreement are incompatible with any one of the criterion for planning obligations set out at Regulation 122(2) of the CIL Regulations, and accordingly attaches no weight to the relevant obligation(s) for the purposes of his determination then the relevant obligation shall, from the date of the Secretary of State's decision letter, cease to have effect and the Owner shall be under no obligation to comply with them.

16 JURISDICTION

This Agreement is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

17 DELIVERY

The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

Schedule 1

Affordable Housing

The Owner covenants to the Borough Council as follows:

Affordable Housing Scheme

- 1 Prior to the Commencement of Development to submit to the Borough Council the Affordable Housing Scheme for approval.
- 2 Not to Commence Development until the Affordable Housing Scheme has been approved in writing by the Borough Council.

Provision of Affordable Housing

- 3 To construct a minimum of 20% of the total Dwellings as Affordable Housing Units on the Affordable Housing Land in accordance with the terms of this Agreement and the approved Affordable Housing Scheme pursuant to paragraph 2 of this Schedule.
- 4 Unless otherwise agreed in writing by the Borough Council not to Occupy or allow the Occupation of more than 50% of the Open Market Dwellings unless and until all of the Affordable Housing Units (except for the First Homes, which shall be delivered in accordance with the provisions in Schedule 2) have been completed and transferred (by way of a formal transfer of the freehold of the Affordable Housing Land) to a Registered Provider.
- 5 Following the transfer of the Affordable Housing Land pursuant to paragraph 4 above, the Affordable Housing Units (except for the First Homes, which shall be delivered in accordance with the provisions in Schedule 2) shall thereafter be owned and managed by a Registered Provider.
- 6 The Affordable Housing Units shall meet the space standards of the Nationally Described Space Standards (as may be updated by the Secretary of State from time to time).

Restrictions on Use

- 7 Subject to the provisions of this Agreement no Affordable Housing for Rent Unit shall be used for any purpose other than the provision of Affordable Housing for Rent under the Hinckley and Bosworth Choice-Based Lettings Scheme and in accordance with the objectives of the Borough Council's Housing Allocations Policy ("HAP") in force from time to time to persons in need of Affordable Housing within the Borough and being such persons as shall be agreed between the Borough Council and the relevant Registered Provider who satisfy the Borough connection within the 'Local Connections' criteria as defined in the HAP PROVIDED THAT if within twenty-eight (28) days of the Registered Provider notifying the Borough Council in writing of an Affordable Housing for Rent Unit becoming vacant no such qualifying person/s can be found to occupy the Affordable Housing for Rent Unit the Registered Provider may let the Affordable Housing for Rent Unit to any person/s who satisfy their normal letting criteria.
- 8 To ensure that the Affordable Housing Units shall not be used other than for Affordable Housing provided that the restrictions in this Schedule shall not be binding on:

- 8.1 Any tenant (including their mortgagees or successors in title or mortgagees of successors in title) who has exercised the right to buy or right to acquire pursuant to the Housing Act 1996 or any other statutory provision for the time being in place in respect of a particular Affordable Housing Unit;
- 8.2 Any leaseholder of a Shared Ownership (including their mortgagees or chargees or successors in title or mortgagees of successors in title) who subsequently purchases all the remaining equity in the relevant Shared Ownership Unit from the Registered Provider;
- 8.3 A RP Mortgagee provided that the RP Mortgagee has first complied with paragraph 9 of this Schedule.

Disposals by RP Mortgagee

- 9 A RP Mortgagee shall not dispose of any of the Affordable Housing Units or commence proceedings for possession of any of the Affordable Housing Units unless it shall:
 - 9.1 Have first given to the Borough Council no less than fifteen (15) Working Days prior notice of the commencement of such proceedings by serving written notice on the Borough Council;
 - 9.2 In the event that the RP Mortgagee chooses to exercise its power of sale it shall use its reasonable endeavours over a period of three (3) months from the date on which it served notice on the Borough Council in accordance with paragraph 9.1 of this Schedule to dispose of the Affordable Housing Unit(s) as Affordable Housing provided that the RP Mortgagee shall not be required to dispose of the relevant Affordable Housing Unit for a consideration not less than the monies owed due and outstanding to the RP Mortgagee under the terms of the relevant mortgage or charge including all accrued principal monies interest costs and expenses;
 - 9.3 During the three (3) month period specified in paragraph 9.2 of this Schedule the Borough Council may nominate a Registered Provider by serving notice in writing to that effect on the RP Mortgagee. Any Registered Provider nominated by the Borough Council shall be required to complete the purchase of the Affordable Housing Units in accordance with paragraph 9.2 of this Schedule and within the said three (3) month period; and
 - 9.4 In the event that the RP Mortgagee or the Borough Council are unable to arrange the disposal of the Affordable Housing Units within the said three (3) month period the RP Mortgagee shall be entitled to dispose of any Affordable Housing Unit(s) at its discretion free from all the obligations or restrictions in this Schedule.

Schedule 2

First Homes

INTERPRETATION

The following words and expressions below shall mean as follows:-

“Additional First Homes Contribution” means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 5.8, 5.9 or 7 of this Schedule, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

“Armed Services Member” means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

“Compliance Certificate” means the certificate issued by the Borough Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 applies the Eligibility Criteria (Local)

“Development Standard” means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015
- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Borough Council from time to time
- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited
- (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)

and the same may be amended by written agreement of the Parties in accordance with paragraph 4.1

“Discount Market Price” means a sum which is the Market Value discounted by at least 30%

“Disposal” means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (a) a letting or sub-letting in accordance with paragraph 6
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- (c) an Exempt Disposal

and “Disposed” and “Disposing” shall be construed accordingly

“Eligibility Criteria (National)” means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National).

“Eligibility Criteria (Local)” means criteria (if any) published by the Borough Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
 - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
 - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
 - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

“Exempt Disposal” means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner

- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 6

“First Home” means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap

“First Homes Owner” means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 6

“First Time Buyer” means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

“Income Cap (Local)” means such local income cap as may be published from time to time by the Borough Council and is in force at the time of the relevant disposal of the First Home

“Income Cap (National)” means:

- (a) in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London), ninety thousand pounds (£90,000); and
- (b) in the case of any other First Home, eighty thousand pounds (£80,000)

or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

“Key Worker” Means such other categories of employment as may be published by the Borough Council from time to time as the “First Homes Key Worker criteria” and is in operation at the time of the relevant disposal of the

First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal.

"Local Connection Criteria"

such local connection criteria as may be designated and published by the Borough Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal it being acknowledged that at the date of this agreement the Borough Council has not designated any criteria as Local Connection Criteria

"Market Dwelling"

means any Dwelling which is not a First Home or Affordable Housing Unit

"Market Value"

means the open market value as assessed by a Valuer of Dwelling as confirmed to the Borough Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

"Mortgagee"

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home

"Practical Completion"

means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied

"Price Cap"

means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State

"SDLT"

means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect

"Secretary of State"

means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

"Valuer"

means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

1 OBLIGATIONS

Unless otherwise agreed in writing by the Borough Council, the Owner for and on behalf of itself and its successors in title to the Land with the intention that the following provisions shall bind

the Land and every part of it into whosoever's hands it may come covenants with the Borough Council as below save that:

- 1.1 paragraphs 2, 3 and 4 shall not apply to a First Homes Owner;
- 1.2 paragraphs 5 and 6 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
- 1.3 Paragraph 7 applies as set out therein.

2. QUANTUM OF FIRST HOMES

25% of the total number of Affordable Housing Units on the Land shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3. TYPE AND DISTRIBUTION

The First Homes provided within the Land shall be in accordance with the distribution in the Affordable Housing Scheme

4. DEVELOPMENT STANDARD

All First Homes shall be constructed to:-

- 4.1 the Development Standard current at the time of the relevant reserved matters approval/the date of this Agreement; and
- 4.2 no less than the standard applied to the Market Dwellings.

5 DELIVERY MECHANISM

- 5.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
 - 5.1.1 the Eligibility Criteria (National); and
 - 5.1.2 the Eligibility Criteria (Local) (if any).
- 5.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 5.1.2 shall cease to apply.
- 5.3 Subject to paragraphs 5.6 to 5.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee
- 5.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
 - 5.4.1 The Borough Council has been provided with evidence that:
 - 5.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.2 applies meets the Eligibility Criteria (Local) (if any)

5.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

5.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Hinckley and Bosworth Borough Council of Hinckley Hub, Rugby Road, Hinckley LE10 0FR

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 5.1 to 5.9 of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of " S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) Central Midlands Estates Limited (2) the Borough Council and (3) Leicestershire County Council

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

5.4.2 The Borough Council has issued the Compliance Certificate and the Borough Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3 and 5.4.1 have been met

5.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Hinckley and Bosworth Borough Council or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

5.6 The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Borough Council to Dispose of it other than as a First Home on the grounds that either:

5.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 5.1 and 5.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 5.3 and 5.4.1; or

5.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.6.1 before being able to Dispose of the Dwelling other

than as a First Home would be likely to cause the First Homes Owner undue hardship

5.7 Upon receipt of an application served in accordance with paragraph 5.6 the Borough Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

5.8 If the Borough Council is satisfied that either of the grounds in paragraph 5.6 above have been made out it shall confirm in writing within twenty-eight (28) days of receipt of the written request made in accordance with paragraph 5.6 that the relevant Dwelling may be Disposed of:

5.8.1 to the Borough Council at the Discount Market Price; or

5.8.2 (if the Borough Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 5.10 which shall cease to apply on receipt of payment by the Borough Council where the relevant Dwelling is disposed of other than as a First Home

5.9 If the Borough Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 5.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Borough Council in accordance with paragraph 5.6 following which the Borough Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

5.10 Where a Dwelling is Disposed of other than as a First Home or to the Borough Council at the Discount Market Price in accordance with paragraphs 5.8 or 5.9 above the Owner of the First Home shall pay to the Borough Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

5.11 Upon receipt of the Additional First Homes Contribution the Borough Council shall:

5.11.1 within 28 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title

5.11.2 apply all monies received towards the provision of Affordable Housing

5.12 Any person who purchases a First Home free of the restrictions in schedule 2 of this Agreement pursuant to the provisions in paragraphs 5.9 and 5.10 shall not be liable to pay the Additional First Homes Contribution to the Borough Council.

6. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 6.1 – 6.4 below.

6.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Borough Council

in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

- 6.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Borough Council and the Borough Council consents in writing to the proposed letting or sub-letting. The Borough Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 6.3 A letting or sub-letting permitted pursuant to paragraph 6.1 or 6.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 6.4 Nothing in this paragraph 6 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

7. MORTGAGEE EXCLUSION

The obligations in paragraphs 1-6 of this Schedule 2 shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 7.1 such Mortgagee or Receiver shall first give written notice to the Borough Council of its intention to Dispose of the relevant First Home; and
- 7.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Borough Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 7.3
- 7.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Borough Council the Additional First Homes Contribution.

7.4 following receipt of notification of the Disposal of the relevant First Home the Borough Council shall:

7.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 5.5; and

7.4.2 apply all such monies received towards the provision of Affordable Housing

Schedule 3

Borough Council Contributions

The Owner covenants with the Borough Council:

Health Care Facilities Contribution

- 1 To pay the Healthcare Contribution prior to the Occupation of any Dwelling and not to occupy any Dwelling unless and until the Owner has paid the Healthcare Contribution to the Borough Council.

Borough Council Monitoring Contribution

- 2.1 To pay the Borough Council's Monitoring Contribution prior to Commencement of Development.
- 2.2 To pay a site visit fee of £219 prior to any site visit by the Borough Council and a document approval fee of £327 upon submission of any document to be approved by the Borough Council.

Open Space

- 3 To elect in writing to the Borough Council prior to Commencement of Development to either:
 - 3.1 provide the Additional On Site Open Space (or any element or elements thereof) on the Land and to comply with paragraph 5 hereof; or
 - 3.2 pay the corresponding element or elements of the Off Site Open Space Contribution and to comply with paragraph 4 hereof.
- 4 In the event that the Owner elects to pay the Off Site Open Space Contribution (or any element or elements thereof) pursuant to paragraph 3.2 hereof:
 - 4.1 to pay 50% of the Off Site Open Space Contribution to the Borough Council prior Commencement of Development; and
 - 4.2 to pay the remaining 50% of the Off Site Open Space Contribution to the Borough Council prior to the Occupation of the 20th Dwelling.
- 5 The Owner covenants with the Borough Council in respect of the On Site Open Space as follows:
 - 5.1 To submit the On Site Open Space Scheme to the Borough Council for written approval and to obtain the written approval of the Borough Council prior to the Commencement of Development and at the same time to serve a written notice on the Borough Council confirming whether the Owner wishes to maintain the On Site Open Space or whether the Owner intends to transfer the On Site Open Space to a management company.
 - 5.2 Not more than 50% of the Dwellings shall be Occupied or permitted to be Occupied until the On Site Open Space has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Scheme.
 - 5.3 To maintain the On Site Open Space for a period of 12 months after notice of practical completion of the works for the On Site Open Space in accordance with the provisions of the approved On Site Open Space Scheme has been offered to and accepted in writing by the Borough Council and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace

it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the Borough Council.

- 5.4 In the event the Owner elects to maintain the On Site Open Space pursuant to paragraph 5.1 it shall within 56 days of the acceptance by the Borough Council of the notice of practical completion submit the On Site Open Space 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 in accordance with the approved On Site Open Space Maintenance Scheme.
- 5.5 In the event that the Owner elects to transfer the On Site Open Space to a management company the Owner shall within 56 days of the acceptance by the Borough Council of the notice of practical completion 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 and shall continue to maintain the On Site Open Space in accordance with the On Site Open Space Maintenance Scheme until such time that the Borough Council is satisfied that:
 - 5.5.1 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 in accordance with the maintenance provisions of the On Site Open Space Maintenance Scheme, and
 - 5.5.2 the On Site Open Space has been transferred to the management company.

Schedule 4

County Council Contributions

The Owner covenants to the County Council as follows:

Library Contribution

- 1 To pay the Library Contribution to the County Council prior to the Occupation of any Dwelling and not to Occupy or to permit the Occupation of any Dwelling until the Library Contribution has been paid to the County Council.

Waste Services Contribution

- 2 To pay the Waste Services Contribution to the County Council prior to the Occupation of any Dwelling and not to Occupy or to permit the Occupation of any Dwelling until the Waste Services Contribution has been paid to the County Council.

County Council Monitoring Contribution

- 3 To pay the County Council Monitoring Contribution to the County Council prior to the Occupation of any Dwelling and not to Occupy or to permit the Occupation of any Dwelling until the County Council Monitoring Contribution has been paid to the County Council.

Bus Passes and Travel Packs

- 4 To elect in writing to the County Council prior to Commencement of Development to either:
 - 4.1 provide the first Occupier of each Dwelling following the submission of a valid application form by that Occupier (contained within the Travel Pack which shall include two such forms) with a maximum of two (2) Bus Passes within six (6) months of first Occupation by that Occupier and to comply with paragraph 6 hereof; or
 - 4.2 pay the Bus Pass Contribution to the County Council and to comply with paragraph 5 hereof.
- 5 In the event that the Owner elects to pay the Bus Pass Contribution pursuant to paragraph 4.2 hereof:
 - 5.1 to pay 50% of the Bus Pass Contribution to the County Council prior to the first Occupation of 50% of the Dwellings; and
 - 5.2 to pay the remaining 50% of the Bus Pass Contribution to the County Council within 56 (fifty-six) days of receipt of notification from the County Council that the first tranche of the Bus Pass Contribution has been expended by it for the purpose of providing the Bus Passes and that a further instalment of the Bus Pass Contribution is required to enable it to provide Bus Passes for residents of the Development.
- 6 In the event that the Owner elects in accordance with paragraph 4.1 hereof, to notify the County Council in writing every six (6) months (in the period beginning with first Occupation of the first

Dwelling and ending with the first Occupation of the last Dwelling) of the number of Bus Passes issued in the previous six (6) month period.

- 7 To elect in writing to the County Council prior to Commencement of Development to either:
 - 7.1 deliver one Travel Pack (having submitted it in draft form to the County Council prior to Commencement of Development and had it approved in writing by the County Council accordingly) directly to each Dwelling upon first Occupation AND comply with paragraphs 8 and 10; or
 - 7.2 pay the Travel Pack Contribution to the County Council and to comply with paragraph 9 hereof;
- 8 In the event that the Owner elects to provide the Travel Packs pursuant to paragraph 7.1 hereof to submit a sample Travel Pack to the County Council together with the Travel Pack Review Fee for approval in writing and not to Occupy any Dwelling until such approval has been given (such approval not to be unreasonably withheld or delayed). The Owner further covenants with the County Council to deliver one Travel Pack directly to each Occupier upon first Occupation of each Dwelling. FOR THE AVOIDANCE OF DOUBT if the County Council has not approved the Travel Pack prior to first Occupation of the first Dwelling then the Owner shall pay the Travel Pack Contribution to the County Council in accordance with paragraph 9 hereof.
- 9 In the event that the Owner elects to pay the Travel Pack Contribution:
 - 9.1 to pay 50% of the Travel Pack Contribution to the County Council prior to the first Occupation of 50% of the Dwellings; and
 - 9.2 to pay the remaining 50% of the Travel Pack Contribution to the County Council within 56 (fifty-six) days of receipt of notification from the County Council that the first tranche of the Travel Pack Contribution has been expended by it for the purpose of providing the Travel Packs and that a further instalment of the Travel Pack Contribution is required to enable it to provide Travel Packs for residents of the Development.
- 10 In the event that the Owner elects in accordance with paragraph 7.1 hereof to notify the County Council in writing every six (6) months (in the period beginning with first Occupation of the first Dwelling and ending with the first Occupation of the last Dwelling) of the number of Travel Packs issued in the previous six (6) month period.

Schedule 5

Indexation Provisions

In this Schedule:

“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 date upon which the relevant contribution is due; and
“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 .

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 increase in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

EXECUTED as a Deed (but not delivered until dated) by affixing the Common Seal of **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** in the presence of:-

Bill Cullen

CEO

)
)
)
)
)



12716

Name

Signature

Job Title

EXECUTED as a Deed (but not delivered until dated) by affixing the Common Seal of **LEICESTERSHIRE COUNTY COUNCIL** in the presence of:-

Lara McNulty

)
)
)
)
)



39892 (a)

Authorised Signatory

EXECUTED as a Deed)
(but not delivered until dated) by)
CENTRAL MIDLANDS ESTATES LIMITED acting)
by a director in the presence of a witness)
by affixing the Common Seal)
In the presence of two directors:

Director

Lange Nam

.....
Witness signature

.....
Witness name

Director

A. Mead

A.B.
.....
Witness address

.....
Witness occupation



APPENDIX 1

Plan

Payan Nam
A. Hea *F. McHilton*

