
Dated: 2023

- (1) Charnwood Borough Council
- (2) Leicestershire County Council
- (3) John Edmund Mansell
- (4) Rosemary Keeber
- (5) Janet Patricia Tindall
- (6) Taylor Wimpey UK Limited

Agreement pursuant to Section 106 of the Town and Country Planning Act 1990

Relating to the property known as land North of Barkby Road, Syston, Leicestershire
(P/21/2639/2 and APP/X2410/W/23/3325902)

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BETWEEN

- (1) CHARNWOOD BOROUGH COUNCIL of Southfield Road, Loughborough, Leicestershire LE11 2TX (the "Borough Council");
 - (2) LEICESTERSHIRE COUNTY COUNCIL of County Hall, Glenfield, Leicester, Leicestershire, LE3 8RA ("the County Council");
 - (3) JOHN EDMUND MANSELL of Homestead Farm, 1447 Melton Road, Queniborough, Leicester LE7 3FP (the "First Owner");
 - (4) ROSEMARY KEEBER of 19 High Street, Evington, Leicester LE5 6FH and JANET PATRICIA TINDALL of 131 Glaphorn Road, Oundle, Peterborough PE8 5BA (the "Second Owner"); and
 - (5) TAYLOR WIMPEY UK LIMITED (Co. Registration. No. 01392762) of Gate House, Turnpike Road, High Wycombe, HP12 3NR (the "Developer")
- ("the Parties")

RECITALS

- (A) The Borough Council is a local planning authority for the purposes of the 1990 Act for the administrative area within which the Site is situated.
- (B) The County Council is the local highway authority and is responsible for the provision of education, waste and library facilities for the administrative area within which the Site is situated.
- (C) The First Owner is the freehold owner of that part of the Site registered at the Land Registry under title number LT500054.
- (D) The Second Owner is the freehold owner of that part of the Site registered at the Land Registry under title number LT396844.
- (E) The Developer is the beneficiary of an option to purchase the Site from the First Owner and Second Owner dated 13th August 2003 (as amended).
- (F) The Developer submitted the Application to the Borough Council on 20th December 2021.
- (G) The Developer has now submitted the Appeal against non-determination to the Secretary of State.
- (H) The Borough Council resolved (in absentia) to refuse planning permission for the Application on 17th August 2023.
- (I) The Parties have agreed to enter into this Agreement with the intent that if the Appeal is allowed that the Development shall be subject to the obligations contained in this Agreement and to ensure that the Owners and Developer's interests in the Site shall be bound by the planning obligations for the purposes of section 106 of the 1990 Act.
- (J) The Parties 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 at paragraph 57 of the NPPF and agree that the planning obligations contained within this Agreement are:
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.

NOW THIS AGREEMENT WITNESSES as follows:-

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

- "1990 Act"** the Town and Country Planning Act 1990 and any statutory amendment, variation, substitution or re-enactment thereof together with all other statutory powers and acts pursuant to which the Parties hereto shall be empowered to enter into this Agreement
- "Affordable Housing"** has the meaning as defined in Annex 2 of the NPPF and provided to an Eligible Party whose needs are not met by the market and should meet the needs of an Eligible Party for the life of the Development (subject to the terms of this Agreement)
- "Affordable Housing Scheme"** a plan to be agreed or determined pursuant to **Part 2 of Schedule 2** naming the proposed Registered Provider who will take the Affordable Housing Units for the relevant Phase and prescribing the location in an individual Phase of the Affordable Housing Units which plan shall identify the Affordable Rented Dwellings, Social Rented Dwellings and the Shared Ownership Dwellings in accordance with the Affordable Housing Tenure or such other plan as shall be served upon the Borough Council by the Owners of any given Phase in accordance with **Part 2 of Schedule 2**
- "Affordable Housing Standards"** a standard which is no less than that of the Market Dwellings and the Affordable Rented Dwellings and Social Rented Dwellings and the Shared Ownership Dwellings are to be designed to satisfy Part M4(2) of the Building Regulations, and to accommodate the following numbers of people:
- (a) 1 bedroom Dwelling to accommodate a 2-person household;
 - (b) 2 bedroom Dwelling to accommodate a 4-person household;
 - (c) 3 bedroom Dwelling to accommodate a 5-person household;
 - (d) 4 bedroom Dwelling to accommodate a 7-person household
- "Affordable Housing Tenure"** subject to **Part 2 of Schedule 2** the relevant proportions of tenure, type and mix type of the Affordable Housing Units to be Provided on the Site and in respect of which the Affordable Housing Units shall be Provided within the locations and Phases as shall be specified by the Affordable Housing Scheme shall (unless otherwise agreed in writing with the Borough Council) comprise:

- (a) 15 No. Affordable Housing Units will be First Homes by operation of **Part 3 of Schedule 2:**

Dwelling Type	No
1 bed apartment	3
2 bed apartments or house	7
3 bed house	5

- (b) 39 No. Affordable Housing Units to be provided as Affordable Rented Dwellings and Social Rented Dwellings:

Dwelling Type	No
1 bed apartment	14
2 bed apartments or house	14
3 bed house	10
4 bed house	1

- (c) 5 No. Affordable Housing Units to be Provided as Shared Ownership Dwellings:

Dwelling Type	No
1 bed apartment	1
2 bed apartment or house	1
3 bed house	1
4 bed house	2

“Affordable Housing Unit”

no less than thirty percent (30%) of the Dwellings to be Provided on the Site as Affordable Housing as part of the Development and in accordance with any Reserved Matters Approval, the Affordable Housing Scheme and the Affordable Housing Standards to be provided equally (in clusters of no more than 10 Dwellings) unless otherwise agreed in writing with the Borough Council

“Affordable Rented Dwelling(s)”

those Affordable Housing Units to be Provided in accordance with the Affordable Housing Scheme and subject to rent controls that require a rent of no more than 80% of the local market rent (including service

charges where applicable) for dwellings of that type in that location and as described in Annex 2 of the NPPF

"Agreement"	this deed of agreement
"Allotments Contribution"	the sum of Twenty Two Thousand and Twenty Pounds (£22,020.00) Index Linked payable to the Borough Council for the creation of allotment provision to serve the Development within Syston
"Appeal"	the appeal lodged by the Developer to the Secretary of State under reference number APP/X2410/W/23/3325902 against the Borough Council's non-determination of the Application
"Application"	the application for outline planning permission and assigned the reference number P/21/2639/2 by the Borough Council for permission to carry out the Development upon the Site
"Approval of Details Fee"	£292 (two hundred and ninety two pounds) Index Linked for each submission and payable to the Borough Council for the costs of considering and approving any details, document or scheme required to be submitted to the Borough Council under the terms of this Agreement
"Armed Services Member"	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
"Barkby Road Access"	means the site access junction shown indicatively on drawing no 20060-02 Rev F
"Barkby Road Roundabout"	means a roundabout that may be constructed in the future to replace the Barkby Road Access
"Barkby Road Roundabout Dedication Land"	means the land shown shaded pink on Plan 3 (or such other area in the control of the Owners as may be agreed between the Owners and the County Council) the detailed extents of which are to be agreed with the County Council pursuant to paragraph 1 of Part 13 of Schedule 2
"Barkby Road Roundabout Deed of Dedication"	means a deed of dedication that shall be entered into between the Owners and the County Council in dedication of the Barkby Road Roundabout Dedication Land to the County Council as highway to enable the future construction of the Barkby Road Roundabout (SAVE THAT any adoption of the dedicated land will occur following completion of the Barkby Road Access)
"Baseline Biodiversity Value"	an assessment of the pre-development biodiversity value of the Site, such assessment to be calculated in Biodiversity Units

“Biodiversity Impact Assessment”

an assessment calculated in accordance with the Department for Environment, Food & Rural Affairs Biodiversity Metric 3.1 published on 21 March 2023 of the Development such assessment to include the following in order to determine if the Biodiversity Net Gain Objective has been achieved:

- (a) the Baseline Biodiversity Value; and
- (b) the Post-Development Biodiversity Value of the Site

“Biodiversity Scheme”

the scheme to be submitted to the Borough Council in provision of a Biodiversity Impact Assessment and identifying the measures on the Site that achieves the Biodiversity Net Gain Objective and which provides for the following:

- (a) arrangements for the implementation of the scheme including timetable for provision;
- (b) the management and maintenance arrangements for the scheme for not less than 30 years from the date of implementation; and

the arrangements for monitoring (including access to the Site for the purposes of monitoring if necessary)

“Biodiversity Net Gain Objective”

a Biodiversity Unit Score which means that the Post-Development Biodiversity Value of the Development exceeds the Baseline Biodiversity Value of the Development by 10% (measured in Biodiversity Units) in the case of habitats and 10% (measured in Biodiversity Units) in the case of hedgerows

“Biodiversity Unit Score”

the outcome of the calculation which is carried out by subtracting the Baseline Biodiversity Value for the Development from the Post-Development Biodiversity Value of that Development, such outcome to be measured in Biodiversity Units

“Biodiversity Units”

a quantity of biodiversity as calculated in accordance with the Department for Environment, Food & Rural Affairs Biodiversity Metric 3.0 published on 21 March 2023

“Building Regulations M4(2)”

the Building Regulations 2010, as amended, and as relates to “Approved Document M: access to and use of buildings Volume 1: dwellings”, and its part M4(2), Category 2: Accessible and adaptable buildings”

“Bus Pass”

an adult bus pass entitling the holder of each bus pass to travel free of charge on local bus services over a period of six (6) months commencing from the first Occupation of each Dwelling and “Bus Passes” shall be construed accordingly

“Bus Pass Contribution”

the sum of One Hundred and Forty Thousand and Four Hundred Pounds (£140,400.00) Index Linked being the sum of Seven Hundred and Twenty Pounds

(£720.00) per Dwelling, Index Linked, payable by the Owners to the County Council towards the provision of Bus Passes (and allocated on the basis that no more than 2 Bus Passes per Dwelling) and as is payable in such circumstances where the Bus Pass application form is not provided for up to two 6-month Bus Passes as part of the Travel Pack

“Chargee”

any mortgagee or charge (other than a Chargee of a Registered Provider) of any Completed Dwelling and any receiver or manager (including an administrative receiver) appointed by such mortgagee or charge pursuant to the Law of Property Act 1925 or otherwise and the successors in title to all of the foregoing

“Chargee Duty”

the tasks and duties set out in **paragraph 15 of Part 2 of Schedule 2** to this Agreement

“CIL Regulations”

the Community Infrastructure Levy Regulations 2010 (as amended)

“Commencement of Development Date” and “Commenced”

the date of Commencement of Development

“Commencement of Development”

the earliest date on which any of the material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development:

- (a) trial holes or other operations to establish the ground conditions of the Site, site survey work, or works of remediation
- (b) archaeological investigations on the Site
- (c) any works of demolition, site clearance and site set-up
- (d) the laying of services
- (e) the Site access works to basecourse;
- (f) any structural planting or landscaping works
- (g) ecological or nature conservation works and surveys associated with the Development
- (h) construction of boundary fencing or hoardings

and “Commence Development” shall be construed accordingly

“Compliance Certificate”

the certificate issued by the Borough Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the First Homes

Eligibility Criteria (National) and unless paragraph 5.2 of **Part 3** of **Schedule 2** applies the First Homes Eligibility Criteria (Local) substantially in the form set out in **Annex A**

"Construction Traffic Routing Scheme"

a scheme agreed in writing between the Owners and the County Council to include details of the routeing of construction traffic to and from the Site during the period that the Development is being constructed, such routeing to be shown by reference to a plan in order to assess and manage the impact of construction works on the road network

"County Council Monitoring Contribution"

the sum of Three Hundred Pounds (£300.00) per planning obligation owed to the County Council herein or 0.5% of the value of any contribution due to the County Council being:-

1. Early Years (£304,250.70)
2. Primary (£679,120.00)
3. Special Needs (£110,074.44)
4. Libraries (£5,888.55)
5. Waste (£10,075.65)
6. Travel Packs (£10,305.75)
7. Travel Plan Monitoring (£6,000.00)
8. Local Highway Mitigation (£263,991)

And comprising the sum of Six Thousand Nine Hundred and Forty Nine Pounds (£6,949.00) (whichever is the greater) payable by the Owners to the County Council as a contribution towards the costs of the County Council in monitoring compliance with obligations owed to it contained herein

"Decision Letter"

a letter issued by the Inspector determining the Appeal

"Development"

development of the Site in accordance with the Application for up to 195 dwellings with all matters reserved except access

"Discounted Market Value"

in relation to First Homes the disposal value of a Dwelling discounted by at least 30% of Market Value

"Dispose"

(other than in the case of First Homes) the freehold sale, grant of a lease of a term in excess of 99 years, assignment or disposal by any other means and "Disposed" and "Disposal" shall be construed accordingly

"Dwellings"

all or any of the dwellings to be constructed on the Site as part of the Development pursuant to the Permission and "Dwelling" shall be construed accordingly

"Early Years Contribution"

the sum not exceeding Three Hundred and Four Thousand Two Hundred and Fifty Pounds and Seventy Pence (£304,250.70) Index Linked payable by the Owners to the County Council calculated as follows

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

Where:

A = total no of Dwellings

B = total early years contribution payable Index Linked

for the provision, improvement, remodelling or enhancement of current early years facilities at early years providers or schools in the locality of the Development or the creation of new premises providing early years education

“Eligible Party”

a person or household in need of an Affordable Housing Unit (because their needs are not met by the market) as determined with regard to local incomes and local house prices and for Rented Dwellings identified in accordance with the provisions of the Borough Council’s allocation procedure or criteria for Affordable Housing adopted from time to time by the Borough Council

“Exempt Disposal”

the First Homes Disposal in one of the following circumstances:

(a)	a First Homes Disposal to a spouse or civil partner upon the death of the First Homes Owner;
(b)	a First Homes 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)	a First Homes 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)	a First Homes Disposal to a trustee in bankruptcy prior to sale of the relevant First Home (and for the avoidance of doubt paragraph 7 of Part 3 of Schedule 2 shall apply to such sale)

PROVIDED THAT in each case other than (d) the person to whom the First Homes Disposal is made complies with the terms of paragraph 6 of **Part 3 of Schedule 2**

“Expert”

as defined in **clause 12.2**

“Final Completion Certificate”

a certificate issued by the Borough Council confirming the final completion of the laying out, surfacing, and landscaping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Agreement and the making good of

all defects and completion of the Maintenance Period to the Borough Council's reasonable satisfaction

"First Homes" or "First Home"

an Affordable Housing Unit 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 Discounted Market Value and which on its first First Homes Disposal does not exceed the Price Cap and where the percentage discounted market value is passed onto subsequent owners by restrictive covenant on the title

"First Homes Contribution"

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 **Part 3 of Schedule 2**, the lower of the following two amounts:

(a)	the reduction in Market Value attributable to the Discounted Market Value; and
(b)	the proceeds of sale less the amount due and outstanding to any First Home 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 First Home 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

"First Homes Disposal"

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 of Part 3 of Schedule 2 ;
(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; and
(c)	an Exempt Disposal

"Disposal", "Disposed" and "Disposing" shall be construed accordingly where referenced in connection with First Homes

“First Homes Eligibility Criteria (National)”

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)

“First Homes Eligibility Criteria (Local)”

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

“First Homes Mortgagee”

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

“First Homes Owner”

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 of Part 3 of Schedule 2

"First Time Buyer"

a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

"First Occupation Date"

the date on which first Occupation occurs

"Healthcare Contribution"

the sum not exceeding Ninety Four Thousand Nine Hundred and Eighty Four Pounds and Three Pence (£94,984.03) Index Linked payable to the Borough Council for the provision of additional clinical accommodation for additional patients at the County Practice, and the Jubilee Medical Practice, both based at Syston Health Centre

"Homes England"

Homes England or any successor body for the time being having or being entitled to exercise the powers now conferred on such agency at the date of this Agreement

"Implementation"

the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act and "Implement" shall be construed accordingly

"Income Cap (Local)"

Eighty Thousand Pounds (£80,000) or such other 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)"

in the case of a First Home situated other than within the administrative area of any London Borough Council (including the City of London), 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

"Index Linked"

the changes in the Index between the date of this Agreement (save in the case of the Early Years Contribution, the Primary School Contribution and the Special Needs Contribution for which it shall mean 1 July 2021) and the date of actual payment of a relevant contribution or the date of the relevant payment being achieved (whichever is the later)

"Index"

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 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

“Inspector”

a representative of the planning inspectorate appointed by the Secretary of State to determine the Appeal

“Key Worker”

such 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 First Home Disposal it being acknowledged that at the date of this agreement the Borough Council has not designated any categories of employment as Key Worker

“Libraries Contribution”

the sum payable by the Owners to the County Council to be used at Syston Library to provide improvements to the library and its facilities, including, but not limited to, books, materials, or associated equipment or to reconfigure the internal or external library space to account for additional usage of the venue arising from an increase in members to the library as a result of the Development calculated in accordance with the following formula:

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

Where:

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

B = total number of Dwellings which comprise one bedroom

C = total number of student bed Dwellings

D = total libraries contribution payable Index Linked

subject to a maximum sum of Five Thousand Eight Hundred and Eighty Eight Pounds and Fifty Five Pence (£5,888.55) Index Linked

“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

“Local Highways Mitigation”

the mitigation of the impacts of the Development (cumulatively with other residential developments) on the local highway and transport network in Syston

and to include interventions to be implemented by the County Council comprising:

- (a) local junction improvements including (but not limited to):
 - i. Goodes Lane / Melton Road, Syston
 - ii. Fosse Way / High Street, Syston; and
- (b) obtaining any associated traffic regulation orders

“Local Highways Mitigation Contribution”

the sum of Sixty Seven Thousand Three Hundred and Forty One Pounds (£67,341.00) Index Linked payable to the County Council for the provision of the Local Highways Mitigation works

“Local Sustainable Travel Mitigation”

the mitigation of the impacts of the Development (cumulatively with other residential developments) on the local highway and transport network in Syston comprising sustainable public transport improvements

“Local Sustainable Travel Mitigation Contribution”

the sum of One Hundred and Ninety Six Thousand Six Hundred and Fifty Pounds (£196,650.00) Index Linked payable to the County Council for the provision of the Local Sustainable Travel Mitigation works

“Management Entity”

the body or bodies nominated or established by the Owners for the long-term management and maintenance of the Open Space

“Management Plan”

a scheme to be submitted to and approved in writing by the Borough Council, which details and identifies:

- (a) future management and maintenance requirements of the Open Space and where applicable step in rights for the Borough Council in the event of any default in carrying out any of the requirements;
- (b) proposed ongoing maintenance operations for the Open Space, specifically identifying the management objectives, task and the timing and frequency of the Operation for all the features of the Open Space;
- (c) proposed means of funding the ongoing maintenance and management of the Open Space in accordance with the Management Plan by the Owners and the Management Entity;
- (d) a mechanism for the periodic review with the Borough Council and where necessary amendment of the Management Plan;
- (e) the proposed Management Entity that is to be responsible for managing and maintaining the Open Space with monies received by the Management Entity to be

used solely for the purposes of management and maintenance of the Open Space;

- (f) details of the permanent funding of the proposed Management Entity or other responsible body which may include one or more of the following:
 - (i) commuted sums for investment for the benefit of the Management Entity;
 - (ii) the creation of an estate rent charge or other service charge arrangements, including details of the covenants to be entered into by a buyer of a Dwelling to pay its pro-rata proportion of the costs and expenses of the Management Entity and to ensure the incoming buyer on a subsequent sale of such Dwelling will enter into like covenants;
 - (iii) endowing the relevant Management Entity so approved with income generating assets;
 - (iv) appropriate arrangements for the provision of security for funding;
- (g) ongoing review and monitoring arrangements to demonstrate that the Management Entity is being adequately funded in accordance with the approved arrangements and will be adequately funded in the long term;
- (h) the management and maintenance standards that are to be implemented and retained in perpetuity;
- (i) public access arrangements in perpetuity and ongoing community engagement and liaison;
- (j) draft transfer of the Open Space to the Management Entity including all covenants and rights in accordance with this Agreement;
- (k) in the event the Management Entity became insolvent or was otherwise unable to perform its duties to manage and maintain the Open Space and no alternative arrangements for effectively doing so were promptly put in place to the satisfaction of the Borough Council the details of arrangements so that the Borough Council may itself receive all payments that would or should have otherwise been paid to the Management Entity subject to the Borough

Council using all such monies for the purposes of meeting the said management and maintenance obligations including appointing its own Management Entity to do so

"Market Dwelling(s)"

any Dwelling for sale for Open Market Value

"Market Value"

the best price that might reasonably be expected for the freehold or long leasehold of a Dwelling of the relevant type from a private purchaser assuming that it was a Market Dwelling made available on the open market without restriction or encumbrance (and for the avoidance of doubt shall not take into account the discount in the valuation in relation to First Homes or other Affordable Housing) as calculated in accordance with the RICS Manual of Valuation Practice (Red Book) current from time to time (being the "RICS Valuation – Global Standards 2017" at the date of this Agreement) or any such replacement guidance issued by RICS) and expressed as a value per square metre and the market value shall be calculated as the average based on the valuations undertaken by three valuers independent to the party that seeks to establish the market value and copies of the three valuations shall be provided in writing to the Borough Council when the party seeks to establish the market value

"Monitoring Fee"

the sum of Five Thousand Pounds (£5,000.00) Index Linked payable to the Borough Council to fund the monitoring of the Owners obligations contained in this Agreement

"Nominated Officer"

the senior officer of the Borough Council responsible for development management or such other officer of the Borough Council as notified to the Owners

"NPPF"

the National Planning Policy Framework published by the Department for Levelling Up, Housing & Communities in September 2023 or any successor provisions which may be introduced from time to time including for the avoidance of doubt changes in policy or legislative changes

"Notice of Intention to Commence"

the written notice served on the County Council pursuant to **Part 13** of **Schedule 2** in prior confirmation of the Commencement of Development

"Occupation"

occupation of any of the Dwellings forming part of the Development excluding occupation for construction or for fitting out or for marketing or repair or security and "Occupy", "Occupier" and "Occupied" shall be construed accordingly

"Open Market Value"

in respect of the Market Dwellings the full market value of 100% of the relevant Dwelling as may be agreed between the Owners and a purchaser

"Open Space Scheme"

the specification:

- (a) in respect of the Open Space (excluding the LEAP) setting out the method of laying out and completing the Open Space within a relevant Phase and to be prepared by the Owners and approved in writing by the Borough Council provided that such approval may be refined by way of Reserved Matters Approval for the relevant Phase of the Development; and
- (b) in respect of the LEAP setting out the details necessary for the provision on the Site and (unless otherwise agreed in writing by the Borough Council) in accordance with the locational and design criteria set out in the Fields in Trust document "Planning and Design for Outdoor Sport and Play" October 2015) and to be prepared by the Owners and approved in writing by the Borough Council provided that such approval may be by way of Reserved Matters Approval for the relevant Phase of the Development

"Open Space"

areas of open space comprising part of the Development including:

- (a) 0.66 hectares of accessible multi-functional green space area
- (b) 0.94 hectares of natural and semi-natural open space
- (c) a locally equipped area for play ("LEAP")

to be laid out on the Site by the Owners as part of the Development in accordance with this Agreement within the general locations as shown on [Plan 2]

"Outdoor Sports Contribution"

the sum of Sixty Four Thousand Two Hundred and Twenty Seven Pounds (£64,227.00) Index Linked payable to the Borough Council for the provision of off-site outdoor sports facilities to serve the Development

"Owners"

the First Owner and the Second Owner which shall include their successors in title and any person deriving title through or under the First Owner and the Second Owner

"Permission"

planning permission granted by the Planning Inspectorate pursuant to the Appeal and to include any permission granted pursuant to an application pursuant to Section 73 of the 1990 Act in accordance with the provisions in clause 7.9 of this Agreement

"Phase"

an area of the Site where a Reserved Matters Application is made to the Borough Council and in accordance with the approved Phasing Plan

"Phasing Plan"

the plan to be prepared by the Developer and submitted to the Borough Council for its written

approval in accordance with the terms approved in discharge of the relevant phasing condition identified in the Permission unless otherwise varied such variation to be in writing and approved by the Borough Council

“Plan 1” the plan entitled ‘Site Location Plan’ with drawing reference P20-3155 001 C-01 appended to this Agreement at **Schedule 1**

“Plan 2” the plan entitled ‘Concept Masterplan’ with drawing reference P20-3155 003 Rev H-01 appended to this Agreement at **Schedule 1**

“Plan 3” the plan entitled ‘Barkby Road Roundabout Land Dedication Plan’ with drawing reference 20060-10 Rev A appended to this Agreement at **Schedule 1**

“Post-Development Biodiversity Value” the post-development biodiversity value of the Development, such value calculated in Biodiversity Units in accordance with the Department or Environment, Food & Rural Affairs Biodiversity Metric 3.0 as part of the Biodiversity Scheme approved by the Borough Council pursuant to **Part 7 of Schedule 2**

“Practical Completion Certificate” a certificate issued by the Borough Council confirming the practical completion of the Open Space in accordance with the relevant scheme or specification approved pursuant to this Agreement

“Price Cap” the amount for which the First Home is sold after the application of the Discounted Market Value which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000.00) or such other amount as may be published from time to time by the Secretary of State

“Primary School Contribution” the maximum sum of Six Hundred and Seventy Nine Thousand and One Hundred and Seventy Two Pounds (£679,172.00) Index Linked (representing a deficit of 37 primary places) calculated as follows:
 $(A \times 0.30 \times £18,356) + (B \times 0.043 \times £18,356) = C$
Where:

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

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

C = total primary school contribution payable Index Linked

payable by the Owners to the County Council to accommodate the capacity issues created by the Development by improving, remodelling, or enhancing existing facilities at Merton Primary School or any other primary school within the locality of the Development including the construction of a new school which will provide primary school education

“Protected Tenant” any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provisions for the time being in force (or any

equivalent contractual right) in respect of a particular Affordable Housing Unit; or

- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) was granted a Shared Ownership Lease (or similar arrangement where a share of an Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of an Affordable Housing Unit and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Unit

“Provided”

in respect of any Affordable Housing:

- (a) completion of construction of the Affordable Housing;
- (b) the exchange of a legally binding contract with a Registered Provider for the sale and purchase of the Affordable Housing to the Registered Provider at a price agreed with the Registered Provider; and/or
- (c) execution of a legally binding contract with a Registered Provider for the sale and purchase of the relevant land upon which the Affordable Housing are to be constructed together with the execution of a legally binding contract with the Registered Provider for construction of the relevant Affordable Housing on that part of the land;

and the expression “Provides” and “Provision” being construed accordingly

“Reasonable Endeavours”

the party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court, public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Agreement such party will be bound to take reasonable steps to fulfil the relevant obligation by the expenditure of such effort and the engagement of such professional or other advisers as in all the circumstances (including the importance to the other parties of the fulfilment of the relevant obligation) would be reasonable to expect:

- (i) in the case of the Owners (or their successors in title) acting as a competent commercial developer or landowner in the context of the Development and where reasonably required by the Borough Council providing written supporting evidence of the steps taken; and

(ii) in the case of the Borough Council acting as a competent local authority acting reasonably in the context of its statutory functions

“Registered Provider”

a registered provider of social housing within the meaning of section 80 of the Housing and Regeneration Act 2008 and approved in writing by the Borough Council and registered with Homes England and any successor or successors for the time being and any similar future authority carrying on substantially the same regulatory making functions

“Rented Dwelling”

both the Social Rented Dwellings and the Affordable Rented Dwellings

“Reserved Matters Application”

each reserved matters submission made pursuant to the Permission

“Reserved Matters Approval”

each reserved matters approval issued pursuant to the Permission

“Revised Affordable Housing Scheme”

written statement to be submitted in the event the cascade provisions set out in Part 2 of **Schedule 2** are triggered by failure of the Owners to contract with a Registered Provider and which sets out the Owners’ proposals for the revised provision of Affordable Housing which may include:

- (a) the numbers, type, size and location of the Affordable Dwellings;
- (b) arrangements for the marketing of the Affordable Dwellings;
- (c) details of arrangements that the Borough Council may reasonably require to ensure that the Affordable Dwellings are retained as Affordable Dwellings to first and all subsequent occupiers including (but not limited to) details of any restrictions on title to secure affordable housing provisions in perpetuity;
- (d) the basis on which any of the Affordable Dwellings may be Occupied

and in the following sequential order:

- (e) in the first instance, an alternative tenure mix or reduction in the number of units to make the Affordable Housing package more attractive to a Registered Provider or the local housing authority;
- (f) a proposal for the gifting of the Affordable Dwellings or an agreed proportion of them to the Borough Council including details of assessing the proportion to be gifted through independent valuation;
- (g) a financial contribution for the provision of Affordable Housing in the Borough Council’s

administrative area in lieu of Affordable Dwellings being provided on the Site;

- (h) as a last resort any proposal for the Affordable Dwellings to be sold on the open market to an Eligible Party at 60% of their open market value with legal safeguards attached ensuring that the discount remains in perpetuity

and for the clarification of doubt more than one iteration of the Revised Affordable Housing Scheme may be produced and approved by the Borough Council in writing to facilitate the sequential order at (e) to (h) above

"RICS"	the Royal Institution of Chartered Surveyors
"SDLT"	Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secretary of State"	the Minister for the Department for Levelling Up, Housing and Communities (DLUHC)
"Shared Ownership Dwelling"	an Affordable Housing to be made available by a Registered Provider where a proportion of the equity is sold on a long lease to the purchaser (such lease to be based on the model form of lease issued by Homes England and the remainder of the equity is retained by the Registered Provider subject to rent being charged on the retained equity and on terms that entitle the purchaser to acquire up to 100% of the equity through Staircasing)
"Shared Ownership Lease"	the form of lease in respect of the Shared Ownership Units which shall be in accordance with the Homes England model form of shared ownership lease or such other successor bodies' model form of lease as may be from time to time in place and on terms that permit the part purchase of the open market value of the equity in a unit with an initial interest of between 10-75% of market value together with rent payable for the open market rack rental value of the unpurchased percentage of the equity in the unit up to a value which does not exceed the rent set by Homes England from time to time (or such other rent or form of lease approved in writing by the Borough Council) and to acquire an additional share from time to time so as to increase their ownership to 100% of the full market value of the Shared Ownership Unit
"Site"	the land North of Barkby Road, Syston, Leicestershire as shown edged in red on Plan 1
"Site Inspection Fee"	the sum of One hundred and Ninety Five Pounds (£195.00) Index Linked for each Site inspection required by this Agreement and payable to the Borough Council towards its costs of preparing for attending such visit or site inspection
"Social Rented Dwellings"	Affordable Housing to be made available by a Registered Provider or a local housing authority where the rent for such dwelling is determined

through the national rent regime or equivalent rental arrangements

“Special Needs Contribution”

together the Special Needs Contribution (Primary) and the Special Needs Contribution (Secondary)

Special Needs Contribution (Primary)”

the maximum sum of Forty Six Thousand Four Hundred and Eighty Pounds and Twenty Six Pence (£46,480.26) Index Linked as follows:

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

Where:

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

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

C = total special needs contribution (primary) payable Index Linked

payable by the Owners to the County Council to accommodate the capacity issues created by the Development by improving, remodelling, or enhancing existing facilities for special needs education at Ashmount School or any other special educational needs establishment within the locality of the Development including the construction of a new school which will provide special needs education

“Special Needs Contribution (Secondary)”

the maximum sum of Sixty Three Thousand Five Hundred and Ninety Four Pounds and Eighteen Pence (£63,594.18) Index Linked as follows:

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

Where:

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

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

C = total special needs contribution (primary) payable Index Linked

to accommodate the capacity issues created by the Development by improving, remodelling, or enhancing existing facilities for special needs education at Ashmount School or any other special educational needs establishment within the locality of the Development including the construction of a new school which will provide special needs education

"Travel Packs"	the travel pack produced in accordance with paragraph 3 (a) of Part 12 of Schedule 2 for each Dwelling at first Occupation to inform residents of what sustainable travel choices are available in the surrounding area and "Travel Pack" shall be construed accordingly
"Travel Packs Contribution"	the sum of Ten Thousand and Three Hundred and Five Pounds and Seventy Five Pence (£10,305.75) Index Linked which may be payable to the County Council in accordance with paragraph 4, Part 12 of Schedule 2 for the supply of the Travel Packs
"Travel Plan"	the travel plan approved by the County Council pursuant to the grant of the Planning Permission to promote the use of sustainable travel by residents of the Development comprising the provision of Travel Packs to each Dwelling including an application forms for up to 6-month Bus Passes for two (2) persons per Dwelling
"Travel Plan Contribution"	Monitoring the sum of Six Thousand Pounds (£6,000.00) and payable to the County Council by the Owners to monitor the effectiveness of the Travel Plan in accordance with the 'Sustainable Travel Accreditation and Recognition Scheme'
"Valuer"	a Member or Fellow of the RICS being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity
"Waste Contribution"	Management the sum of Fifty One Pounds and Sixty Seven Pence (£51.67) Index Linked per Dwelling subject to a maximum sum of Ten Thousand and Seventy Five Pounds and Sixty Five Pence (£10,075.65) Index Linked payable by the Owners to the County Council towards site reconfiguration and/or development of waste infrastructure to increase the capacity for the Mountsorrel Household Waste and Recycling Centre ("HWRC") or any other HWRC directly impacted by the Development
"Working Day(s)"	any day(s) upon which clearing banks in the City of London are open to the public and for the avoidance of doubt such day(s) shall not include any Saturday or Sunday New Year's Day Good Friday Easter Monday Christmas Day and Boxing Day
"Youth Facilities Contribution"	the sum of One Hundred and Eighty Six Thousand and Twenty Eight Pounds (£186,028.00) Index Linked payable to the Borough Council for the provision of equipment or facilities for use by local young people and to serve the Development

2. INTERPRETATION

- 2.1 Any covenant by the Developer, the Owners, the Borough Council or the County Council not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person but only where knowledge of the actions of the other person is reasonably to be inferred.

- 2.2 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 2.3 Where under this Agreement any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or response is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or response shall not be unreasonably withheld or delayed.
- 2.4 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 2.5 Where reference is made to a clause, Part, plan, paragraph, recital or Schedule such reference (unless the context requires otherwise) is a reference to a clause, Part, plan, paragraph, recital or Schedule of or to (or in the case of plans attached to) this Agreement.
- 2.6 In this Agreement the singular includes the plural and vice versa and masculine includes the feminine and vice versa.
- 2.7 Any obligation herein to construct, complete or undertake any building or engineering operations or Commence any element of the Development however expressed shall be deemed to mean construct, complete, undertake or Commence the same to the reasonable satisfaction of the Borough Council.
- 2.8 Without prejudice to **clause 3.2** where more than one person is obliged to observe or perform an obligation contained in this Agreement, the obligation may be enforced against all such persons jointly or against each of them individually and may be carried out by one or more of them.

3. **PLANNING OBLIGATIONS**

- 3.1 This Agreement is made and entered into pursuant to the 1990 Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 (as amended) and Section 1 of the Localism Act 2011 (as amended) and all other enabling powers and both the positive and restrictive covenants and undertakings herein on the part of the Owners in respect of the Site are entered into with the intent that the same shall be enforceable without limit of time not only against the Owners but also against their successors in title and assigns and any person corporate or otherwise claiming through or under the Owners an interest or estate created hereafter in the Site (or any part or parts thereof) as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person provided that:
- 3.2 no party hereto shall be liable for a breach of covenant or undertaking relating to any part of the Site in which it has no interest at the date of this Agreement or which occurs once it has parted with all interests relating to that part of the Site but without prejudice to liability for any breach occurring at a time when the party held an interest in the relevant part of the Site; and
- 3.3 the obligations contained in this Agreement shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interest in the Site nor the mortgagee or chargee of any such persons nor any receiver appointed by a mortgagee or chargee of any such persons; and
- 3.4 the obligations contained in this Agreement shall not be binding upon any freehold leasehold owner-occupiers or tenants of Dwellings nor against those deriving title from them and shall not be binding upon any mortgagee of an owner-occupier save that this clause shall not apply to the restrictions on the use of the Affordable Dwellings.

4. **ENTRY INTO FORCE**

4.1 This Agreement takes effect immediately apart from the covenants and the planning obligations in the Schedules to this Agreement which shall only come into effect upon the grant of the Permission and Commencement save unless they are expressed to come into effect before Commencement in which case they take effect upon the grant of the Permission.

5. **BLUE PENCIL CLAUSE**

In the event that the Inspector states in the Decision Letter either:

5.1 that a planning obligation contained in this Agreement (or part thereof) is not a material consideration in the granting of the Permission pursuant to the Appeal; or

5.2 that a planning obligation contained in this Agreement (or part thereof) is incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the CIL Regulations;

and accordingly attaches no weight to that obligation in determining the Appeal then that planning obligation (or part of the planning obligation as appropriate) shall cease to have effect and the Owners shall not be required to comply with that obligation.

6. **NO ENCUMBRANCE**

The Owners hereby covenant with the Borough Council and the County Council that in the event the Permission is Implemented they will not knowingly enter into any covenant or agreement relating to any part of the Site whose effect would be to preclude the carrying out of the planning obligations and covenants contained in this Agreement.

7. **GENERAL PROVISIONS**

7.1 It is hereby agreed and declared that:

7.1.1 the covenants on behalf of the Parties to be observed and performed under this Agreement shall be treated as Local Land Charges and registered by the Borough Council in the Local Land Charges Register for the purposes of the Local Land Charges Act 1975 (as amended); and

7.1.2 nothing in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Borough Council and the County Council in the exercise by them of their statutory functions and the rights powers duties and obligations of the Borough Council and the County Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if they were not a party to this Agreement.

7.2 The Parties covenant to observe and perform their respective obligations on their respective parts as set out in the schedules hereto.

7.3 The Borough Council (as the case may be) will on written request from the Developer and/or the Owners certify whether or not an obligation under this Agreement has been satisfied.

7.4 Nothing in this Agreement shall be construed as granting permission to the Developer and/or the Owners or their agents or servants from time to time to carry out works on a highway.

7.5 The Owners agree that they will give the Borough Council and the County Council written notice of any change in their respective freehold ownership of the whole or of any part of its or their interest in the Site until all obligations under this Agreement have been discharged and that such notice shall be provided to the Borough Council and the County Council as soon as reasonably practicable after such changes have occurred. Such written notice shall give the Borough Council details of the name and address of the current and

new owners of such interest together with details of the Site to which each of their respective interests apply save that this clause shall not apply to the Disposal of individual Dwellings.

- 7.6 The Owners warrant that they are the owners of the Site registered at HM Land Registry under title number LT5000054 and LT396844 with full power to enter into this Agreement and there is no other person or body with an interest in the Site whose consent is necessary to make this Agreement binding on all interests in the Site.
- 7.7 The Developer agrees that it will give the Borough Council and the County Council written notice upon its being registered as a freehold owner in respect of part or all of the Site and will provide the Borough Council and the County Council with Land Registry office copy entries of its resultant interest in each of the titles referred to.
- 7.8 The notices and Land Registry office copy entries referred to in **clause 7.7** shall be provided within ten (10) Working Days of the exercise of the options and of registration of the relevant titles respectively.
- 7.9 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment or variation to the Permission and planning permission is granted pursuant to Section 73 of the 1990 Act then this Agreement shall apply in full force in respect of that planning permission unless:
- 7.9.1 the Borough Council in their absolute discretion requires a separate Agreement under Section 106 and/or Section 106A of the 1990 Act to amend planning obligations contained in this Agreement or to secure new planning obligations relating to the new planning permission; or
- 7.9.2 the Owners reasonably require a separate Agreement under Section 106 of the 1990 Act to amend planning obligations contained in this Agreement or to secure new planning obligations relating to the new planning permission.

8. **NO WAIVER**

No waiver (whether express or implied other than by deed) by the Borough Council or the County Council (as the case may be) of any breach or default by the Owners in performing or observing any of the covenants, undertakings, obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the County Council (as the case may be) from enforcing any of the said covenants, undertakings, obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owners.

9. **INTEREST**

Without prejudice to any other right, remedy or power herein contained or otherwise available to any party if any payment of any sum by the Owners referred to herein shall have become due but shall remain unpaid for a period exceeding fourteen (14) days the Owners shall pay to the payee interest thereon at the interest rate of 4% per annum above the base lending rate of the National Westminster Bank plc from the date when the same became due until payment thereof.

10. **SEVERABILITY**

Each clause, schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, schedule or paragraph be valid shall apply without prejudice to any other clause, schedule or paragraph contained herein.

11. **MODIFICATIONS TO BE NOTED**

In the event of the planning obligations contained in this Agreement being modified a note or memorandum thereof signed by the Borough Council, the County Council, the Developer and the Owners shall be endorsed upon this Agreement provided always that any modification of the obligations contained in this Agreement shall be in accordance with section 106A of the 1990 Act and shall be by deed.

12. **RESOLUTION OF DISPUTES**

12.1 In the event of any dispute between the Parties any party may invite any other party to resolve the dispute by mediation in such manner as the Parties may agree.

12.2 In the event of a dispute between the Parties (other than a dispute relating to a matter of law or in relation to the interpretation of this Agreement) the Parties agree that the matter in dispute will on the application of either of them be referred to a person acting as an expert (hereinafter referred to as the "Expert") being a person with not less than ten (10) years' recent and relevant experience of the matter in dispute whose identity will be agreed between the Parties or in default of agreement appointed by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors on the application of any party and it is further agreed that:

12.2.1 the determination of the Expert will be final and binding on the Parties save in the case of manifest error or fraud;

12.2.2 the Parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct save that unless the parties agree otherwise the Expert shall be appointed on the basis that his decision shall be issued no later than sixty (60) Working Days from the date of his appointment; and

12.2.3 the Expert's costs will be borne in such proportions as he may direct failing which each party will bear its own costs of the reference and determination and one-half each of the Expert's costs.

13. **NOTICES**

13.1 Any notice to be served in accordance with this Agreement shall be validly served if served in accordance with section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Act 1962 at the respective addresses cited in this Agreement except that any notice to be served on the Borough Council shall be addressed to the Nominated Officer and on the County Council shall be addressed to the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment, Chief Executives Department and in either case shall quote the reference in the Application.

13.2 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:

13.2.1 if delivered by hand, upon delivery at the relevant address; and

13.2.2 if sent by first class post, at 09:00 hours on the 2nd Working Day after the date of posting;

except that where any such notice or other communication is or would otherwise be deemed to be received after 17:00, such other notice or other communication shall be deemed to be received at 09:00 on the next following Working Day.

13.3 The Owners shall give to the Borough Council and the County Council advance written notice of at least twenty eight (28) days of the intended Commencement of Development Date and shall notify the Borough Council immediately as soon as the Development has been Commenced.

- 13.4 The Owners shall give to the Borough Council and the County Council advance written notice of the anticipated date of first Occupation of the first Dwelling no later than ten (10) Working Days prior to such anticipated date of Occupation.
- 13.5 The Owners shall give written notice to the Borough Council of the anticipated dates of the relevant triggers set out in Parts 1-7 of Schedule 2 no later than 10 (ten) Working Days prior to each respective anticipated date.
- 13.6 The Owners shall give written notice to the County Council of the anticipated dates of the relevant triggers set out in Parts 9-13 of Schedule 2 no later than 10 (ten) Working Days prior to each respective anticipated date.

14. **DEVELOPER'S ACTIONS ON COMPLETION**

The Developer will on completion of this Agreement pay the Borough Council and County Council's reasonable and proper legal costs incurred in the negotiation and preparation of this Agreement receipt of which is hereby acknowledged by the Borough Council and County Council.

15. **DEED GOVERNED BY ENGLISH LAW**

This Agreement is subject to and will be construed in all respects in accordance with the provisions of English law.

16. **THIRD PARTIES**

Without prejudice to the definitions of the "Borough Council", the "County Council", the "Developer" and the "Owners" given in **clause 1.1** hereof it is not intended that this Agreement should give rights hereunder to a third party arising solely by virtue of the Contracts (Rights of Third Parties) Act 1999 (as amended).

17. **TERMINATION**

The obligations on the Owners contained in this Agreement will cease if the Permission is quashed or revoked or withdrawn or expires prior to Implementation of the Development.

18. **DEVELOPER'S ACKNOWLEDGEMENT**

- 18.1 The Developer acknowledges that this Agreement has been entered into with its consent and that the Site shall be bound by the restrictions and obligations contained in this Agreement provided that it shall not be bound by any of the provisions of this Agreement (other than **clauses 7.6,7.8,7.8** and **14**) unless or until it becomes a successor in title to the Owners.

19. **VERIFICATION**

The Developer and the Owners shall permit the Borough Council and their authorised employees and agents upon reasonable notice and subject to their compliance with relevant health and safety requirements to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

This document is executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Plans

DRAFT

SCHEDULE 2

The Owners Covenants with the Borough Council and the County Council

The Owners' Covenants with the Borough Council

The Owners hereby covenant with the Borough Council as follows:

Part 1 Notifications

1. To give the Borough Council no less than five Working Days' notice of the following:
 - 1.1 Implementation;
 - 1.2 Commencement of Development;
 - 1.3 Occupation of the first Dwelling; and
 - 1.4 Completion of the Affordable Housing Units.

Part 2 Affordable Housing

1. As part of any Reserved Matters Application to submit to the Borough Council for its written approval the Affordable Housing Scheme and not to Commence the Development or permit Commencement in each Phase until such time as the Affordable Housing Scheme has been approved by the Borough Council ("Approved Affordable Housing Scheme").
2. The Owners shall implement and comply with the Approved Affordable Housing Scheme or (where applicable) any approved variation thereto (an "Approved Revised Affordable Housing Scheme") in accordance with the details set out therein.
3. Following Commencement of Development to provide the Affordable Housing Units in accordance with the Approved Affordable Housing Scheme or any approved variation thereto.
4. Not to Occupy the first Market Housing Unit in each Phase until an exchanged contract or contracts for the sale of the Affordable Housing (excluding any First Homes) in each respective Phase to a Registered Provider and details have been provided to and approved by the Borough Council SAVE THAT where paragraphs 6, 7 and 8 of Part 2 of this Schedule are engaged the restriction on the Occupation of the respective Phase shall be extended to not Occupy more than 25% of the Market Housing Unit in each Phase (or such other reasonable period that may be agreed in writing with the Borough Council).
5. Not to construct the Affordable Housing otherwise than in accordance with the Approved Affordable Housing Scheme or (where applicable) an Approved Revised Affordable Housing Scheme and the timescales and details set out therein (unless otherwise agreed with the Borough Council).
6. Not to Occupy more than 80% of the Market Housing Unit until all of the Affordable Housing Units (excluding any First Homes) to be provided under the Approved Affordable Housing Scheme or (where applicable) an Approved Revised Affordable Housing Scheme are Practically Complete and have been transferred to the approved Registered Provider or the Borough Council (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:
 - 6.1 free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Housing Units as Affordable Housing;
 - 6.2 with the benefit of all necessary easements, rights and utilities; and

- 6.3 any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme or (where applicable) an Approved Revised Affordable Housing Scheme.
7. In the event that the Owners are unable to enter into a sale and purchase agreement with a Registered Provider in accordance with this Schedule for all or any of the Affordable Housing Units (excluding any First Homes) the Owners shall provide the Borough Council with written evidence of the use of such endeavours to enter into a sale and purchase agreement with a Registered Provider for the Affordable Housing Units ("Affordable Housing Notice") for the Borough Council's written approval ("Approved Affordable Housing Notice").
8. Following notification of the Approved Affordable Housing Notice by the Borough Council, the Owners must use reasonable endeavours to co-operate with the Borough Council to secure the transfer of the Affordable Housing Units to a Registered Provider (or the local housing authority) proposed by the Borough Council on terms which include the provisions and restrictions set out in this Agreement (as relevant) and otherwise on terms acceptable to the Owners (acting reasonably).
9. Following the notification of the Approved Affordable Housing Notice and having cooperated with the Borough Council to secure a Registered Provider pursuant to paragraph 8 above, if the Owners have been unable to secure the transfer of the Affordable Housing (excluding any First Homes) to a Registered Provider (or the local housing authority) proposed by the Borough Council within three months of the date of receipt of the Approved Affordable Housing Notice, the Owners shall submit a Revised Affordable Housing Scheme for the approval of the Borough Council ("the Approved Revised Affordable Housing Scheme").
10. The Owners and the Borough Council shall as a first solution seek to agree a Revised Affordable Housing Scheme with an alternative tenure mix or reduction in Affordable Housing Units to make the Affordable Housing package more attractive to a Registered Provider or the local housing authority. Following the Borough Council's approval of the Revised Affordable Housing Scheme with an alternative tenure mix, the Owners shall for a further period of three months use reasonable endeavours to enter into a sale and purchase agreement with a Registered Provider (or the local housing authority) for the disposal of the Affordable Housing Units (excluding any First Homes) in accordance with the Approved Revised Affordable Housing Scheme.
11. In the event that at the end of the three month period referred to under paragraph 9 above (or such longer period as may be agreed between the Owners and the Borough Council), the Owners remain unable to enter into a sale and purchase agreement with a Registered Provider (or the local housing authority) in accordance with the terms of this Schedule and Agreement, the Owners will submit for the approval of the Borough Council a further Revised Affordable Housing Scheme which shall include obligations in respect of the Affordable Housing Units in the following sequential order:
- 11.1 the gifting of a reasonable proportion of the Affordable Housing Units (excluding any First Homes) to the Borough Council to reflect the value of the subsidy comprised in any unsold Affordable Housing Units;
- 11.2 the provision of a commuted sum to the Borough Council in lieu of the number of Affordable Housing Units not to be provided on the Site;
- 11.3 as a last resort disposal or assignment of an agreed proportion of the Affordable Housing Units (excluding any First Homes) on the open market to an Eligible Party at no more than 60% of their Open Market Value with all appropriate valuation and legal safeguards necessary to ensure that the discount remains in perpetuity.
12. To ensure the Registered Provider has entered into a Nomination Agreement prior to Occupation of any of the Affordable Housing Units transferred to that Registered Provider.
13. From the date of Completion of the Affordable Housing Units (excluding any First Homes) they shall not be Occupied other than as Affordable Housing by Eligible Party in accordance with the occupancy criteria approved as part of the Affordable Housing Scheme and not to sub-divide or amalgamate the Affordable Housing Units SAVE THAT this obligation shall not be binding on:

- 13.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees;
- 13.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty and any person deriving title from the Chargee who has complied with the Chargee's Duty and any successor in title thereto and their respective mortgagees and chargees;
14. In the event that paragraph 11 of this Schedule applies any remaining Affordable Housing Units (excluding any First Homes) that have not been transferred to a Registered Provider or the Borough Council or sold pursuant to paragraph 11 shall be free from the restrictions set out in this Schedule and the Owners shall be free to dispose of the said remaining Affordable Housing Units as Market Dwellings.
15. Any Chargee shall prior to seeking to dispose of any of the Affordable Housing Units (excluding any First Homes) pursuant to any default under the terms of its mortgage or charge give written notice ("the Chargee's Notice") to the Borough Council of its intention to dispose and:
- 15.1 in the event that the Borough Council responds within three months from receipt of the Chargee's Notice indicating that arrangements for the transfer of the Affordable Housing Units (excluding any First Homes) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall cooperate with such arrangements and use reasonable endeavours to complete such transfer for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interests and costs and expenses; or
- 15.2 if the Borough Council does not serve its response to the Chargee's Notice within three months of receipt of the same then the Charges shall be entitled to dispose of the Affordable Housing Units (excluding First Homes) free of the restrictions set out in this Schedule; or
- 15.3 if such a disposal has not completed within the three months period from receipt of the Chargee's Notice the Chargee shall have complied with its obligations under this Schedule and the Chargee shall be entitled to dispose of the Affordable Housing Units (excluding First Homes) free of the restrictions set out in this Schedule.

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Borough Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage including all accrued principal monies, interest and any costs and expenses reasonably and properly incurred.

Part 3 First Homes

1. Obligations

Unless otherwise agreed in writing by the Borough Council, the Owners for and on behalf of themselves and their successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants to 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**

- 2.1 Twenty-five percent (25%) of the Affordable Housing Units on the Site (rounded up or down to the nearest whole Affordable Housing Unit) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme submitted pursuant to this Schedule and shall be provided and retained as First Homes for the life of the Development subject to the terms of this Schedule.
- 2.2 Unless otherwise agreed in writing with the Borough Council (or unless secured by operation of this Schedule) and as set out in the approved Affordable Housing Scheme (25%) of the total number of the Affordable Housing Units in each Phase (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes, and those Affordable Housing Units shall be provided and retained as First Homes for the life of the Development subject to the terms of this Schedule in accordance with the approved Affordable Housing Scheme relevant to that Phase.

3. **Clustering**

- 3.1 The First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance.
- 3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted.

4. **Type and Distribution**

- 4.1 The mix of First Homes provided within the Site shall be in accordance with:
- 4.1.1 the Affordable Housing Standards; and
- 4.1.2 the distribution in the Affordable Housing Scheme.

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 First Homes Eligibility Criteria (National); and
- 5.1.2 the First Homes 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 First Homes 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 First Home 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 First Homes Eligibility Criteria (National) and unless paragraph 5.2 applies meets the First Homes Eligibility Criteria (Local) (if any)

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

5.4.1.3 the transfer of the First Home includes:

a) a definition of the "Borough Council" which shall be Charnwood Borough Council

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

"means the provisions set out in clause[s] 5.1-5.9 of Part 2 of Schedule 2 of the S106 Deed a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Deed" means *"the Deed made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Borough Council and (2) the County Council and (3) John Edmund Mansell and (4) Rosemary Keeber and (5) Janet Patricia Tindall and 6) Taylor Wimpey UK Limited"*

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 Compliance Certificate has been issued by the Borough Council within twenty eight (28) days of the Borough Council 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 Charnwood Borough Council, of [] 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 Owners 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 First Home is disposed to the Borough Council at the Discount Market Value.

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 Value; 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 Deed 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 of the First Home 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 Value 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 First Homes Contribution.

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

5.11.1 within 20 Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 5.5 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 5 of this Deed pursuant to the provisions in paragraphs 5.9 and 5.10 of this Schedule shall not be liable to pay the 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 Deed 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 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 Part 3 of this Schedule in relation to First Homes shall not apply to any First Home Mortgagee or any receiver (including an administrative receiver appointed by such First Home Mortgagee or any other person appointed under any security documentation to enable such First Home 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 First Home Mortgagee or Receiver PROVIDED THAT:

- 7.1 such First Home 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 First Home Mortgagee or Receiver to the Borough Council the First Home 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 First Home 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 First Homes Contribution.
- 7.4 following receipt of notification of the Disposal of the relevant First Home
 - 7.4.1 a completed application shall be issued by the Borough Council 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 all such monies received towards the provision of Affordable Housing shall be applied by the Borough Council.

Part 4 Open Space Contributions and Obligations

1. As part of any Reserved Matters Application to submit to the Borough Council for its written approval the Open Space Scheme for each Phase and not to Commence Development or permit Commencement of the relevant Phase until an Open Space Scheme for that Phase has been submitted to and approved by the Borough Council ("the Approved Open Space Scheme").
2. Following Commencement of Development to carry out the construction, laying out, equipping, surfacing and landscaping of the Open Space in each Phase in accordance with the Approved Open Space Scheme.
3. Following completion of the Open Space not at any time to use the Open Space or to cause or permit the Open Space to be used for any purpose other than as public open space land including using:
 - 3.1 the subsoil of the Open Space for the laying of services unless so agreed by the Borough Council (not to be unreasonably withheld or delayed) or by conditions pursuant to the Permission;
 - 3.2 the Open Space or the area of the Site designated for that purpose in the Open Space Scheme for:
 - 3.2.1 the storage of materials;
 - 3.2.2 the parking of cars and/or any other vehicles;
 - 3.2.3 as a site compound; or
 - 3.2.4 for any other purpose detrimental to the structure of the soil or existing vegetation.
4. On completion of 50% of the Open Space in each Phase the Owners shall invite the Borough Council in writing to inspect the Open Space with a view to issuing a Practical Completion Certificate in respect of that 50% of the Open Space and on completion of 100% of the Open Space the Owners shall invite the Borough Council in writing to inspect the Open Space with a view to issuing a Practical Completion Certificate in respect of 100% of the Open Space.
5. The Borough Council shall inspect the Open Space within 20 Working Days of receipt of the invitation in paragraph 4 of this Part 4 of Schedule 2 and shall within 20 Working Days of such inspection EITHER issue a Practical Completion Certificate OR issue a notice ("Defects Notice") which states the Open Space have has not been provided to the Borough Council's reasonable satisfaction and set out details of the work required to reach that standard or remedy any defect or deficiency;
6. If the Owners receives a Defects Notice the Owners shall use reasonable endeavours to carry out the works specified in the Defects Notice as soon as reasonably practicable and in any event no longer than eight weeks from receipt of a Defects Notice (or such longer period as may be agreed by the Borough Council) and then invite the Borough Council to re-inspect the Open Space having regard to the requirements of the Defects Notice.
7. That the procedure set out in paragraphs 4 to 6 of this Part 4 of Schedule 2 shall be repeated until such time as the Borough Council issues a Practical Completion Certificate.
8. To maintain the Open Space in accordance with the Approved Open Space Scheme during the Maintenance Period to the reasonable satisfaction of the Borough Council, rectifying any defects arising and (where relevant) replacing any trees shrubs plants or grass which have died or been removed or become seriously diseased or damaged with others of a similar size and species.

9. Upon expiry of the Maintenance Period, the Owners shall invite the Borough Council in writing to inspect the Open Space with a view to issuing a Final Completion Certificate and the provisions of paragraphs 4 to 6 this Part 4 of Schedule 2 shall apply mutatis mutandis.
10. Not to cause or permit the Occupation of more than 30% of the Dwellings on the Site prior to receipt of the Practical Completion Certificate from the Borough Council in respect of 60% of the Open Space and not to cause or permit the Occupation of more than 90% of the Dwellings on the Site prior to receipt of the Practical Completion Certificate from the Borough Council in respect of 100% of the Open Space (unless otherwise agreed in writing with the Borough Council).
11. To continue to maintain the Open Space in accordance with above notwithstanding the issue of a Final Completion Certificate unless and until it is transferred pursuant to paragraph 12 PROVIDED THAT FOR THE AVOIDANCE OF DOUBT the responsibility for the maintenance of the Open Space shall notwithstanding the provisions of Section 106 (4) of the Act or Clause 15 of this Agreement remain with 'the Owners' (which in this context and for the avoidance of doubt includes the developer who is carrying out or who has carried out the Development) unless or until transferred to a Management Entity in accordance with this Schedule.
12. No later than six months after the date of the Final Completion Certificate the Owners shall transfer the Open Space to a Management Entity in accordance with this Schedule.
13. The Owners covenants not to Occupy or allow or permit the Occupation of any Dwelling until:
 - 13.1 the Management Plan has been submitted to and approved by the Borough Council ("the Approved Management Plan"); and
 - 13.2 the Management Entity has been created.
14. To implement and comply with the Approved Management Plan.
15. Not to complete a transfer of the Open Space to any Management Entity until the Borough Council has approved the Management Plan and shall remain responsible for that maintenance unless the transfer to the Management Entity accords with the Approved Management Plan.
16. Not to permit the Occupation of more than 95% (ninety five percent) of the Dwellings until the Open Space has been transferred to the Management Entity in accordance with the Approved Management Plan and on the terms set out in this Agreement.
17. For the avoidance of doubt the Management Entity as a person obtaining title to part of the Site under the Owners shall become responsible for the maintenance of the Open Space transferred to it in accordance herewith and the party named as the Owners shall then cease to be so responsible notwithstanding that the Owners retains an interest in the Site or any part thereof.
18. To ensure that any transfer of land comprising the Open Space:
 - 18.1 be a transfer of the entire freehold interest of the Open Space for a nominal sum;
 - 18.2 be free from any pre-emption or option agreement;
 - 18.3 be free from any mortgage, charge, lien or other such incumbrance;
 - 18.4 be free from any lease, licence or any other third party interests;
 - 18.5 and contains the following covenants or rights for the benefit of the Owners' retained land:
 - 18.5.1 restriction preventing use for any purpose other than as public open space;

- 18.5.2 not to be used for a trade or business;
- 18.5.3 not to be used for residential purposes;
- 18.5.4 to keep the land in good repair and condition;
- 18.5.5 not to obstruct the public highway;
- 18.5.6 to keep and properly maintain the boundaries in good repair and condition;
- 18.5.7 to properly keep and maintain landscaping;
- 18.5.8 to keep and maintain the land in a clean and tidy condition;
- 18.5.9 not to cause or knowingly permit any nuisance on the land;
- 18.5.10 on any transfer or part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the Owners for the whole or relevant parts of the retained land to observe and perform these covenants;
- 18.5.11 a covenant for the benefit of the Borough Council that the Management Entity will manage and maintain the Open Space in accordance with the Approved Management Plan for the lifetime of the Development;
- 18.5.12 not to erect any buildings or other erections except equipment ancillary to the purpose for which the land is transferred; and
- 18.5.13 the reservation of any rights of access required by the Owners.

Part 5 Youth Facilities Allotments and Outdoor Sports Contributions

1. To pay the Allotments Contribution to the Borough Council prior to Occupation of any Dwelling and not to Occupy or permit Occupation of any Dwelling until the Allotments Contribution has been paid to and received by the Borough Council in full in accordance with this Agreement.
2. To pay the Outdoor Sports Contribution to the Borough Council prior to Occupation of any Dwelling and not to Occupy or permit Occupation of any Dwelling until the Outdoor Sports Contribution has been paid to and received by the Borough Council in full in accordance with this Agreement.
3. To pay the Youth Facilities Contribution to the Borough Council prior to Occupation of any Dwelling; and not to Occupy or permit Occupation of any Dwelling until the Youth Facilities Contribution has been paid to and received by the Borough Council in full in accordance with this Agreement.

Part 6 Health Contributions

1. To pay the Healthcare Contribution to the Borough Council prior to Occupation of any Dwelling and to not Occupy or permit Occupation of any Dwelling until the Healthcare Contribution has been paid to and received by the Borough Council in full in accordance with this Agreement.

Part 7 Biodiversity

1. The Owners covenant with the Borough Council that:
 - 1.1 prior to Commencement of Development to submit the Biodiversity Scheme to the Borough Council for approval and not to Commence or permit Commencement until the Borough Council has approved the Biodiversity Scheme (the "Approved Biodiversity Scheme");

- 1.2 thereafter the Approved Biodiversity Scheme shall be implemented either in accordance with agreed arrangements between the Owners and the Borough Council or in the absence of Deed prior to the Occupation of 70% of the Dwellings; and
- 1.3 thereafter subject to the Commencement of Development not to Occupy more than 70% of the Dwellings or permit such Occupation until the Approved Biodiversity Scheme has been implemented and completed in full.

Part 8 Monitoring Fee

1. To pay to the Borough Council the Monitoring Fee upon the Implementation of Development and not to Implement until the total Monitoring Fee has been paid to the Borough Council in full.
2. To pay the Approval of Details Fee to the Borough Council with each submission of details for the Borough Council's approval pursuant this Agreement provided that this does not apply to Reserved Matters Applications.
3. To pay the Site Inspection Fee to the Borough Council on booking any site visit or inspection required by the Borough Council pursuant this Agreement.

The Owners' Covenants with the County Council

The Owners hereby covenant with the County Council as follows:

Part 9 Education

Early Years Contribution

1. To pay the Early Years Contribution to the County Council as follows:

- 1.1 25% prior to Occupation of the 1st Dwelling;
- 1.2 25% prior to Occupation of the 50th Dwelling;
- 1.3 25% prior to Occupation of the 100th Dwelling; and
- 1.4 25% prior to Occupation of the 150th Dwelling

and to not Occupy or permit Occupation of the relevant Dwellings identified in this paragraph 1 of Part 9 of this Schedule until the respective instalments of the Early Years Contribution have been paid to and received by the County Council in accordance with this Agreement.

Primary School Contribution

2. To pay the Primary School Contribution to the County Council as follows:

- 2.1 25% prior to Occupation of the 1st Dwelling;
- 2.2 25% prior to Occupation of the 50th Dwelling;
- 2.3 25% prior to Occupation of the 100th Dwelling; and
- 2.4 25% prior to Occupation of the 150th Dwelling

and to not Occupy or permit Occupation of the relevant Dwellings identified in this paragraph 2 of Part 9 of this Schedule until the respective instalments of the Primary School Contribution have been paid to and received by the County Council in accordance with this Agreement.

Special Needs Contribution

3. To pay the Special Needs Contribution to the County Council as follows:

- 3.1 25% prior to Occupation of the 1st Dwelling;
- 3.2 25% prior to Occupation of the 50th Dwelling;
- 3.3 25% prior to Occupation of the 100th Dwelling; and
- 3.4 25% prior to Occupation of the 150th Dwelling

and to not Occupy or permit Occupation of the relevant Dwellings identified in this paragraph 3 of Part 9 of this Schedule until the respective instalments of the Special Needs Contribution have been paid to and received by the County Council in accordance with this Agreement.

Part 10 Libraries

1. To pay the Libraries Contribution to the County Council prior to the first Occupation of the first Dwelling and not to Occupy or permit Occupation of any Dwelling until the Libraries

Contribution has been paid to and received by the County Council in accordance with this Agreement.

Part 11 Waste Management

1. To pay the Waste Management Contribution to the County Council prior to the first Occupation of the first Dwelling and not to Occupy or permit Occupation of any Dwelling until the Waste Management Contribution has been paid to and received by the County Council in accordance with this Agreement.

Part 12 Transport

Travel Plan

1. To implement the Travel Plan following Commencement of Development.
2. To pay the Travel Plan Monitoring Fee to the County Council prior to Occupation of the 1st Dwelling and not to Occupy or permit Occupation of any Dwelling until the Travel Plan Monitoring Fee has been paid to the County Council.

Travel Packs

3. To elect in writing prior to Commencement of Development to either
 - (a) provide its own Travel Packs and to submit a sample Travel Pack to the County Council together with the County Council's administration fee of Five Hundred Pounds (£500.00) 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 Owners further covenant with the County Council to deliver one Travel Pack directly to each Dwelling upon first Occupation. FOR THE AVOIDANCE OF DOUBT if the County Council has not approved the Travel Pack prior to first Occupation of the first Dwelling then the Owner shall pay the Travel Packs Contribution to the County Council prior to first Occupation of the first Dwelling or
 - (b) in the alternative elect to comply with paragraph 4 below.
4. If the Owners so elect in accordance with paragraph 3, to pay 20% of the Travel Packs Contribution prior to first Occupation of the first Dwelling. Thereafter the remaining 80% of the Travel Packs Contribution shall be paid in 20% tranches on submission of evidence by the County Council to the Owners that all preceding payments of the Travel Packs Contribution have been spent or are about to be spent SAVE THAT the obligation to pay the Travel Packs Contribution shall apply up until the expiry of nine (9) months after the Occupation of the final Dwelling at which point the Owners shall no longer be obligated to comply with the provisions of this paragraph 4.
5. To promptly provide (no later than twenty eight (28) days after receipt of the written request) to the County Council upon written request full documentary evidence detailing Travel Packs issued under paragraph 3 if the Owner elected for option (a) as set out in paragraph 3.

Bus Passes

6. To either (a) provide up to two (2) Bus Passes for each Dwelling who complete and return the application forms provided in the Travel Pack within six (6) months of first Occupation of such Dwelling or in the alternative (b) to elect to comply with paragraph 7 below.
7. If the Owners so elect in accordance with paragraph 6 of Part 12 of this Schedule the Owners covenant with the County Council to pay 20% of the Bus Pass Contribution prior to first Occupation of the first Dwelling. Thereafter the remaining 80% of the Bus Pass Contribution shall be paid in 20% tranches on submission of evidence by the County Council to the Owners that all preceding payments of the Bus Pass Contribution have been spent or are about to be spent SAVE THAT the obligation to pay the Bus Pass Contribution shall apply up until the expiry of nine (9) months after the Occupation of the final Dwelling at

which point the Owners shall no longer be obligated to comply with the provisions of this paragraph 7.

8. To promptly provide (no later than twenty eight (28) days after receipt of the written request) to the County Council upon written request full documentary evidence detailing Bus Passes issued under paragraph 6 if the Owners elected for option (a) as set out in paragraph 6.

Local Highway Mitigation

9. The Owners covenant to pay the Local Highways Mitigation Contribution to the County Council as follows:

- 9.1 50% within 3 months of the Commencement of Development; and

- 9.2 50% on the first anniversary of the payment made pursuant paragraph 6.1 above

Sustainable Travel

10. The Owners covenant to pay the Local Sustainable Travel Mitigation Contribution to the County Council as follows:

- 10.1 50% within 3 months of the Commencement of Development; and

- 10.2 50% on the first anniversary of the payment made pursuant paragraph 7.1 above

Not to Occupy or permit Occupation of the relevant Dwellings until the respective instalments of the Local Sustainable Travel Mitigation Contribution has been paid to and received by the County Council in accordance with this Agreement

Part 13 Barkby Road Deed of Dedication

1. The Owners covenant to the County Council to submit for its written approval a detailed plan showing the extent of the Barkby Road Roundabout Dedication Land prior to Commencement of Development.
2. The Owners covenant to the County Council to enter into the Barkby Road Roundabout Deed of Dedication within 1 month of Commencement of Development.

Part 14 Construction Routing

1. The Owners shall not Commence Development until a Construction Traffic Routeing Scheme has been submitted to and agreed in writing by the County Council (which may be varied from time to time by agreement in writing between the Owners and the County Council) to ensure that the construction traffic coming to or leaving the Site in the course of construction of any part of the Development causes minimum disruption to the surrounding area upon entering or leaving the Site.
2. The Owners shall implement and monitor the approved Construction Traffic Routeing Scheme for the duration of the construction work at the Site.
3. The Owners shall comply at all times with the Construction Traffic Routeing Scheme.

Part 15 Monitoring

1. The Owners covenant with the County Council to pay the County Council Monitoring Contribution to the County Council prior to the first Occupation of the first Dwelling and not to Occupy or permit Occupation of any Dwelling until the County Council Monitoring Contribution has been paid and received by the County Council in accordance with this Agreement.

SCHEDULE 3

Borough Council's covenants with the Owners

The Borough Council covenants with the Owners as follows:

1. To use all sums received from the Owners under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owners and the Borough Council shall agree.
2. To notify the NHS Leicester, Leicestershire & Rutland ICB within 21 Working Days of receipt of the Healthcare Contribution that the Borough Council is in receipt of the Healthcare Contribution
3. To pay the Healthcare Contribution to the NHS Leicester, Leicestershire & Rutland ICB upon receipt of written confirmation from the NHS Leicester, Leicestershire & Rutland ICB that they will:
 - 3.1 use the Healthcare Contribution for the purposes set out in this Agreement;
 - 3.2 provide full details of the expenditure of the Healthcare Contribution within 28 Working Days of written request to the Borough Council or to the Owners PROVIDED THAT no such demand shall be made before the expiry of two years from the date of receipt of the Healthcare Contribution by the NHS Leicester, Leicestershire & Rutland ICB or three years from the date of payment whichever is the earlier and such demands shall not be made more frequently than once a quarter thereafter; and
 - 3.3 return any uncommitted part of the Healthcare Contribution to the Borough Council after the expiry of ten years from the date of receipt of the Healthcare Contribution by the Borough Council regardless of when the same was paid to the NHS Leicester, Leicestershire & Rutland ICB.
4. Upon written request of the party who paid the Healthcare Contribution to repay to such payer any uncommitted monies received by the Borough Council pursuant to paragraph 3.3 of this Schedule.
5. Save for the Healthcare Contribution, upon the written request of a party who paid any sum to the Borough Council to repay to that party any payment which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the Borough Council has properly resolved by way of member resolution or delegated authority to enter into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Borough Council of such payment.
6. Upon the written request of the Owners or any party who paid any sum to the Borough Council under this Agreement, to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.

SCHEDULE 4

County's Council's covenants with the Owners

1. The County Council covenants with the Owners as follows:
2. To use all sums received from the Owners under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owners and the County Council shall agree **SAVE THAT** the Local Highways Mitigation Contribution and the Local Sustainable Travel Mitigation Contribution may be aggregated from time to time by the County Council in response to other local highway and transport network measures in Syston to be secured in connection with further residential development within the locality of the Site.
3. Upon the written request of a party who paid any sum to the County Council to repay to that party any payment made to the County Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the County Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt of the final tranche of each respective contribution by the County Council of such payment.
4. To provide to the Owners or any party who paid a sum such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owners under this Agreement.

**THE COMMON SEAL OF
CHARWOOD BOROUGH COUNCIL**)
was affixing in the presence of:)
)

Authorised signatory

**THE COMMON SEAL OF
LEICESTERSHIRE COUNTY COUNCIL**)
was affixing in the presence of:)
)

Authorised signatory

Signed as a deed by)
TAYLOR WIMPEY UK LIMITED)
by its attorney)
in the presence of)

Signature of attorney

Signature of attorney

Signed as a deed by)
JOHN EDMUND MANSELL)
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by)
ROSEMARY KEEBER)
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by)
JANET PATRICIA TINDALL)
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address:

DRAFT