

Phase Specific Affordable Housing Delivery Plan	<p>means a plan for the delivery of Affordable Dwellings within a Phase or Development Parcel to be submitted to and approved by the Borough Council (and any amendments to such plan as may be agreed from time to time) which plan shall (save as otherwise agreed by the Borough Council) comply with the Site Wide Affordable Housing Delivery Plan and shall contain the following:</p> <ul style="list-style-type: none"> (g) the proposed distribution of Affordable Dwellings within the Phase (including within Development Parcels falling within the Phase where appropriate) or Development Parcel; (h) the balance of Affordable Housing to be delivered in subsequent Phases; (i) the proposed type and tenure mix of the Affordable Dwellings within the Phase or Development Parcel in question such that the type and tenure of the Affordable Dwellings across the whole Development shall be in accordance with the Affordable Housing Tenure Mix and Affordable Housing Size/Type Mix; and (j) the proposed rights of nomination by the Borough Council of persons to Occupy the Affordable Dwellings in that Phase or Development Parcel (if any) and shall require the Owner to enter into any necessary nomination agreement with the Borough Council to entitle the Borough Council to seek 100% nomination rights for the initial lets of the Affordable Dwellings for rent and a minimum of 75% nomination rights for subsequent relets.
Phasing Plan(s)	means the plan or plans showing the Phases and Development Parcels (where appropriate) of the Development such plan(s) to be approved pursuant to the relevant Condition or such revision thereof as may be agreed with the Borough Council.
Planning Permission	means the planning permission subject to Conditions to be granted by the Borough Council in respect of the Application the form of which is set out in Schedule 1.
Police Facility	means a room of suitable size to accommodate a police presence commensurate with the scale of the Development and broadly in line with the Broadnook Centre Brief to be provided in the Community

	Resource Centre for use by the Police Force to support local residents
Police Force Facility Lease	means a lease of the Police Facility to the Police Force the terms of which shall include those set out in the Police Force Facility Lease Terms
Police Force	means the Leicestershire Constabulary Police Authority and any successor authority to its functions for the area of the Application Site
Police Force Facility Lease Terms	means the terms of the Police Force Facility Lease set out at Annex 1 to Schedule 3
Premises	means the building(s), premises, playing field, playground and other space to be occupied by the Primary School.
Prepared and Serviced Site	means in relation to the Application Site or any part thereof a site such as may be specified in the relevant provision of this Deed and: <ul style="list-style-type: none"> (a) being of regular shape properly drained of even gradient and levelled free of contamination and noxious plant or weed growth and in the case of the Primary School Site this to be to the satisfaction of the County Council fenced and secured with all works to protect, remove or record existing archaeological remains to have been carried out in accordance with any agreed scheme, all rubbish has been removed, remediated to an appropriate standard, any necessary regulatory consents have been obtained at the Owner's cost and for and or any necessary protected species mitigation measures implemented at the Owner's cost to enable the intended works to be carried out and no interests, environmental physical constraints or encumbrances existing which shall materially affect or prevent the proposed use of the relevant land; and (b) having connections for mains water, foul and storm drainage, gas, electricity and telecommunications including broadband internet appropriate to the proposed use of the relevant land and adequate for the purposes of the prospective users of such land (and in the case of the Primary School sufficient to enable the installation of a sprinkler system) to a point 3 metres inside the boundary with the remainder of the Application Site to enable connections to be made thereto and with sufficient vehicular and pedestrian access

through the Application Site and connected to a public highway to a standard for construction access and thereafter prior to adoption use by the public and for service access

- (c) in respect of the Primary School Site the County Council having a right of access thereto prior to its Transfer

Primary School

means a school for educating children between the ages of four and eleven designed for a 3 Form Entry but initially constructed to cater for 2.73 Forms of Entry but which is capable of being extended to 3 Forms of Entry (630 places) to be provided on the Primary School Site at a cost not exceeding the Primary School Contribution unless such increased cost arises through a revision to the number of Dwellings requiring further school places to be funded by the Owners

Primary School Contribution

means the sum of Eight Million Three Hundred and Sixty One Thousand Two Hundred and Sixteen Pounds (£8,361,216.00) Index Linked whether payable by the Owners to the County Council in accordance with paragraph 1.10.(b) of Schedule 2 to be applied by the County Council to construct and equip the Premises for the Primary School on the Primary School Site in lieu of the provision of the Primary School by the Owners or being the total limit on the cost Index Linked to the Owners of providing and constructing the Primary School and broken down as follows:

Phase 1 (£4,372,893)

Phase 2 (£2,239,015)

Phase 3 (£1,749,308)

Primary School Phases

means each of the three construction phases for the Primary School with each phase being specified in the definition of Primary School Specification below

Primary School Site

means a Prepared and Serviced Site of 3 hectares to accommodate Premises for the Primary School to be located as shown on the Land Use Parameter Plan (appended at Schedule 10 as Plan 3) or such other Prepared and Serviced Site within the Application Site as the Borough Council, the County Council and the Owners shall agree that is centrally located to the dwellings it is taking pupils from

Primary School Site Transfer Terms

means the terms of transfer for the Primary School Site which shall include those set out in Annex 1 to Schedule 2.

Primary School
Specification

means the specification for the construction provision and equipping of the Primary School (as the case may be) which shall as so far as reasonably practicable be in accordance with the Broadnook Centre Brief and the standard of accommodation and equipment necessary to accord with the DFE Building Bulletin 103: Area Guidelines for Mainstream Schools and the standard of the external areas shall be in accordance with the specification for DFE guidelines to provide the Primary School in the following 3 phases

Phase 1 to include main hall library specialist teaching (appropriate on site special education provision/food/science/DT rooms) 7 classrooms group room staff room and office administration working spaces kitchen toilets for staff and pupils storage space including central plant server room and lifts secure outdoor hard play

Phase 2 to include 7 classrooms additional food/science/DT rooms studio room group rooms staff work room toilets and storage for staff and pupils

Phase 3 to include 5 classrooms small hall 2 group rooms toilets and storage for staff and pupils

PROVIDED THAT the cost to the Owners or County Council (arising from the Owners election) of providing the Primary School in accordance with such specification shall not exceed the Primary School Contribution Indexed to the date when construction of the Primary School is due to begin and for the avoidance of doubt where the Primary School cannot be delivered within the financial limits set by the Primary School Contribution the Owner and the County Council shall make such amendments to the Primary School Specification as are necessary to bring the same within the said financial limits of the Primary School Contribution.

Proper Officer

means the officer appointed from time to time by the Councils notified to the Owners in writing the holder of the post to be responsible for the Council's functions relevant to the particular context to which the term relates or an officer duly authorised on his or her behalf such officer to comply with responsibilities as set out within this Deed and in particular at para 1.8 of Schedule 11.

Provided

means when the relevant Affordable Dwelling has been:

- (a) Completed on a Prepared and Serviced Site to the reasonable satisfaction of the Borough Council as evidenced in writing pursuant to:
 - (i) the relevant Reserved Matters Approval; and
 - (ii) the relevant Phase Specific Affordable Housing Delivery Plan;
- (b) Transferred to a Registered Provider; and
- (c) Notification of the Transfer has been given to the Borough Council.

Public Realm Works

means those works which are to be carried out and completed by the Owners to the areas of publicly accessible open space around the Community Resource Centre and shown on Plan 3 at Schedule 10 subject however to the cost of the said works not exceeding the Public Realm Works Cap.

Public Realm Works Cap

means the sum of Seven Hundred and Fifty Thousand Pounds (£750,000.00)

Qualifying Persons

means persons or households who prior to occupation have been identified by the Borough Council, or Registered Provider or Homebuy Agent as in need of an Affordable Dwelling save that where reasonably possible to do so priority will be given to allocating Affordable Dwellings to those with a local connection based on residency (including recent residency), employment, family connections or strong associations with the parishes of Rothley, Wanlip, Birstall and Thurcaston & Cropston

Reasonable Endeavours

means that 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 has diligently pursued the following to the standard of that required of the relevant Party as set out below over a reasonable period of time (which may either be specified in the relevant obligation or in the absence of this such period of time as is reasonable in the circumstances) in order to achieve the desired result:

- (a) methods commercially and reasonably prudent and likely to achieve the desired result; and
- (b) in the event a first reasonable attempt at securing the result has failed then (unless

there are no reasonable alternatives) one further reasonable alternative such method of achieving the desired result.

PROVIDED THAT this shall not require any Party to sacrifice its own commercial interests, nor shall it require any Party to continue with such endeavours to comply if it is reasonable to conclude that all further efforts would be futile (but for the avoidance of doubt these provisions are subject to any specific agreed steps or time periods set out in or agreed pursuant to the obligation in question).

Red Hill Circle Highway Works

mean the highways and junction improvement works to the A6 Red Hill Roundabout within Leicester and part of the Leicester City Council's highways network

Red Hill Circle Highway Works Contribution:

means the sum of Three Hundred and One Thousand Two Hundred and Fifty Pounds (£301,250.00) Index linked to be paid by the Owner in order for the same to be spent by Leicester City Council to fund the Red Hill Circle Highway Works

Registered Provider

means a registered provider as defined in the Housing and Regeneration Act 2008 or any association or organisation from time to time permitted by law to provide Affordable Housing or such other registered provider as may be proposed by the Owners and approved by the Borough Council.

Reserved Matters Application

means the submission of any applications for approval of any matters reserved pursuant to a Condition.

Reserved Matters Approval

means an approval of a Reserved Matters Application.

Secondary School Contribution

means the sum of Six Million Eight Hundred and Forty Eight Thousand Six Hundred and Fifty Three Pounds and Ten Pence (£6,848,653.10) Index Linked for the provision of secondary school education at the Cedars Academy, Birstall or where it is demonstrated to the reasonable satisfaction of the parties hereto that it is not possible to expand accommodation at Cedars Academy for whatever reason the Secondary School Contribution may be expended at Rawlins Academy in order to provide additional capacity to accommodate pupil growth from the Development ("the Secondary School") involving the reconfiguration new build and/or

	extension of the existing classrooms in order to provide additional pupil capacity of up to 378 places to accommodate pupil growth from the Development
Shared Ownership Dwelling	means an Intermediate Dwelling provided under the terms of a Shared Ownership Lease by which the lessee of the Intermediate Dwelling (being also the Occupier of such Intermediate Dwelling then or on completion) obtains a share of the equity in an Intermediate Dwelling ranging between 25% and 75% from a Registered Provider who retains any remainder and in respect of which rent is payable on the remaining equity and which allows the lessee to purchase all of the remaining equity and "Shared Ownership" shall be construed accordingly.
Shared Ownership Lease	means a lease of a Shared Ownership Dwelling entered into with a Registered Provider to dispose of the Shared Ownership Dwelling on shared ownership lease terms within the meaning of section 70(4) of the Housing and Regeneration Act 2008.
Site Plan	means the plan attached hereto at Schedule 10 and labelled as Plan 1.
Site Wide Affordable Housing Delivery Plan	<p>means a plan for the delivery of the Affordable Dwellings within the Development to be submitted to and approved by the Borough Council (and any agreed amendments to such plan as may be agreed from time to time including as amended where appropriate by agreement to each of the Phase Specific Affordable Housing Delivery Plans) containing the following:</p> <ul style="list-style-type: none"> (a) the proposed quantum and distribution of Affordable Dwellings within each of the Phases or Development Parcel being not less than 16.36% of the total number of Dwellings to be erected thereon save that should the Owner seek a variation of the Site Wide Affordable Housing Delivery Plan by reference to a variation to the above percentage of Affordable Dwellings on a Phase the total number of Affordable Dwellings on the Development when completed shall not be less than 16.36% and the number of Affordable Dwellings within each Phase or Development Parcel shall not be less than 14%; and (b) the proposed size, type and tenure mix of the Affordable Dwellings within the Phases of the Development such that the type and tenure of

the Affordable Housing across the all Phases of the Development shall be in accordance with the Affordable Housing Tenure Mix and Affordable Housing Size/Type Mix.

Special Education Needs Contribution	means the sum of One Million and Eleven Thousand Six Hundred and Eighty Pounds and Thirty Pence (£1,011,680.30) Index Linked in order to fund the provision of special education needs accommodation at Ashmount School Loughborough or such other special needs schools or special needs resource facilities in other schools which will provide additional capacity to accommodate pupil growth generated by the Development including reconfiguration or expansion of existing County Council special needs schools or school based facilities.
Sport England Guidance	means design and cost guidance published by Sport England or any other body and/or successor body fulfilling the same functions.
Standard Conditions	means the Standard Commercial Property Conditions (Second Edition).
SUDs	means the sustainable urban drainage facilities designed to meet the drainage requirements of the Development
SUDs Maintenance Contribution	means the sum of Four Hundred and Eighty Seven Thousand Eight Hundred and Sixty Four Pounds (£487,864.00) Index linked to be paid to the Trust for the purpose of managing and maintaining the SUDs.
SUDs Strategy	means the written details of the SUDs including the timing of provision of the SUDs in conjunction with the Development
Surplus	A monetary sum equivalent to the amount of surplus profit (if any) over 20% of the gross development value of the Development
Tenure Blind	means, in relation to Affordable Dwellings, generally equivalent to Market Dwellings in terms of external appearance.
Traffic Regulation Contribution	means the sum of Twenty Two Thousand Five Hundred Pounds (£22,500.00) Index linked to be paid by the Owners to the County Council to be applied by the County Council for the introduction of traffic regulation measures to implement the Highway Works and to reduce the traffic speeds on the A6 and on Loughborough Road to include

	making any orders advertising and confirmation as well as measures to introduce and implement the order(s).
Transfer	means, unless specified otherwise in this Deed or the contrary intention appears, the transfer of the freehold interest in any part of the Application Site as a Prepared and Serviced Site, and: <ol style="list-style-type: none"> (a) in the case of the Primary School Site by way of freehold transfer to the County Council on terms that shall include the Primary School Site Transfer Terms; (b) in the case of the Travelling Showpeople Land a transfer of the leasehold interest by the Trust with covenants to ensure that it shall not be used other than to accommodate for the benefit of Travelling Showpeople.
Travel Packs	a pack produced by the County Council for each Dwelling and all Employees providing information on public transport and other means of travel to and from the Development other than the private motor car including an application form for two (2) Travel Passes per Dwelling or one (1) per Employee or in the alternative a pack produced by the Owners and first approved by the County Council and supplied by the Owners to the first Occupier of each Dwelling and all Employees
Travel Packs Contribution	means the aggregate amount to cover the County Council's cost of it providing a Travel Pack at a cost of Fifty Two Pounds and Eighty Five Pence (£52.85) per Dwelling and per Employee payable by the Owners to the County Council for the provision of Travel Packs by the County in accordance with the provisions of paragraph 4 of Schedule 4.
Travel Pass(es)	means up to two adult bus passes per Dwelling and one adult pass per Employee with a value of Three Hundred and Sixty Pounds (£360.00) (Index Linked) per Travel Pass (subject to demand) entitling the holder of each Travel Pass to travel free of charge on local bus services over a period of six months.
Travel Plan	means the framework and individual travel plan secured by way of a relevant Condition.
Travel Plan Coordinator	means a person appointed by the Owners in agreement with the County Council to be appointed

at the first Occupation of the Development and to carry out their duties until 1 year after Occupation of the final Dwelling whose responsibilities are:

- Obtaining and maintaining commitment and support from future occupiers of the Development towards sustainable travel.
- Promotion and coordination of site sustainable travel measures and initiatives to achieve the overall modal split targets identified in the Travel Plan.
- Promoting the use of car share schemes.
- Designing and implementing effective site marketing and awareness raising campaigns to promote the Travel Plan.
- Managing the dissemination of sustainable transport information via a public website to help promote travel by sustainable modes.
- Maintaining a database of sustainable travel related information relevant to the site.
- Acting as a single point of contact for Travel Plan related information.
- Liaising with the Borough Council, County Council and Highways England as appropriate.
- Liaising with relevant "third party" organisations and their respective travel plan coordinators.
- Liaising with public transport services.
- Promoting and Chairing a travel forum for the Development.
- Coordinating the necessary annual data collection exercise required to monitor and report on the effectiveness of the Travel Plan.
- Monitoring and reviewing the performance of sustainable travel measures, setting future modal shift targets in consultation with the Borough Council and County Council, identifying measures and initiatives to meet future targets.

Travel Plan Monitoring
Contribution

means a contribution in the sum of Eleven Thousand Three Hundred and Thirty Seven Pounds and Fifty Pence (£11,337.50) Index Linked payable by the Owners to the County Council for the

	monitoring of the Travel Plan in accordance with the provisions of paragraph 7 of Schedule 4.
Travelling Showpeople	means members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, education or health needs or old age have ceased to travel temporarily or permanently but excludes Gypsies and Travellers.
Travelling Showpeople Land	means up to a total of 0.4 of a hectare of land (such land to be Prepared and Serviced) within the Application Site to provide accommodation for Travelling Showpeople and shown generally on the Land Use Parameter Plan (appended at Schedule 10 as Plan 3).
Trigger Event	means the relevant restriction on or target number or percentage of Occupations of Dwellings (including Market Dwellings or Affordable Dwellings) or such other restriction or trigger as set out in or approved under any provision of this Deed or in or under any Condition, scheme, strategy or similar and the expression "Trigger Number" shall in each instance used be the number or percentage of Dwellings (including Market Dwellings or Affordable Dwellings) which corresponds to the relevant Trigger Event PROVIDED THAT where in any case the Trigger Event is changed by approval of the Borough Council (with the agreement of the County Council or Leicester City Council or any other party where they are the recipient whether directly or indirectly of the contribution or obligation) then the Trigger Event and Trigger Number for the purposes of this Deed shall be as the same shall be approved by the Borough Council and where relevant the County Council or Leicester City Council or other party.
UTC	Urban Traffic Controller means the provision of CCTV and associated infrastructure to help monitor and manage traffic
UTC Contribution	means the sum of Thirty Eight Thousand Six Hundred Pounds (£38,600.00) Index linked to be paid by the Owners to the County Council for the purposes of funding the installation of an urban traffic controller and CCTV to monitor and manage traffic at the A607/Melton Road signalised junction.
Viability Advisor	A consultant appointed by the Borough Council to

advise on the Viability Reassessment such consultant to be experienced in advising on the viability of similar development schemes to the Development

Viability Re-assessment A re-assessment of the viability of the Development to determine the extent of any Surplus adopting the methodology summarised in Annex 1 of Schedule 7 such re-assessment to be carried out in writing and determined in accordance with the relevant provisions of paragraph 7 of Schedule 7.

Wellbeing Navigator a senior member of the village management team responsible for the Extra Care Apartments at whose primary role is to connect with residents and bring together, as required, their support and networks with the aim of helping residents engage socially and arrange outings and activities, as well as support the introduction of more formal care services.

- 1.2 Where in this Deed reference is made to a clause, paragraph, schedule or plan it is to a clause, paragraph, schedule or plan in this Deed and unless the contrary is expressed, references within a schedule to a paragraph is a reference to a paragraph within that schedule.
- 1.3 Headings used in this Deed are an aid to interpretation only and do not form part of this Deed.
- 1.4 Except where expressly stated to the contrary a reference to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, modified or re-enacted.
- 1.5 Words incorporating the singular include the plural and vice versa and words importing any gender include every gender.
- 1.6 Words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.
- 1.7 References to the Owners and Developers and Mortgagee shall include reference to their successors in title and persons deriving title from them and their permitted assigns and references to the Borough Council, and the County Council shall include their statutory successors.
- 1.8 References to "Parties" shall mean the parties to this Deed and reference to "Party" shall mean any one of the parties (including relevant successors in accordance with the principles under paragraph 1.7 above).
- 1.9 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.

- 1.10 Any reference to an Act of Parliament shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.11 Where in this Agreement reference is made to any approval, consent, agreement or otherwise on the part of the Owners the said approval, consent or agreement shall be given by the First Owner or the Fifth Owner save unless the same relates to any matter that is specifically referable to development being carried out on any Phase or Development Parcel where the consent of the Owner who is also carrying out development on that Phase or Development Parcel will be required and who will not unreasonably withhold approval consent or agreement.

2 Statutory Provisions

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Section 278 of the 1980 Act and Section 1 of the Localism Act 2011.
- 2.2 The covenants, restrictions and requirements imposed upon the Owners and Developers under this Deed create planning obligations pursuant to Section 106 of the Act which bind the Application Site (and where expressly provided for in this Deed land within the red line of the Application Site but not shaded green where obligations arise in respect of such land but only to the extent of complying with such obligations including for the avoidance of doubt the Off Site PROW Improvement Scheme and the Artificial Grass Pitch) and are jointly and severally enforceable against the Owners and Developers to the extent that the covenants are given jointly by them to the Borough Council and the County Council save unless expressly stated to the contrary.

3 Conditionality

- 3.1 Save to the extent expressly stated to the contrary the obligations contained within the Schedules to this Deed shall only take effect on the Commencement Date otherwise the provisions of the remainder of this Deed take effect from the date hereof.

4 CIL

- 4.1 If, after the date of this Deed, a CIL is introduced that is applicable to the Development then the parties to this Deed will use reasonable endeavours to agree variations to this Deed as are considered reasonably necessary with the intent that:
- (a) the planning benefits secured by this Deed should continue to be secured and delivered; and
 - (b) the Owners should not be in a position where they are in a financially worse position because of CIL in respect of the obligations contained in this Deed than they would be if they performed the obligations in this Deed and no CIL has been introduced

save that for the avoidance of doubt this clause 4 shall apply to the Development authorised by the Planning Permission or an amending planning permission issued pursuant to Section 73 of the Act only and not to any other development that may be permitted on the Application Site hereafter

- 4.2 If after the date of this Deed a fresh planning permission is issued for the Application Site which attracts a CIL charge the Borough Council and County Council will seek where possible to avoid any double charging in respect of the Development both in terms of the said CIL charge and the obligations contained within this Deed to the extent that the fresh planning permission is bound by or the parties agree by deed that it shall be bound by this Deed.

5 Obligations of the Owners the Developers and the Mortgagee

5.1 The Owners and the Developers covenant with the Borough Council:

- (a) The Developers to pay to the Borough Council on completion of this Deed the reasonable legal costs of the Borough Council up to the amount of £() incurred in the negotiation, preparation and creation of this Deed;
- (b) The Owners shall comply with the obligations on their part contained in this Deed (including the Schedules hereto) at the times and in the manner provided therein;
- (c) The Owners shall notify the Borough Council no more than fourteen days before and no less than seven days in advance of the Commencement of each Phase and thereafter to confirm the date in writing to the Borough Council; and
- (d) The Owners shall notify the Borough Council of the reaching of any Occupation thresholds in relation to Dwellings mentioned in this Deed within 10 Business Days (Mondays to Fridays excluding bank holidays) of such thresholds being reached.

5.2 The Developers and the Owners covenant with the County Council:

- (a) The Developers to pay to the County Council on execution of this Deed by the County Council the reasonable legal costs of the County Council in the amount of £() incurred in the negotiation, preparation and creation of this Deed;
- (b) The Owners shall comply with the obligations on their part contained in this Deed (including the Schedules hereto) at the times and in the manner provided therein.
- (c) The Owners shall give notice to the County Council of those matters specified in clause 5.1(c) and (d) above.

- 5.3 The Developers covenant with the Borough Council and the County Council that they consent to the Owners entering into this Deed and that their interest is bound by and takes subject to the covenants and obligations contained herein but shall not (save as provided in clauses 5.1 and 5.2) have any liability under the terms of this Deed save unless

they acquire a legal interest in any part of the Application Site and are bound as successors in title to the Owner.

- 5.4 The Mortgagee covenants with the Borough Council and the County Council that they consent to the owners of the land over which they have a charge entering into this Deed but shall otherwise have no liability under this Deed save to the extent specified in Clause 6.1 (d) below.
- 5.5 The Owners covenant that they will not develop allow or cause or permit to be developed that part of the Application Site comprised within title number LT219669 until such time as the charge of HSBC Bank plc is redeemed and evidence of redemption has been supplied to the Borough Council and the County Council.

6 Enforceability and Enforcement of Obligations

- 6.1 The obligations contained in this Deed shall not be binding upon nor enforceable against:
- (a) subject to paragraph 3 of Schedule 7 in the case of the Affordable Dwellings, any individual owner, tenant or occupier of any individual Dwelling and their successors in title and their mortgagee or chargee (or any receiver including any receiver appointed to the Law of Property Act 1925) or an administrative receiver appointed by such mortgagee or chargee and any person appointed under any security documentation to enable such mortgagee or chargee to release its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) and any person who is a successor in title or derives title through or under any such mortgagee or chargee (or such receiver)
 - (b) any statutory undertaker or other person who acquires any part of the Application Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services within or from the Application Site and for no other purpose.
 - (c) any person whose interest in the Application Site is in the benefit of a covenant or easement.
 - (d) the Mortgagee save unless the Mortgagee takes possession of any part of the Application Land pursuant to their charge and carry out or cause or permit any development to be carried out on such land while they remain in possession save that this exemption does not apply to any party acquiring any land within the Application Site pursuant to a power of sale exercised by the Mortgagee.
- 6.2 No person shall be liable for any breach of the planning obligations or other provisions contained in this Deed occurring after it has parted with its interest in the Application Site or the part in respect of which such breach occurs (but without prejudice to the liability of such person for any breach occurring prior to its parting with such interest).
- 6.3 Where either of the Borough Council or the County Council become aware of a breach or non-compliance with a provision of this Deed

affecting them they shall be entitled to serve notice of such breach upon the Owners with a copy to the council not affected and the notice of breach shall state the nature of the breach, the steps required to remedy the breach and a reasonable timescale for remedying the breach PROVIDED THAT this shall be without prejudice to other rights or remedies of the Borough Council, or the County Council.

- 6.4 The Owners shall within 10 Business Days of receiving the said notice (without prejudice to or limitation of any other actions open to it) give written notification to the Borough Council, or the County Council (as the case may be) of its response to the notice including any claim that it will remedy the breach within the stated timescale, that the timescale is too short or that it rejects the notice for the reason that no breach has occurred and explanation of why it believes this to be case.
- 6.5 The Trustees of the Charles Palmer-Tomkinson Children's Settlement enter into this Deed as trustees and shall have no personal liability for the obligations contained herein whatsoever and the liability of the said Trust shall be limited to the assets of the Trust including those parts of the Application Site which they own as trustees.
- 6.6 In the event of a dispute arising regarding any notice of breach under this Deed the matter shall be determined through the Dispute Resolution Procedure save that this shall not preclude any party's right to pursue any matter relating to any breach through the Courts.

7 Monitoring Information and Monitoring Costs

- 7.1 The Owners shall prepare and provide an annual return ("Annual Monitoring Return") detailing for the period of 12 months prior to the date of the relevant annual return the performance and satisfaction of the relevant obligations under this Deed such report to include as a minimum the following matters:
 - (a) number of Dwellings Completed and Occupied at the date of the Annual Monitoring Return;
 - (b) number of Affordable Dwellings completed (including tenure) to date;
 - (c) mix of Dwellings (according to the number of bedrooms) completed;
 - (d) infrastructure provided – social, green, physical;
 - (e) employment space completed (m2);
 - (f) retail space (Class A1-A5 use) completed (m2);
 - (g) number of jobs/businesses on Site (to the extent reasonably ascertainable);
 - (h) details of all payments made under this Deed, including the amount (principal sum and indexation and interest stated separately) and date of payment;
 - (i) (to the extent not covered by (a) to (h) above) the obligations in this Deed that have fallen due and confirmation of compliance with the same; and

- (j) details of which Occupiers have been provided with a Travel Pack and Travel Passes in accordance with the relevant provisions of this Deed.
- 7.2 The Owners shall submit the Annual Monitoring Return to the Borough Council:
- (a) in the case of the first return on or before the 30th day of April first occurring after the date 9 months following the date of Commencement;
 - (b) in the case of each subsequent return on or before the 30th day of April in each year during which the Development is being implemented; and
 - (c) in the case of the final return on or before the 30th day of April in the year following the completion of the Development.
- 7.3 The Owners shall pay to the Borough Council the Borough Council's monitoring costs Index Linked of £98,026.50 as follows:
- (a) £2,513.50 prior to Commencement
 - (b) £2,513.50 prior to Occupation of the 50th Dwelling
 - (c) ££11,310.75 prior to Occupation of 275th Dwelling
 - (d) ££11,310.75 prior to Occupation of 500th Dwelling
 - (e) ££11,310.75 prior to Occupation of 725th Dwelling
 - (f) ££11,310.75 prior to Occupation of 950th Dwelling
 - (g) ££11,310.75 prior to Occupation of 1175th Dwelling
 - (h) ££11,310.75 prior to Occupation of 1400th Dwelling
 - (i) ££11,310.75 prior to Occupation of 1625th Dwelling
 - (j) £13,824.25 prior to Occupation of 1900th Dwelling or any of the last 10 Dwellings if less than 1900
- 7.4 The Owners shall not Commence the Development or (as the case may be) Occupy more than the number of Dwellings specified in clauses 7.3(b) – (j) unless and until it has paid to the Borough Council the relevant instalment of the Borough Council's monitoring costs.
- 7.5 The Owners shall pay the County Council's monitoring costs Index linked of Twenty Thousand Pounds (£20,000.00) to the County Council as follows:
- (a) 20% prior to Commencement
 - (b) 20% prior to Occupation of the 500th Dwelling
 - (c) 20% prior to Occupation of 1000th Dwelling
 - (d) 20% prior to Occupation of 1500th Dwelling
 - (e) 20% prior to Occupation of 1900th Dwelling or any of the last 10 Dwellings if less than 1900

- 7.6 The Owners shall not Commence Development or (as the case may be) Occupy more than the number of Dwellings specified in clauses 7.5(b) - 7.5(e) unless and until it has paid to the County Council the relevant instalment of the County Council's monitoring costs.

8 Borough Council's Covenants

- 8.1 The Borough Council covenants with the Owners to comply with the obligations on its part contained in this Deed (including in the Schedules hereto) at the times and in the manner provided therein.

9 County Council's Covenants

- 9.1 The County Council covenants with the Owners to comply with the obligations on its part contained in this Deed (including in the Schedules hereto) at the times and in the manner provided therein.

10 Indexation

- 10.1 All Contributions referred to in this Deed payable by the Owners (including any caps on contributions or liability including the value of works or buildings to be provided), shall be adjusted by an amount equal to the percentage change in the relevant Index between the date of the Index figure last published on or before the Borough Council's Plans Committee determining the Application that met on 17th March 2020 and the Index figure last published at the date on which the relevant sum is payable (or paid if earlier) or relevant cap or limit or liability is being applied as specified in this Deed.

11 VAT

- 11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof.
- 11.2 The Owners hereby acknowledge and agree that if at any time VAT is required to be paid in respect of any Contribution then to the extent that VAT had not been previously charged in respect of that contribution the Borough Council and County Council shall issue a VAT invoice to the Owners and the VAT shall be paid accordingly save that such invoice will be issued in a timely manner to enable the Owners to recover VAT so paid where appropriate.

12 Notices

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- 12.1 Any notice or other communication to be given under or in connection with this Deed shall be in writing, which for this purpose shall not include e-mail and should be addressed as provided in clause 12.4.
- 12.2 Where sent by post, the notice or communication shall be sent by registered post or such other form of postage which requires a signature upon delivery and any other form of postage shall not be effective for the purposes of this Deed.
- 12.3 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:
- (a) if delivered by hand, upon delivery at the relevant address except that where any such notice or other communication is delivered by

hand after 4 p.m. such notice or other communication shall be deemed to be received at 9.00 a.m. on the next following Business Day; and

- (b) if sent by post, at 9.00 a.m. on the second Business Day after the date of posting PROVIDED THAT if clear evidence is produced by the recipient that the notice or communication was delivered after the second Business Day following its posting, then the date of delivery shall be the actual date of delivery.

12.4 Subject to clause 12.5 the address, relevant addressee and reference for each party are:

For the Borough Council:

Address: Charnwood Borough of Southfield Road Loughborough
Leicestershire LE11 2TN or the relevant Head Office from time
to time where the Borough Council no longer occupies this
address

Relevant addressee: Head of Planning & Regeneration; and separately Head
of Strategic Support;

Reference: P/16/1660/2

For the County Council:

Address: Leicestershire County Council of County Hall Leicester Road
Glenfield Leicester LE3 8RA

Relevant addressee: Head of Planning and Historic and Natural Environment;

For the Developers and the Owners at the addresses at the start of this Deed to any other address that the Developers or Owners may notify in writing to the Borough Council and the County Council from time to time.

12.5 A Party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than 5 clear Business Days after the date on which notice is received or deemed to be received, the fifth Business Day after notice of any such change is given.

13 Determination Of Disputes

13.1 Subject always to clause 13.9 if any dispute arises relating to or arising out of the terms of this Deed, either Party may give to the other Party or Parties a Determination Notice.

- 13.2 For the purposes of this Deed a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in the area to which the dispute relates.
- 13.3 The Specialist shall be appointed by agreement between the Parties (and who is independent of and has not either acting directly or as an employee or agent of an appointed company that has previously advised any Party in relation to the Application and/or the Development) or if within 10 Business Days after service of the Determination Notice the Parties have been unable to so agree then on the application of any of the Parties by such a person as the Parties shall agree to be appropriate having regard to the nature of the dispute or difference in question.
- 13.4 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 13.3.
- 13.5 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being the lead accredited one for the area of work covered by the relevant Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 13.6 The Specialist is to act as an independent expert and:
- (a) each party may make written representations within 10 Business Days of his appointment and will copy the written representations to the other party;
 - (b) each party is to have a further 10 Business Days to make written comments on the other's representations and will copy the written comments to the other party;
 - (c) the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - (d) the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - (e) the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - (f) the Specialist is to use all reasonable endeavours to publish his decision within 25 Business Days of his appointment.

- 13.7 Except where stated to the contrary in this Deed, responsibility for the costs of referring a dispute to a Specialist under this clause 13, including costs connected with the appointment of the Specialist, the Specialist's own costs and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 13.8 The Specialist's decision will (save in the case of fraud or manifest error) be final and binding on the Parties save that no decision taken pursuant to this clause shall prevent or restrict the County Council in the exercise of its statutory duty to ensure sufficient school places are provided locally (or appropriately in the case of children and young people with special education need) to meet the educational needs of children and young people within the Development
- 13.9 This clause 13 shall not apply to disputes relating to matters of law, or the construction or interpretation of this Deed which shall only be subject to the jurisdiction of the courts of England.

14 Contracts (Rights of Third Parties) Act 1999

- 14.1 A person who is not a Party to this Deed shall not have any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999. For the avoidance of doubt this shall be the case even where the terms are expressed to be for the benefit of another party, nor shall any such third party have any rights of approval in regard to or anywhere over any future variations to this Deed.

15 Miscellaneous

- 15.1 Each clause, sub-clause or schedule shall be separate distinct and severable from each other to the extent only that if any clause, sub-clause or schedule becomes or is invalid because of a change of circumstances or any other unforeseen reasons including illegality or if any one or more of such clause, sub-clause or schedule 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 the Parties shall each co-operate and act reasonably so as to agree necessary modifications in such circumstances so as to give effect to the intentions of the original provisions and to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause or schedule contained herein.
- 15.2 In the event of the planning obligations contained in this Deed being modified a note or memorandum thereof shall be endorsed upon this Deed together with an appropriate Deed of Variation being completed.
- 15.3 If the Planning Permission shall expire before the Development has begun within the meaning of Sections 91, 92 or 93 of the 1990 Act or is quashed or revoked or is otherwise withdrawn without the consent of the Owners or its successors in title this Deed shall have no further effect.
- 15.4 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop the Application Site or any part of it in accordance with a planning permission (other than the Planning Permission) granted by

the Borough Council or by the relevant Secretary of State on appeal or by reference to him after this date save unless in the case of a permission granted pursuant to Section 73/73A of the 1990 Act or any permission granted pursuant to a planning application for a re-plan of any part of the Application Site or plot substitutions will be bound by the terms of this Deed unless the Borough Council or the County Council expressly require another deed to be entered into in respect of such permission.

- 15.5 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Borough Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

16 Approvals by the Parties

- 16.1 Where an Approval is required by the Owners from the Borough Council and/or the County Council (or vice versa where an approval, agreement, consent, authority, confirmation or expression of satisfaction is required by any such Party from the Owners or Developers) under the terms of this Deed such Approval must be in writing unless expressly stated otherwise within this Deed and shall not be unreasonably withheld or delayed (having due regard to the Borough Council's or (as the case may be) the County Council's respective statutory duties and functions).
- 16.2 Where it is provided in this Deed that an Approval is required by any of the Parties and a timescale for such Approval being given is not specified, the relevant provision shall be deemed to be subject to a proviso that the Party in receipt of the submission and/or request for Approval shall proceed expeditiously to consider such submission and/or request and if a decision is not issued within a period of 30 Business Days (or such extended period pursuant to Clause 16.4 below) following the date of the submission or request for the Approval in question, then the matter may be referred to a Specialist for determination pursuant to the Dispute Resolution Procedure.
- 16.3 Where any Party refuses to give an Approval then reasons for that decision shall at the request of any other Party be provided in writing.

~~16.4 For the purposes of Clause 16.2, where it would be reasonable in the circumstances for the period of time for an Approval to be extended, a Party may request a reasonable extension and such extension shall be granted where reasonable to do so in all the circumstances having regard in particular to the complexity of the Approval required, any additional information reasonably requested, progress made, the duty of the Parties under Clause 19 and the extent of any other Approvals being sought from the same Party at the same time under this Deed.~~

17 Waiver

- 17.1 No waiver (whether expressed or implied) by the Borough Council, the County Council or Owners of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall

constitute a continuing waiver and no such waiver shall prevent the Borough Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

18 Change in Ownership

18.1 The Owners agree with the Borough Council to give the Borough Council written notice of any change in Ownership of any of its interests within the red line boundary of the Application Site (with the exception of individual Dwellings or public highways) occurring before all the obligations under this Deed have been discharged such notice to be provided within 10 Business Days of the change in Ownership and shall give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site or unit of Occupation purchased by reference to a plan.

19 Duty to act reasonably and in good faith

19.1 The Parties agree with one another to act reasonably and in good faith in the fulfilment of the obligations in this Deed.

20 Jurisdiction

20.1 This Deed is governed by and interpreted in accordance with the laws of England and the Parties submit to the non-exclusive jurisdiction of the courts of England.

21 Delivery

21.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

In witness whereof the Parties hereto have executed this Deed on the day and year first before written.

