DATED 8th APRIL **2014**

JS BLOOR (MEASHAM) LIMITED (1)

and

HINCKLEY & BOSWORTH BOROUGH COUNCIL (2)

- and -

LEICESTERSHIRE COUNTY COUNCIL (3)

PLANNING AGREEMENT

Pursuant to Section 106 Town and Country Planning Act 1990
relating to residential development on land to rear of
Dragon Lane Newbold Verdon

Hinckley and Bosworth Borough Council
The Hub
Rugby Road
Hinckley
LE10 0FR

THIS AGREEMENT is made the 8th day of APRIL Two Thousand and Fourteen

BETWEEN:

1. **JS BLOOR (Measham) Limited (Co. Reg. No. 511568)** of Ashby Road Measham Swadlincote Leicestershire DE12 7JP ("the Owner"); and

2. **HINCKLEY & BOSWORTH BOROUGH COUNCIL** of the Hub Rugby Road Hinckley LE10 0FR ("the Borough Council")

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

RECITALS:

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

B. The County Council is a local planning authority and is responsible for the provision of waste disposal transport and education services for the area in which the Application Land is situated

C. The Owner is the freehold owner of the Application Land which is registered at the Land Registry under Title Number LT446554

D. The Owner and Herbert Anthony Milner Patricia Gladys Milner and Paul Wilfred Milner and the Borough Council and the County Council entered into an agreement dated 19 March 2012 ("the First Agreement") which contained covenants and which was entered into pursuant to planning application reference 11/00489/FUL ("the First Permission")

E. The First Agreement contained an obligation (clause 3.8.3) for the transfer of the On Site Open Space Area to the Parish Council and on 19 March

2012 the Owner and Herbert Anthony Milner Patricia Gladys Milner and Paul Wilfred Milner and the Parish Council entered into an agreement relating thereto ("the Parish Council Agreement")

F. There was Commencement of Development pursuant to the First Permission in November 2012

G. The Owner has applied to the Borough Council for planning permission under reference 13/00905/FUL ("the Current Application") to carry out the Development and the parties hereto have agreed to enter into this Agreement to secure the planning obligations contained in it

H. It is agreed between the parties hereto that some of the covenants set out in the First Agreement shall be dealt with in this Agreement as set out in The Third Schedule hereto and the obligations in this Agreement shall supersede the obligations in the First Agreement to the extent set out in this Agreement

I. The Borough Council has resolved to grant planning permission for the Development subject to conditions and subject to the making of this Agreement without which planning permission would not have been granted

J. The parties hereto acknowledge that elements of the development authorised by the First Permission are also included in the Current Application

1. **DEFINITIONS AND INTERPRETATION**

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

"Act" the Town & Country Planning Act 1990 (as amended)

"Acceptance Notice"	means a notice or notices in writing given by a Registered Provider and/or the Borough Council to the Owner pursuant to clause 3.1.4 and specifying which of the Remaining Affordable Dwellings (that have been notified to it in an Availability Notice) they wish to purchase
"Affordable Dwelling/s"	thirty seven units which have been or are to be constructed as part of the Development in the locations as shown on the Site Plan pursuant to the First Permission together with the three additional units authorised to be constructed pursuant to the Planning Permission in the locations shown on the Site Plan and those forty units in total shall include the following; i) twenty one (21) of the Affordable Dwellings in total as Social Rented Dwellings; and ii) nineteen (19) of the Affordable Dwellings in total as an Intermediate Affordable Dwellings or such other tenure provision as may be agreed in writing with the Borough Council
"Affordable Housing"	has the meaning given to it in Annex 2 of the National Planning Policy Framework March 2012 or any guidance which may replace it
"Affordable Housing Provider"	means either: i) a social landlord registered with the Homes and

	Communities Agency (formerly the Housing Corporation) under the Housing and Regeneration Act 2008; or
	ii) any other housing provider approved in writing by the Council
"Affordable Housing Scheme"	means the scheme provided and agreed pursuant to the First Agreement
"Affordable Housing Scheme"	means the scheme provided and agreed pursuant to the First Agreement
"Application Land"	means the land shown edged red on the Site Plan
"Availability Notice"	means a notice or notices in writing given by the Owner to both Registered Providers and to the Borough Council pursuant to clause 3.1.3 and notifying them of each of the Remaining Affordable Dwellings that is offered for sale to them and identifying the plot by reference to a plan and whether a Social Rented Dwelling or Intermediate Affordable Dwelling
"Borough Council Monitoring Costs"	means in respect of the Off Site Open Space Contribution 2% of the value of that Contribution towards the Borough Council's costs of monitoring compliance with the obligations of the Owner
"Bus Passes"	means two adult bus passes entitling the holder of the bus pass to travel free of charge on local bus services for a period of six months
"Chargee"	means any mortgagee or chargee of the Affordable

	Housing provider or the successors in title to such Mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee pursuant to the Law of Property Act 1925 or otherwise
" Civic Amenity Contribution "	means the sum of **£376** (Three Hundred and Seventy-Six pounds) adjusted in accordance with the provisions of the First Schedule payable to the County Council under clause 4.1 hereof towards the improvement and increase in capacity at Barwell Civic Amenity Site, Stapleton Lane, Barwell
"Commuted Sum"	Means the amount payable to the Borough Council in respect of each Remaining Affordable Dwelling sold on the open market under clause 3.1.4 and ascertained by application of the Commuted Sum Calculation
" Commuted Sum Calculation "	means a calculation based on the following formula : RV 100% MH = Residual value with 100% market housing RV AH = Residual value with x% affordable housing (% as set out in Policy 15 of Core Strategy) Equivalent commuted sum = RV 100% minus RV AH
"Contracted"	Means entering into a new contract or varying an existing contract dated 18 June 2012 between Bloor Homes Limited and Midland Heart Limited for the sale to Midland Heart Limited of the Remaining

	Affordable Dwellings
"County Council Monitoring Costs Contribution"	means £250.00 (Two Hundred and Fifty Pounds) or 0.5% of the value of the total contribution (whichever is the greater) adjusted in accordance with the provisions of the First Schedule per obligation in favour of the County Council towards the County Council's costs of monitoring compliance with the obligations contained in this Agreement
"Development"	the development authorised by the Planning Permission
"Dwelling/s"	means any dwelling built pursuant to the Planning Permission and whether an Affordable Dwelling or otherwise and whether a house or a flat or otherwise
"High School Sector Contribution"	means the sum of £14,300.93 (Fourteen Thousand Three Hundred pounds and 93 pence) adjusted in accordance with the provisions of the First Schedule] payable by the Owner to the County Council under clause 4.1 hereof towards the provision and improvement of educational facilities at Market Bosworth High School or any successor educational facilities
"Intermediate Affordable Dwellings"	means homes (in the locations shown coloured blue on the Site Plan) for sale and rent provided at a cost above social rented but below market levels subject to the criteria of Affordable Housing contained within in Annex 2 of the National Planning and Policy Framework (March 2012). It can include shared equity and other low cost homes for sale and intermediate rent

	but not affordable rented housing (as defined in Annex 2 of the National Planning and Policy Framework (March 2012))
"Market Dwelling/s"	means any dwelling constructed as part of the Development for sale lease or other disposal on the open market which is not an Affordable Dwelling
"Occupation"	means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include i) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or ii) the use of any Dwellings for the marketing of the Development; or iii) the storage of plant and materials and "Occupy" and "Occupied" shall be construed accordingly
"Off-Site Open Space Contribution"	means the sum of Fifty Eight Thousand and Ninety Three Pounds and Twenty Pence (£58,093.21) adjusted in accordance with the provisions of the First Schedule payable by the Owner to the Borough Council under clause 3.1.9 hereof comprising the sum of Thirty One Thousand Nine Hundred and Fifty Seven Pounds and Twenty Pence (£31,957.20) in respect of the improvement of off-site open space provision at Alans Way Newbold Verdon ("the Provision Sum") and the sum of Twenty Six

	Thousand One Hundred and Thirty Six Pounds (£26,136.00) in respect of the maintenance of such off-site open space ("the Maintenance Sum")
"On Site Open Space Area"	means the area/s of equipped and unequipped informal open space to be provided by the Owner within the Development in accordance with the Open Space Area Scheme and shown shaded green on the Plan attached hereto
"On Site Open Space Area/s Maintenance Contribution"	means the sum of Eighty Five Thousand Nine Hundred and Fourteen Pounds and Twenty Pence (£85,914.20) adjusted in accordance with the provisions of the First Schedule payable by the Owner to the Borough Council for the maintenance of the On Site Open Space Area/s in accordance with the provisions of clause xxx hereof comprising the sum of Fifteen Thousand Nine Hundred and Twenty One Pounds and Twenty Pence (£15,921.20) towards the maintenance of the On Site Open Space Area and the sum of Sixty Nine Thousand Nine Hundred and Ninety Three Pounds (£69,993.00) towards the maintenance of on site children`s equipped play space
"On Site Open Space Scheme"	means the scheme originally required by the First Agreement and to be submitted by the Owner to the Borough Council pursuant to clause 3.1.10 hereof
"Open Market Value"	has the meaning given to it in Practice Statement 42 of the Royal Institute of Chartered Surveyors Appraisal and Valuation Manual (as revised May 2011) or any

	further update or variation thereto
"Planning Application"	means the application submitted to the Borough Council by the Owner under reference 13/00905/FUL for the for the substitution of house types and the provision of additional dwellings as part of development authorised under planning permission 11/00489/FUL
"Planning Permission"	means the planning permission to be granted pursuant to the Planning Application in accordance with the draft attached in the Second Schedule subject to conditions pursuant to the granting of permission
"Public Transport Measures"	means i) Bus Passes ii) Travel packs
"Remaining Affordable Dwellings"	means those Affordable Dwellings being seven units in number shown edged green on the Site Plan (comprising five Intermediate Affordable Dwellings and two Social Rented Dwellings) the freehold interest in which has not at the date hereof been transferred to an Affordable Housing Provider
"Social Rented Dwellings"	means dwellings (in the locations shown coloured red on the Site Plan) available at a Target Rent as determined through the national rent regime in accordance with proposals set out in the Three Year Review of Rent Restructuring (July 2004) which was implemented as policy in July 2006

"Shared Equity Dwelling"	Means an Intermediate Affordable Dwelling of a type to be sold at 75% Open Market Value (with the balance of 25% held by the Owner on terms of disposal to be agreed in writing between the Owner and the Borough Council prior to disposal thereof with the balance being secured by means of a legal mortgage thereon
"Site Plan"	means the plan attached to this agreement
"Travel Pack"	means a pack of information approved by the County Council to be supplied by the Owner containing details of local walking and cycling routes local bus services/stops/timetables Bus Pass application forms shops and other local amenities and details of any community transport car-sharing or car club schemes operating in the vicinity of the Application Land

1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa

1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

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

1.6 Covenants made hereunder:

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

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

1.7 The expression `Owner` shall where the context so admits include its respective successors and assigns.

2. **GENERAL PROVISIONS**

Statutory Authority

2.1 This Agreement and each of the covenants given by the Owner contained herein are planning obligations and are made pursuant to Section 106 of the Act and the Agreement is entered into by the Borough Council and the County Council pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000

2.2 The covenants by the Owner contained herein shall be enforceable by either or both the County Council and the Borough Council except where the obligation is expressed as a covenant made solely with the County Council or the Borough Council in which case such obligation shall be enforceable only by that authority

2.3 This Agreement is a local land charge and shall be registered as such

Liability

2.4 The covenants given by the Owner contained herein are made with the intent that the covenants will bind the Application Land and be binding on and enforceable against its successors in title or assigns and subject to

Clause 2.4 those deriving title under the Owner PROVIDED TIIAT without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach

2.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply

2.4 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Application Land constructed pursuant to the Planning Permission having a roof, windows and doors and being in a state of readiness for occupation or against statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant

2.5 In the event that the Owner disposes of its interest in the Application Land or any part thereof (other than a disposal to a purchaser of an individual Dwelling) it shall within fourteen days of such disposal give written notice of the name and address of its successors in title to the Borough Council and the County Council together with sufficient details of the land included in the disposal to allow its identification

2.6 No mortgagee of the Application Land (or any part) shall be bound by the obligations in or be liable under this Agreement except as mortgagee in possession and for the avoidance of doubt no mortgagee of an individual Market Dwelling, whether in possession or otherwise, shall be bound by the obligations in or be liable under this Agreement

Contingencies

2.6 The covenants contained in Clauses 3 and 4 (save for Clause 3.1.3 and 3.1.14 and 3.1.15 and4.3 and 4.4) shall be conditional upon the grant of Planning Permission

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

Determination by Expert

2.8 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner the Borough Council or the County Council (or any of them) concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms

2.8.1 The person to be appointed pursuant to Clause 2.9 shall if possible be a person having ten years or more relevant post-qualification experience of

the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute

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

2.8.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;

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

2.8.2.3 the expert shall be bound to have regard to the said submissions and representations;

2.8.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;

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

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

VAT

2.9 In the event that the provision by the Owner to the Borough Council the County Council or other body of any land or buildings or infrastructure or matters pursuant to this Agreement is a taxable supply for the purposes of the legislation relating to Value Added Tax in respect of which any Value

Added Tax should become payable then the Borough Council the County Council or other body in receipt of such supply shall pay to the Owner all such Value Added Tax upon receipt from the Owner of a Value Added Tax invoice therefore and the Owner shall endeavour to ensure that the timing of such invoice or invoices within any four week period shall be such as to minimise the period between settlement of the invoice and recovery of the tax

Time Periods

2.10 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owner and the Borough Council and/or the County Council (as the case may be) SAVE THAT any party to this Agreement who requires time to be of the essence in any period extended shall serve notice on any other relevant party stating that time is of the essence in relation to any time period so extended

Approvals

2.11 For the purposes of this Agreement where a party is required to make a request give confirmation approval or consent express satisfaction with agree to vary or to give notice of any matter such request confirmation approval consent expression of satisfaction agreement to vary or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed

Notices

2.12 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing and:

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

2.12.2 in the case of the County Council address to the County Solicitor

2.13 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting

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

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

Void Provisions

2.15 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties

No Fetter of Discretion

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

Effect of any Waiver

2.17 No waiver (whether express or implied) by the Borough Council and/or the County Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Borough Council and/or the County Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

General Requirement to Co-operate

2.18 Without prejudice to its statutory duties the Borough Council the County Council and the Owner shall all act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified

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

3.1 The Owner covenants with the Borough Council as follows:

Affordable Housing

3.1.1 To construct or procure the construction of the Remaining Affordable Dwellings as part of the Development in accordance with this Agreement

3.1.2 Not to permit the Occupation of more than 102 Market Dwellings constructed but not yet Occupied pursuant to the First Permission or to be constructed pursuant to the Planning Permission until the Remaining Affordable Dwellings have been constructed and are available for Occupation

3.1.3 Not earlier than a period of 15 days from the date of this Agreement the Owner shall serve an Availability Notice for the freehold interest in those Remaining Affordable Dwellings which have not at the expiry of the said period of 15 days been Contracted to be sold to Midland Heart Limited

3.1.4 If no Acceptance Notice has been received within 45 days from the date of the Availability Notice or if an Acceptance Notice was received within 45 days but a contract for sale has not been entered into in respect of such of the Remaining Affordable Dwellings as specified within such Acceptance Notice within 75 days of the date of the Availability Notice then the Owner may offer the Remaining Affordable Dwellings for sale on the open market free of the restrictions of this Agreement and shall pay the Commuted Sum in respect of each such Remaining Affordable Dwelling to the Borough Council within five working days of the date when each Remaining Affordable Dwelling is offered for sale on the open market by the Owner or the date when the amount of the Commuted Sum ascertained by the Commuted Sum Formula has been agreed by the Owner and the Borough Council (both parties to act diligently) or it has been determined in accordance with clause 2.9 of this Agreement (whichever is the later)

PROVIDED ALWAYS THAT;

a) The Owner shall notify the Borough Council in writing and on the date when each and any of the Remaining Affordable Dwellings is offered for sale on the open market and

b) The Owner shall at its discretion where any of the Remaining Affordable Dwellings are Intermediate Affordable Dwellings provide such dwellings as Shared Equity Dwellings and

c) The Owner shall notify the Borough Council in writing accordingly and once all Remaining Affordable Dwellings are sold the Owner shall supply to the Borough Council a plan identifying the tenure and location of the Remaining Affordable Dwellings that have been sold under this sub clause

3.1.5 Any transfers under Clause 3.1 shall contain the following provisions:

3.1.5.1 the grant and reservation by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Dwellings and the remainder of the Dwellings constructed or to be constructed as part of the Development

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

3.1.6 To provide that the Affordable Dwellings (but not any of those sold on the open market pursuant to sub clauses 3.1.4 above) shall remain available as Intermediate Dwellings and Social Rented Dwellings provided that this provision shall not be binding on:

a) any present or future mortgagee or Chargee of any of the Affordable Dwellings or

b) any receiver appointed by such a mortgagee or Chargee or manager

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

d) a lessee under a Shared Ownership lease of an Affordable Dwelling or a mortgagee or chargee of a Shared Ownership lease granted in respect of an Affordable Dwelling

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

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

3.1.7 The Owner shall notify the Borough Council in writing;

i) within 14 days of the date the date when [102] of the Market Dwellings have been Occupied; and within 14 days of each transfer of an Affordable Dwelling(s) of the date of such transfer and (if applicable) the Affordable Housing Provider to whom the Affordable Dwelling(s) was transferred

3.1.8 No Social Rented Dwellings shall be used for any purpose other than for the provision of Social Rented Dwellings for rent [via the Leicestershire Choice Based Lettings Scheme to persons in need of Affordable Housing within the parish of Newbold Verdon ("**the Parish**") and being such person(s) as shall be agreed between the relevant Affordable Housing Provider and the Borough Council as being persons who satisfy one of the following:

i) Was/were born in the Parish;

ii) Previously lived in the Parish for 10 or more years;

iii) Has/have resided in the Parish for the last 5 years;

iv) Used to live in the Parish but has/have been forced to move away through lack of affordable housing;

v) Is/are employed in the Parish;

vi) Has/have local connections with the Parish for at least five years;

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

PROVIDED THAT

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

AND FURTHER PROVIDED THAT

i) nothing herein shall prevent the Owner from using the Affordable Dwellings for any purposes connected with the Development whilst the Owner is carrying out residential development thereof provided the triggers for the provision of the same under Clauses 3.1.1 and 3.1.2 have been met ; and

ii) nothing shall prevent the Affordable Housing Provider to whom the Affordable Dwellings are transferred from disposing of the Affordable Dwellings or any part thereof under Section 16 of the Housing Act 1996 and following such disposal of the freehold of any part of the Affordable Dwellings such part shall be free of the covenants in this paragraph

Off Site Open Space

3.1.9 The Owner covenants to pay the greater of the Off-Site Open Space Contribution or the Off-Site Open Space Contribution adjusted in accordance with the provisions of the First Schedule to the Agreement to the Borough Council in accordance with the following provisions;

i) The Provision Sum shall be paid on or before the date of the first Occupation of 50% of the Dwellings authorised to be constructed pursuant to the Panning Permission

ii) The Maintenance Sum shall be paid on or before the date of the first Occupation of 50% of the Dwellings authorised to be constructed pursuant to the Planning Permission

On Site Open Space

3.1.10 (a) To comply with the requirement of clause 3.8.1 of the First Agreement (approval of an On Site Open Space Area Scheme) as now varied by this clause 3.1.10

(b) No Market Dwelling not already Occupied pursuant to the First Permission shall be occupied unless and until the Owner has submitted in writing to and obtained the written approval of the Borough Council to the On Site Open Space Scheme ("the Approved Scheme")

3.1.11 (a) To comply with the requirement of clause 3.8.2 of the First Agreement as now varied by this clause 3.1.11

(b) Not to permit the Occupation of more than 50% of the Dwellings authorised to be constructed pursuant to the Planning Permission until the requirements of clause 3.8.2 of the First Agreement (provision of the On Site Open Space Area) have been complied with

3.1.12 To comply with the provisions of clause 3.8.3 of the First Agreement (transfer of the Open Space Area to the Parish Council)

3.1.13 The Owner will on the date of the completion of the transfer pursuant to Clause 3.1.12 above pay the greater of the On Site Open Space Area Maintenance Contribution or the On Site Open Space Area Maintenance Contribution adjusted in accordance with the First Schedule of this Agreement to the Borough Council

The Borough Council`s Costs

3.1.14 The Owner hereby covenants to pay to the Borough Council's reasonable legal costs in the sum of Twelve Hundred Pounds (£1,200.00) in respect of the preparation of this Agreement on its execution

3.1.15 The Owner hereby covenants to pay the Borough Council`s Monitoring Costs Contribution adjusted in accordance with the First Schedule to the Borough Council on completion of this Agreement.

4. THE OWNER'S PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

4.1 The Owner covenants with the County Council:

High School Sector Contribution

To pay the greater of the High School Sector Contribution or the High School Sector Contribution adjusted in accordance with the First Schedule to the County Council prior to the first Occupation of the First Dwelling not already Occupied pursuant to the First Planning Permission.

Public Transport Measures

4.1.2 To deliver the Public Transport Measures in accordance with the following;

i) to provide a Travel Pack in each Dwelling which has been Occupied within 7 days of the date of this Agreement and in respect of any Dwelling not yet Occupied prior to its first Occupation

ii) To provide the Bus Passes to the occupants of Dwellings who complete and return the application form in the Travel Pack

Civic Amenity Contribution

4.2 To pay the greater of the Civic Amenity Contribution or the Civic Amenity Contribution adjusted in accordance with the provisions of the First Schedule to the County Council on completion of this Agreement.

County Council Monitoring Costs

4.3 To pay the greater of the County Council Monitoring Costs Contribution or the County Council's Monitoring Costs Contribution adjusted in

accordance with the First Schedule to the County Council on completion of this Agreement.

The County Council Legal Costs

4.4 To pay the County Council's reasonable legal costs in respect of the preparation of this agreement on its execution in the sum of Nine Hundred and Fifty Pounds (£950.00)

5. THE BOROUGH COUNCIL'S COVENANTS

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

Deed of Release

5.1.1 Upon written request where compliance with an obligation in this Agreement has been fulfilled to certify compliance with such obligation and if so requested to execute a Deed of Release (or partial release) (upon payment of the Borough Council`s reasonable charges) from the relevant obligation and procure that a note thereof is entered on the Register of Local Land Charges

Monitoring Costs

5.1.2 To apply the Monitoring costs of the Borough Council Contribution as a contribution towards the administrative costs of confirming compliance with the obligations contained in this Agreement

6. COUNTY COUNCIL`S COVENANTS -

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

Monitoring Costs

6.1.1 To apply the Monitoring costs of the County Council Contribution as a contribution towards the administrative costs of confirming compliance with the obligations contained in this Agreement

High School Sector Contribution

6.1.2 To apply the High School Sector Contribution towards the provision and improvement of educational facilities at Market Bosworth High School or any successor educational facilities

6.1.3 If no part of the High School Sector Contribution has been expended by the County Council within five years of the date of payment of the final instalment then the High School Sector Contribution shall be repaid by the County Council to the payee on demand

6.1.4 If part of the High School Sector Contribution has been expended by the County Council within five years of the date of payment of the final instalment then the proportion of the Contribution which has not been expended shall be repaid by the County Council to the payee on demand

Civic Amenity Site Contribution

6.1.5 To apply the Civic Amenity Site Contribution towards the improvement of and increasing the capacity of Barwell Civic Amenity Site, Stapleton Lane, Barwell

6.1.6 If no part of the Civic Amenity Site Contribution has been applied by the County Council within five years of the date of payment then the Civic Amenity Site Contribution shall be repaid by the County Council to the payee on demand

6.1.7 If part of the Civic Amenity Site Contribution has been applied by the County Council within five years of the date of payment then the

proportion of the Contribution which has not been applied shall be repaid by the County Council to the payee on demand

THE FIRST SCHEDULE

INDEXATION PROVISIONS

1. In this Schedule:-

"Index"	means in the case of the Civic Amenity Contribution the Borough Council Monitoring Costs the County Council Monitoring Costs Contribution the On-Site Open Space Contribution the Off Site Open Space Area Contribution and the High School Sector Contribution the All in Tender Price Index of Building Cost Information Service ("BCIS") as published by the Royal Institution of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs
"Base Index Date"	means the date of this Agreement or the date of the grant of planning permission whichever is the later.
"Base Index Figure"	means the figure published in respect of the Index immediately prior to the Base Index Date

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid

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

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

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

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

4. If any substitution for the said BCIS, or any index previously substituted therefor shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the BCIS or any index previously substituted therefor on the other hand

SECOND SCHEDULE

Draft Planning Permission

This is a Draft Decision Only.

Hinckley & Bosworth Borough Council

A Borough to be proud of

Town and Country Planning Act 1990

PLANNING PERMISSION

Name and Address of Applicant
Mr Lee Griffin
Bloor Homes East Midlands
7 Calico Business Park
Sandy Way
Amington
Tamworth
Staffordshire
B77 4DS

Name and Address of Agent (if any)

Part I - Particulars of Application

Date of Application	**Application No.**
22 November 2013	13/00905/FUL

Particulars and location of development :

Substitution of housetypes for plots 29-46, 52-61, 93-94 with the erection of 8 new dwellings revising scheme total from 94 to 102 dwellings with associated garages and access.

Land Rear Of 71 Dragon Lane Newbold Verdon Leicestershire

Part II - Particulars of decision

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below according to their degree of consistency with the National Planning Policy Framework, it is considered that subject to compliance with the conditions attached to this permission, the proposed development would be in accordance with the development plan. By virtue of the previous development on the site, the proposed substitution of house types and additional dwellings would respect the character and appearance of the original proposal, maintaining separation distances and the form of development. The proposal is considered to be acceptable subject to the completion of a S106 to secure relevant contributions.

Hinckley & Bosworth Local Plan (2001):- Policies NE5, REC6, BE7, RES5, IMP1, BE1, REC2, REC3, NE14, T3, T5, T9, T11.

Hinckley & Bosworth Borough Council Local Development Framework: Core Strategy (2009): - Policies 7, 14, 16, 19.

In dealing with the application, through ongoing negotiation and the receipt of amended plans the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application.

IMPORTANT - PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council grants permission for the carrying out of the development referred to in Part I hereof in accordance with the application form and plans submitted, subject to the following conditions :-

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:
M119_EM_LP_101A (Location Plan scale 1:2500), 2B3P-PL01, 2B3P-PL02, 2B3P-PL03, 2B3P-PL04, 2B3P-PL05, GL1.G02[DET]01 Rev A, received 22 November 2013.

305.C-PL02.Rev B, 305.C-PL01.Rev B, 304.C-PL02. Rev B, 304.C-PL01.Rev B, 303.C-PL03, 303.C-PL02.REV A, 303.C-PL01.REV A, 421.C-PL01.REV A, 421.C-PL02 Rev A, 421.C-PL04 Rev A, 412.C-PL02. Rev A, 412.C-PL01.Rev A, 406.C-PL01. Rev A, 406.C-PL02.Rev A, 400.C-Pl01.Rev A, 421.C-PL03, 421.C-PL05.Rev A, Received 9 January 2014.

M119_EM_R03 H (Site Location), 430.C-PL01 Rev A, 411SP.C-PL01 Rev A, 430.C-PL02 Rev A, 411SP.C-PL02 Rev A, M119_202_4_E (external works drawing) Received 10 January 2014.

JAB 11-174-03 Rev B, JBA 11-174-02 Rev B received 14 January 2014.

2. The hard and soft landscaping scheme shall be carried out in accordance with the details provided within the first available planting season following completion of the development. The soft landscaping shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

3. For the period of the construction of the development within the site, vehicle wheel cleansing facilities shall be provided within the site and all vehicles exiting the site shall have all tyres and wheels cleaned, as may be necessary, before entering the Highway.

4. Before the first occupation of any dwelling hereby approved, its access drive and any turning space shall be surfaced with tarmacadam, concrete or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the Highway boundary and shall be so maintained at all times.

5. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated June 2011, reference number V141-AR, compiled by Bloor Homes, attached to planning permission 11/00489/FUL, and the following mitigation measures detailed within the FRA:

1. A scheme for the provision and implementation of surface water run-off limitation to existing greenfield run-off rates as detailed in Section 15.1: Residual Risk assessment & Mitigation;

2. Provision, implementation and maintenance of a Sustainable Drainage (SuDs) system with storage provided up to the 100 year plus 30% climate change allowance as detailed in section 15;

The SuDS scheme shall:

* Incorporate the utilisation of soakaway and / or above ground permanently wetted balancing areas or other sustainable drainage techniques;
* Have the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations;
* Address responsibility for the future maintenance of drainage features.

3. Finished floor levels should be set no lower than 150mm above ground levels as detailed in section 15.2.

6. The gradient of the access drive shall not exceed 1:12 for the first 5 metres behind the Highway boundary.

7. For the period of the construction of the development, vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site.

The reasons for the conditions are :-

1. For the avoidance of doubt and in the interests of proper planning.

2. To ensure that the work is carried out within a reasonable period and thereafter maintained to accord with policy NE12 of the adopted Hinckley & Bosworth Local Plan.

3. To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard for road users to accord with Policy T5 of the adopted Hinckley and Bosworth Local Plan.

4. To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard for road users to accord with Policy T5 of the adopted Hinckley and Bosworth Local Plan.

5. To prevent flooding elsewhere by ensuring the satisfactory disposal of surface water from the site at greenfield run-off rates. To prevent flooding elsewhere by ensuring the satisfactory storage of surface water from the site. To reduce the risk of overland flow flooding to the proposed development and future occupants. In accordance with paragraphs 100-104 of the National Planning Policy Framework.

6. To enable vehicles to enter and leave the highway in a slow and controlled manner and in the interests of general highway safety to accord with Policy T5 of the Adopted Hinckley and Bosworth Local Plan

7. To ensure that adequate off-street parking provision is made to reduce the possibilities of development of the site leading to on-street parking problems in the area during construction in accordance with policy T5 of the adopted Hinckley and Bosworth Local Plan.

DRAFT

NOTES TO APPLICANT :-

1. Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2. This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3. This Authority charges for the discharge of conditions. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Highways Manager (0116 3050001).



Date : 20 March 2014

NIC THOMAS
CHIEF PLANNING AND DEVELOPMENT OFFICER

This is a Draft Decision Only.

NOTES

It will be most helpful if the application number shown overleaf is quoted in all correspondence.

If you consider that this decision has been made invalidly through the Council failing to follow a procedure correctly, not having the legal power to make the decision in the way it did or through its decision being so unreasonable as no reasonable local authority would make the same decision based on the same facts, then you may enter a claim for judicial review to quash the decision. In order to proceed with a claim for judicial review an initial application for permission will need to be made to the Administrative Court, this application is required to be made "promptly and in any event within three months of the decision". The initial permission application will decide if you have an arguable case, whether you are sufficiently materially affected by the decision to bring the claim. If you are granted permission to bring the claim it will proceed to a full hearing at the Administrative Court. Although there is no requirement for you to do so it is highly recommended that you seek independent legal advice before bringing forward a claim for Judicial Review.

If the applicant is aggrieved by the decision of the Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act 1990 within six months (see para 2a below) of the date of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Room 305(K), Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, by telephoning 0117 372 6372 or online at www.planningportal.gov.uk/planning/appeals/). You must use a Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the appeal form you require. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that the permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to the directions given under the order. He does not in practice refuse to entertain appeals solely because the decision by the Local Planning Authority was based on a direction given by him. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 5th September 2003 must be made within six months of the date of this notice.

If permission to develop land is granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

This permission covers only consent under the Town and Country Planning Acts and does not give permission to demolish a Listed Building, for which separate consent is required. Amongst other things the consent of the Council of the district in which the land is situated may be required under the Building Regulations and if the proposals affect land within the limits of the highway (that is between the highway fences or hedges) the separate consent of the Highway Authority may also be required. Steps to obtain the necessary further consents should be taken before proceeding with the development.

SHOPS, OFFICES, FACTORIES, EDUCATIONAL BUILDINGS & BUILDINGS TO WHICH THE PUBLIC ARE TO BE ADMITTED : ACCESS AND PROVISION FOR THE DISABLED PERSONS

The Local Planning Authority is required to bring to your attention the requirements of the Disabled Persons 1981, Building Regulations 1991 "Access and facilities for Disabled People" document M and the Chronically Sick & Disabled Act 1970 (as amended 1976) (Sections 4.7.8 and 8A) requiring the provision of access facilities, car parking and toilets for the disabled and the provision of signing indicating what provision has been made for disabled persons within the building. Your attention is also drawn to the Code of Practice B.S 5619 "Design of Housing for the convenience of Disabled People", 1978 and Code of Practice, B.S. 5810 : 1979, "Access for the Disabled to buildings" available from the British Standards Institution, 2 Park Street, London W1A 2BS. (Tel 071-629-9000) and (in so far as educational buildings are concerned), to Design Note 18 "Access for the Physically Disabled to Educational Buildings."

The buildings to which these requirements apply are :-
Buildings to which the public are to be admitted to which Section 4 of the Chronically Sick & Disabled Act 1970 (as amended 1976) applies.
Offices, Shops & Railway Premises as defined in the Offices, Shops & Railway Premises Act 1963 or premises deemed to fall within the Act.
Factories as defined by Section 175 of the Factories Act 1961.
Educational Buildings as defined by Section 29B of the Disabled Persons Act 1981.

THE THIRD SCHEDULE

DECLARATIONS

Part 1

It is hereby agreed and declared by the parties hereto as follows in relation to the Obligations set out in the First Agreement;

General

2. Commencement of Development has taken place in relation to the Planning Permission because the Planning Permission incorporates part of the development authorised by the First Permission and Commencement of Development under the First Permission was deemed to have taken place in November 2012

3. The continuation of Development on the Application Land from the date of this Agreement shall be pursuant to the Planning Permission and in accordance with the provisions of this Agreement and not pursuant to the First Permission or the First Agreement (save as set out in this Third Schedule below)

Part 2

Borough Council Matters

1. In paragraphs 3.1-3.5 of the First Agreement the Owner and others covenanted with the Borough Council to take certain actions in relation to the provision of **Affordable Housing**

2. Those actions have been partially implemented at the date of this Agreement but the Planning Permission makes changes to the provisions for Affordable Housing and it is hereby agreed between the Owner and the Borough Council that the covenants set out in Clause 3.1.1 to 3.1.8 of this Agreement shall be deemed from

the date of this Agreement to replace the covenants referred to in paragraph 1 above in so far as they relate to the provision of the **Remaining Affordable Dwellings**

3. In paragraph 3.8 of the First Agreement the Owner and others covenanted with the Borough Council to provide the **On Site Open Space Area** and to pay the **On Site Open Space Area Maintenance Contribution** as set out therein

4. The On Site Open Space Area has not been provided and the On Site Open Space Area Maintenance Contribution has not been paid at the date of this Agreement and it is hereby agreed between the Owner and the Borough Council that the provision of the On Site Open Space Area and the payment of the On-Site Open Space Area Maintenance Contribution shall continue to be required and delivered pursuant to clause 3.8 of the First Agreement as amended by clause 3.1.10 to 3.1.13] of this Agreement

5. In paragraph 3.9 of the First Agreement the Owner and others covenanted with the Borough Council to pay the **Off Site Open Space Contribution** to the Borough Council

6. That payment has not been made at the date of this Agreement and it is hereby agreed between the Owner and the Borough Council that the covenants on the part of the Owner as set out in clause 3.1.9 of this Agreement shall be deemed from the date of this Agreement to replace the covenants referred to in paragraph 5 above

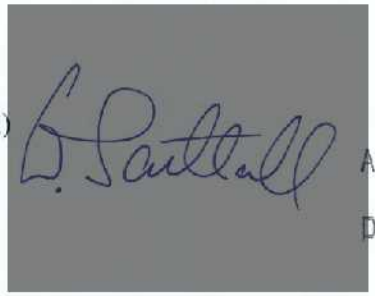
7. It is also hereby agreed between the Owner and the Borough Council that the provisions of clause 5 of the First Agreement shall continue to apply

County Council matters

1. In paragraph 4.1 of the First Agreement the Owner and others covenanted with the County Council to pay the **High School Sector Contribution** in the manner set out therein
2. That contribution has been paid at the date of this Agreement.
3. In paragraph 4.2 of the First Agreement the Owner and others covenanted with the County Council to deliver the **Public Transport Measures** set out therein
4. Those Public Transport Measures have not been delivered at the date of this Agreement and it is hereby agreed between the Owner and the County Council that the covenants set out in clause [4.1] of this Agreement shall be deemed to replace the covenants referred to in paragraph 3 above
5. In paragraph 4.3 of the First Agreement the Owner and others covenanted with the County Council to pay the **Footpath Contribution** to the County Council as set out therein
6. The Footpath Contribution has been paid at the date of this Agreement.
7. In paragraph 4.4 of the First Agreement the Owner and others covenanted with the County Council to pay the **Civic Amenity Contribution** to the County Council as set out therein
8. The Civic Amenity Contribution has been paid at the date of this Agreement
9. It is also hereby agreed between the Owner and the County Council that the provisions of clause 6 of the First Agreement shall continue to apply

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

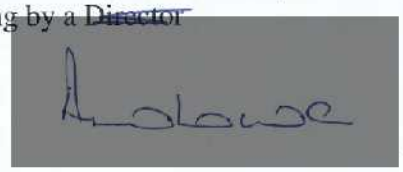
SIGNED AS A DEED by JS BLOOR (Measham) LIMITED) acting by a ~~Director~~



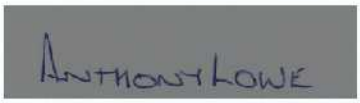
AUTHORISED SIGNATORY

D. SOUTHALL

~~Director~~:
Signature:
Name:



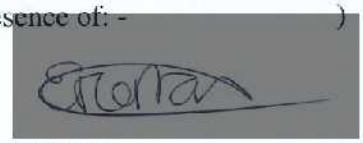
In the presence of :



Witness:
Signature:
Name:
Address:

J. S. BLOOR (SERVICES) LTD.
ASHBY ROAD
MEASHAM
SWADLINCOTE
DERBYSHIRE DE12 7JP

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



Authorised Officer

11395

31213 (d)

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

~~Authorised Officer~~



.....

Head of Legal Services

.....