14 NOV 2008

Memorandum

To: Cathy Horton, Planning Department 08/00349/fue.

CC:

From: Michael Rice, Legal Services

Date: 13th November, 2008

Re: S106 AGREEMENT, STOKE ROAD, HINCKLEY

I attach a copy of the S106 Agreement dated 7th November, 2008 now completed. Would you kindly issue planning consent if still outstanding.

Many thanks,

Mike

DEVELOPMENT SERVICES
14 NOV 2008
RECEIVED

DATE 7th November 2008

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

LEICESTERSHIRE COUNTY COUNCIL

- and -

ENSCO 536 LIMITED

PLANNING AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

Relating to the residential development of land
at west side of Stoke Road Hinckley Leicestershire

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire LE10 1BZ

THIS AGREEMENT is made the 2nd day of Dec 2008

BETWEEN

(1) HINCKLEY AND BOSWORTH BOROUGH COUNCIL of Council Offices Argents Mead Hinckley LE10 1BZ ("the Borough Council")

(2) LEICESTERSHIRE COUNTY COUNCIL of County Hall Glenfield Leicestershire LE3 8RA ("the County Council")

(3) ENSCO 536 LIMITED (Company Registration Number 05964067) whose registered office is situate at Knightsbridge House Lower Brown Street Leicester Leicestershire LE1 5NL ("the Owner")

RECITALS

A. The Borough Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated

B. The County Council is a Local Planning Authority for the area within which the Land is situated

C. The Owner is the owner in fee simple in possession of the Land

D. JS Bloor (Measham) Limited and the Owner have applied to the Borough Council for planning permission to carry out the Development

E. To facilitate the Development the Borough Council require the payment of the Health Contribution, the Civic Amenity Contribution, the Off-Site Open Space Contribution, the On-Site Open Space Contribution, the Library Facilities Contribution the Monitoring Costs Contribution and the provision of the Affordable Housing Development on the Land

F. 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 for the Development would not have been granted

NOW THIS DEED WITNESSES as follows:-

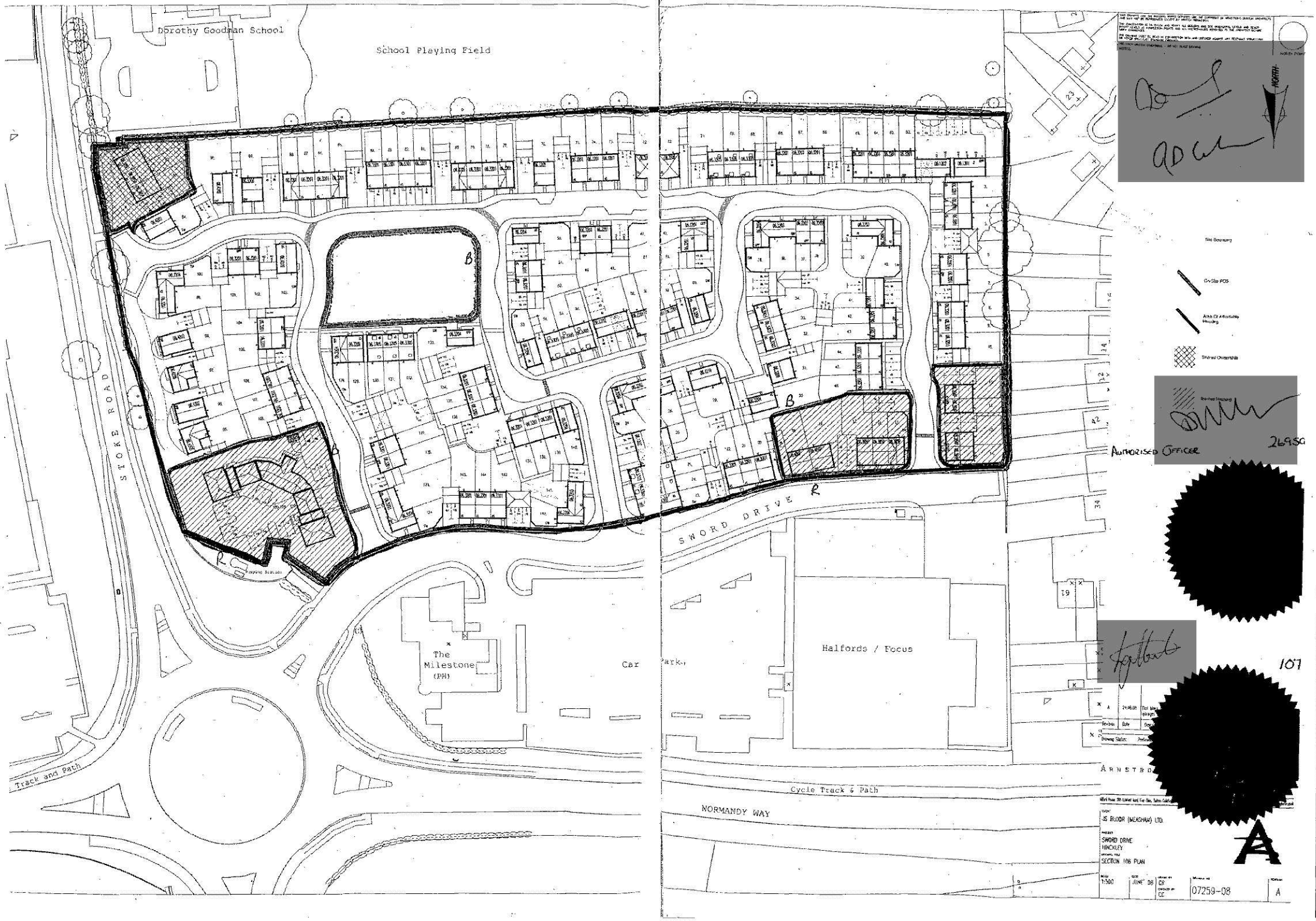
1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including for the avoidance of doubt the Recitals hereto) the following expressions shall have the following meanings unless the context requires otherwise:-

"Affordable Housing Development"	means the Twenty Four units of Rented Accommodation and the Three units of Shared Ownership Accommodation to be constructed on the Affordable Housing Land
"Affordable Housing Land"	means the land edged blue on the Plan upon which the Affordable Housing Development is to be constructed
"Civic Amenity Contribution"	the sum of Six Thousand Six Hundred and Seventy Four Pounds (£6,674.00) as a contribution towards the provision and/or improvement and maintenance of the civic amenity site at Barwell
"Commencement of Development"	shall mean the time when the development is initiated or begun by carrying out any of the operations specified in Section 56(4) (a) (b) (c) or (d) of the Planning Act (other than works of demolition site clearance and fencing survey soil tests or archaeology tests) and "Commence" or "Commenced" shall mutatis mutandis be construed accordingly
"Development"	residential development of the Land pursuant to the Planning Permission
"Health Contribution"	the sum of One Hundred and Thirty Two Thousand Four Hundred and Fifty Pounds (£132,450.00) towards the improvement of healthcare provision which would ordinarily be expected to serve the residents of the Development

"the Land"	the Land as described in the First Schedule hereto
"Library Facilities Contribution"	the sum of Eight Thousand Six Hundred and Seventy Pounds (£8,670.00) as a contribution towards the cost of the provision and enhancement of library facilities at libraries which would ordinarily be expected to be attended by residents of the Development
"Monitoring Costs Contribution"	the sum of two hundred and fifty pounds (£250.00) or 0.5% of the value of the total contribution (whichever is the greater) per obligation towards the County Council's costs of monitoring compliance with the obligations contained in the Fifth Schedule hereto
"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 of any part of the Development; or (ii) the use of any dwelling house(s) for the marketing of the Development; or (iii) the storage of plant and materials and "Occupy" and "Occupied" shall be constructed accordingly
"Off-Site Open Space Contribution"	the sum of Ninety Five Thousand Five Hundred and Fifty Five Pounds (£95,555.00) comprising Forty Five Thousand Three Hundred and Ninety Nine Pounds Fifty Pence (£45,399.50) in respect of the provision and/or improvement of open space ("the Provision Sum") and Fifty Thousand One Hundred and Fifty Five Pounds Fifty Pence (£50,155.50) in respect of the maintenance of such open space ("the Maintenance Sum") as a contribution towards the provision and/or

	improvement and maintenance of open space in lieu of the provision of open space within the Development
"On-Site Open Space"	the public open space to be provided within the Development
"On-Site Open Space Contribution"	the sum of Ninety One Thousand One Hundred and Fifty Six Pounds Ninety Three Pence (£91,156.93) in respect of the maintenance of the On-Site Open Space
"Plan"	the plan annexed hereto
"Planning Act"	the Town and Country Planning Act 1990 (as amended)
"Planning Application"	the Planning Application made by JS Bloor (Measham) Limited and the Owner to the Borough Council on 4 April 2008 reference number 08/00349/FUL for detailed planning permission for the Development
"Planning Permission"	the planning permission to be granted pursuant to the Planning Application for the Development subject to conditions
"Registered Social Landlord"	means a registered social landlord within the meaning of the Housing Act 1996.
"Rented Accommodation"	means the Twenty Four dwellings shown hatched black on the Plan to be constructed as part of the Development and transferred to the Registered Social Landlord under the provisions of this Agreement
"Shared Ownership Accommodation"	means the Three dwellings shown cross hatched black on the Plan to be constructed as part of the Development and transferred to a Registered Social Landlord under the provisions of this Agreement


Dorothy Goodman School
School Playing Field
STOKE ROAD
SWORD DRIVE
The Milestone (PH)
Car Park
Halfords / Focus
Track and Path
Cycle Track & Path
NORMANDY WAY
ARMSTRONG
Site Boundary
On-Site POS
Affordable Housing
Shared Ownership
Authorised Officer
269SG
107
JS BLOOR (WEASHAW) LTD.
SWORD DRIVE
HINCKLEY
SECTION 106 PLAN
1:500
JUNE '08
07259-08
A

1.2 In this Agreement

1.2.1 Words importing the masculine gender shall be deemed to include the feminine and the neuter and the singular the plural and vice versa and words denoting natural persons shall include corporations and vice versa unless the contrary is expressly provided or the context otherwise requires

1.2.2 Obligations and liabilities of a party comprising more than one person are obligations and liabilities of such persons jointly and severally provided that no person shall be liable in respect of any breach (and for this purpose breach shall include the failure to perform any positive obligation) other than in respect of land in his beneficial ownership AND further no person shall be liable for any breach of covenant first occurring after he has disposed of such interest in such land or the part thereof in respect of which such breach occurs

1.2.3 Any reference to a numbered clause or sub-clause or to a Schedule is (except where indicated to the contrary) a reference to the corresponding clause or sub-clause or a Schedule to this Agreement

1.2.4 Any reference to any statute or any section thereof includes any amendment modification consolidation or re-enactment thereof and any statutory instrument direction or regulation made thereunder for the time being in force

1.2.5 The clause headings in this Agreement are for ease of reference only and shall not affect the construction thereof

1.2.6 Subject to clause 1.2.7 clause 1.2.8 and clause 1.2.9 the expressions "the Borough Council" "the County Council" and "the Owner" shall where the context so admits include their respective successors and assigns

1.2.7 No person who occupies any dwelling constructed on the Land pursuant to the Planning Permission nor their mortgagee shall be a successor in title for the purposes of this Agreement

1.2.8 No Registered Social Landlord or other social housing provider nor their mortgagee shall be liable for any financial contributions under the Agreement

1.2.9 No statutory undertaker or other provider of utility media and services shall be a successor in title for the purposes of this Agreement

1.2.10 No failure or delay by the Borough Council or the County Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right or power of the relevant Council

1.2.11 Where under this Agreement the Borough Council or the County Council (as the case may be) are to grant approve or provide consent to any matter in respect of the Owner's obligation in this Agreement such grant approval or consent shall not unreasonably be withheld delayed or conditioned.

2. STATUTORY BASIS

This Agreement is made pursuant to Section 106 of the Planning Act Section 111 of the Local Government Act 1972 and in pursuance of all other powers enabling the parties hereto respectively with the intention that the covenants given by the Owner in this Deed bind (so far as provided by this Agreement) its successors in title (being owners for the time being of the owner's interests or a part thereof in the Land)

3. PLANNING OBLIGATION

3.1 Each covenant by the Owner contained herein is a planning obligation for the purpose of Section 106 of the Planning Act and enforceable by the Borough Council

3.2 The covenant contained in clause 4.2 is also enforceable by the County Council

4. THE OWNER'S COVENANTS

4.1 The Owner covenants with the Borough Council to comply with the covenants contained in the Second Schedule

4.2 The Owner covenants with the County Council to comply with the covenants contained in the Third Schedule

5. THE BOROUGH COUNCIL'S COVENANTS

5.1 The Borough Council covenants with the Owner to comply with the obligations contained in the Fourth Schedule

6. THE COUNTY COUNCIL'S COVENANTS

6.1 The County Council covenants with the Owner to comply with the obligations contained in the Fifth Schedule

7. GENERAL

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

7.2 Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

7.3 Any notice agreement consent or approval to be given under the terms of this Agreement shall be in writing and sent by ordinary post and:-

7.3.1 in the case of the Borough Council be addressed to the Planning Office, Council Offices, Argents Mead, Hinckley, Leicestershire, LE10 1BZ; and

7.3.2 in the case of the County Council be addressed to the County Solicitor County Hall Glenfield Leicester LE3 8RA

7.3.3 in the case of the Owner shall be sent by ordinary post to its registered office or the Owner's address above or such other address as it shall provide in this regard

7.4 The Owner shall notify the Borough Council and the County Council within 14 days of such commencement of the Commencement of the Development and within 14 days of the first Occupation of the Development

7.5 If the Planning Permission expires is revoked or otherwise ceases to exist before the Commencement of Development this Agreement will cease to have effect and as from such time there shall be no further obligations on any party in relation to any matter that has occurred or may arise under this Agreement

7.6 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this

Agreement and no person other than the parties to this Agreement or their successors in title or assigns shall have any rights under it nor shall it be enforceable by any person other than the parties to it or their successors in title

7.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement

7.8 The Borough Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges

7.9 The Owner shall pay the Borough Council's and the County Council's reasonable legal costs in respect of the preparation and completion of this Agreement

IN WITNESS THE Borough Council the County Council and the Owner have executed this Agreement as a Deed on the day and year first before written

FIRST SCHEDULE

The Land

3.47 hectares of land at west side of Stoke Road Hinckley Leicestershire and shown for identification edged red on the Plan

SECOND SCHEDULE

The Owner's Covenants to the Borough Council

1. No Development shall Commence until the greater of the Health Contribution or the Health Contribution adjusted in accordance with the Sixth Schedule has been paid by the Owner to the Borough Council

2. No Development shall Commence until the greater of the Off-Site Open Space Contribution or the Off-Site Open Space Contribution adjusted in accordance with the Sixth Schedule has been paid by the Owner to the Borough Council

3. In the event the On-Site Open Space is transferred to the Borough Council the Owner shall on completion of such transfer pay to the Borough Council the On-Site Open Space Contribution adjusted in accordance with the Sixth Schedule

4. Subject to paragraph 6 below no more than Fifty Nine open market dwellings authorised to be constructed pursuant to the Planning Permission shall be Occupied until the Owner shall have entered into a contract to transfer the Affordable Housing Land to a Registered Social Landlord along with sufficient rights and services to enable beneficial occupation at a price agreed with the Registered Social Landlord which shall enable them to let all of the Rented Accommodation and to dispose of the Shared Ownership Accommodation by way of a shared ownership lease to persons in need of affordable housing within the Borough of Hinckley and Bosworth in accordance with the terms of this Agreement

5. The Owner shall notify the Borough Council

(a) within 14 days of such occupation of the date of the Occupation of the first dwelling constructed pursuant to the Planning Permission
(b) within 14 days of a contract being entered into for the transfer of the Affordable Housing Land together with details of the Registered Social Landlord and
(c) within 14 days of a transfer of the Affordable Housing Land to the Registered Social Landlord

6. In the event that no Registered Social Landlord is found to take a transfer of the Affordable Housing within 12 months of completion of the Affordable Housing development the Owner may enter into a contract to transfer the Affordable Housing Development to any housing association or other housing body which is willing and able to use the Affordable Housing in accordance with paragraph 7 below PROVIDED THAT if no such alternative housing provider is willing to take a transfer of the Affordable Housing within a further 24 month period that the obligations under this Agreement in relation to the Affordable Housing development shall no longer be enforceable and the Owner shall be free to sell the dwellings on the open market

7. Other than expressly provided for in this Agreement no part of the Rented Accommodation shall be used for any purpose other than for the provision of Affordable Housing for rent and no part of the Shared Ownership Accommodation shall be used for any other purpose than the provision of Affordable Housing for disposal of by way of a grant or assignment of a shared ownership lease in both cases to persons in need of affordable housing within the Borough of Hinckley and Bosworth and being such person(s) as shall be agreed between the relevant Registered Social Landlord and the Borough Council as being persons who satisfy one of the following:

(i) was/were born in the Town of Hinckley;

(ii) is/are residing in the Town of Hinckley;

(iii) used to live in the Town of Hinckley but has/have been forced to move away through lack of Affordable Housing;

(iv) is/are employed in the Town of Hinckley; or

(v) has/have local connections with the Town of Hinckley;

(vi) such other person(s) in the absence of (i) to (v) above as shall be agreed between the relevant Registered Social Landlord and the Borough Council as being persons who satisfy any one of the conditions set out in (i) to (v) above within the Borough of Hinckley and Bosworth

PROVIDED THAT if within 28 days of the Registered Social Landlord notifying the Deputy Chief Executive of the Borough Council in writing of a dwelling becoming vacant no such qualifying person or persons can be found to occupy the dwelling the relevant Registered Social Landlord may let the dwelling to any person or persons who satisfy their normal letting criteria

AND FURTHER PROVIDED THAT

(i) nothing herein shall prevent the Owner from using the Affordable Housing Development for any purposes connected with the Development whilst the Owner is carrying out residential development thereof; and

(ii) nothing shall prevent the Registered Social Landlord to whom the Affordable Housing Development is transferred from disposing of the Affordable Housing Development or any part thereof under Section 16 of the Housing Act 1996 and following such disposal of the freehold of any part of the Rented Accommodation or the Shared Ownership Accommodation such part shall be free of the covenants in this paragraph 7

THIRD SCHEDULE

The Owner's Covenants to the County Council

1. No Development shall Commence until the greater of the Library Facilities Contribution or the Library Facilities Contribution adjusted in accordance with the Sixth Schedule has been paid to the County Council

2. No Development shall Commence until the greater of the Civic Amenity Contribution or the Civic Amenity Contribution adjusted in accordance with the Sixth Schedule has been paid to the County Council

3. No Development shall Commence until the greater of the Monitoring Costs Contribution or the Monitoring Costs Contribution adjusted in accordance with the Sixth Schedule has been paid to the County Council

FOURTH SCHEDULE

The Borough Council's Covenants to the Owner

1. The Borough Council covenants with the Owner to pay the Health Contribution to the Leicester, Leicestershire and Rutland Facilities Consortium to be used for the improvement of healthcare provision which would ordinarily be expected to serve the residents of the Development

2. The Borough Council covenants with the Owner to apply the Off-Site Open Space Contribution towards the provision of new or improvement of existing recreational facilities and open space and/or the maintenance thereof within the locality of the Development

3. If no part of the Off-Site Open Space Contribution has been used by the Borough Council within five years of the date of payment the Off-Site Open Space Contribution shall be repaid by the Borough Council to the payer on written demand

4. If part of the Off-Site Open Space Contribution has been used by the Borough Council within five years of the date of payment then the following amounts shall be repaid by the Borough Council to the payer on written demand:

4.1 that part of the Provision Sum which has not been used; and

4.2 such proportion of the Maintenance Sum as that part of the Provision Sum which has not been used bears to the Provision Sum

5. The Borough Council covenants with the Owner to apply the On-Site Open Space Contribution towards the maintenance of the On-Site Open Space

FIFTH SCHEDULE

The County Council's Covenants to the Owner

1. The County Council covenants with the Owner to apply the Library Facilities Contribution towards the provision and enhancement of library facilities at libraries which would ordinarily be expected to be attended by residents of the Development

2. The County Council covenants with the Owner to apply the Civic Amenity Contribution towards the provision and/or improvement and maintenance of the civic amenity site at Barwell

3. If the whole of the Library Facilities Contribution and the Civic Amenity Contribution has not been used by the County Council within five years of the date of payment of each such Contribution then any sums not so used shall be repaid by the County Council to the payer on written demand

4. To apply the Monitoring Costs Contribution towards the administrative costs of confirming compliance with the Library Facilities Contribution and the Civic Amenity Contribution

SIXTH SCHEDULE

1. In this Schedule:-

"Index" means

(i) In respect of the Off-Site Open Space Contribution and the On-Site Open Space Contribution and the Health Contribution the All Items Retail Prices Index published by the Office of National Statistics

contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the Index shall be abolished, there shall be substituted for the purposes of this Schedule, such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published, the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

(ii) In the case of the Library Facilities Contribution and the Civic Amenity Contribution and the Monitoring Costs Contribution the All in Tender Price Index of Buildings Cost Information Services ("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 the grant of planning permission.

"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 Library Facilities Contribution the Civic Amenity Contribution the Off-Site Open Space Contribution

the On-Site Open Space Contribution the Health Contribution and the Monitoring Costs Contribution are paid

2. The Library Facilities Contribution the Civic Amenity Contribution the Off-Site Open Space Contribution the On-Site Open Space Contribution the Health Contribution and the Monitoring Costs 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 Library Facilities Contribution the Civic Amenity Contribution the Off-Site Open Space Contribution the On-Site Open Space Contribution the Health Contribution and the Monitoring Costs Contribution

"B" equals the Base Index Figure

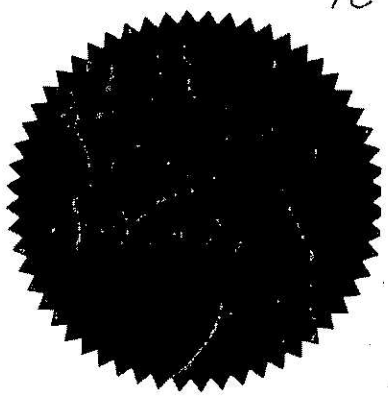
"C" equals the Final Index Figure

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

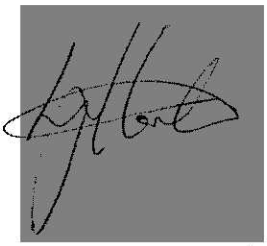
4. If any substitution for the said All Items Retail Prices Index or the BCIS, or any index previously substituted therefor shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the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

10

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

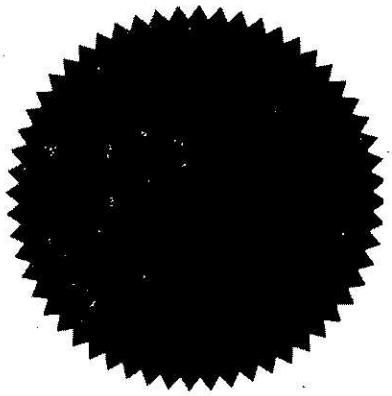


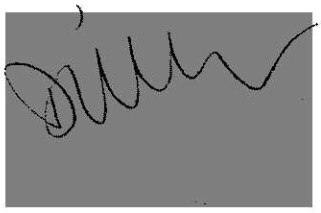
Authorised Officer



2695

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

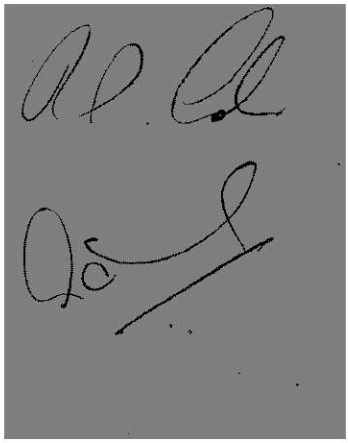




Authorised Officer

SIGNED AS A DEED on behalf of ENSCO 536)
LIMITED acting by:-)

Director



Director/Secretary