DATE 2010

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

JIM DAWSON

- and -

PLANNING AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

Relating to the residential development of land
at

Yew Tree Farm, Occupation Road,
Nailstone, Nuneaton

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

THIS AGREEMENT is made the day of 2010

BETWEEN

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

(2) JIM DAWSON of 8 Rectory Lane Nailstone Nuneaton Warwickshire CV13 0QQ ("the Owner")

(3) [whose registered office is situate at

("the Mortgagee")]

RECITALS

1. The Borough Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated
2. The Owner is the owner in fee simple in possession free from encumbrances of the Land

[3. The Mortgagee is mortgagee of the Land under a legal mortgage dated and made between the Owner and the Mortgagee.]

4. The Owner has applied to the Borough Council for planning permission to carry out the Development as hereinafter defined
5. To facilitate the Development the Borough Council require the payment of an Open Space Contribution.
6. 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:-

"Planning Act"	the Town and Country Planning Act 1990 (as amended)
"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 fencing surveys soil tests or archaeology tests) and "commence" or "commenced" shall mutatis mutandis be construed accordingly
"Development"	the conversion of farmhouse and farm buildings into three dwellings and erection of two new dwellings at the Land pursuant to the Planning Permission
“Interest”	shall mean interest at a rate of 2% above the Bank of England base lending rate prevailing at the time such to be applied from the date of payment to the Council until the date of repayment
"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 construed accordingly
"Off-Site Open Space Contribution"	the sum of Four Thousand Nine Hundred and Sixty Four pounds (£4,964.00) comprising £2,482.00 in respect of the provision and/or improvement of open space ("the provision sum") and £2,482.00 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
"Plan"	the Plan annexed hereto
"Planning Application"	the Planning Application made by the Owner to the Borough Council on reference number 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.
"the Land"	the Land as described in the First Schedule hereto.

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 The expressions "the Borough Council" "the Owner" and ["the Mortgagee"] shall where the context so admits include their respective successors and assigns.

12.7 No failure or delay by the Borough 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 Borough Council.

2. STATUTORY BASIS

This Agreement is made pursuant to Section 106 of the Planning Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 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 Owners interest 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

4. THE OWNERS COVENANTS

No Development shall commence until the greater of the Off-Site Open Space Contribution or the Off-Site Open Space Contribution as adjusted in accordance with the Second Schedule has been paid to the Borough Council and such greater sum shall be paid to the Borough Council before the Commencement of Development

5 THE BOROUGH COUNCIL'S COVENANTS

5.1 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 the maintenance thereof within the locality of the Development .

5.2 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 Open Space Contribution shall be repaid by the Borough Council together with Interest to the payer on written demand

5.3 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 amount shall be repaid by the Borough Council to the payer on written demand:

5.3.1 that part of the provision sum which has not been used; and

5.3.2 such proportion of the maintenance sum as that part of the provision sum which has not been used bears to the provision sum

6. GENERAL

6.1 This Agreement is a local land charge and shall be registered as such by the Borough Council

6.2 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.

6.3 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:-

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

6.3.2 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.

6.4 The Owner shall notify the Borough Council within 14 days of such commencement of the Commencement of the Development

[6.5 The Mortgagee consents to the Owner entering into this Agreement and acknowledges that this Agreement binds the proposed development. The Mortgagee shall only be liable for any breach of this Agreement if it has itself caused the breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach although for the avoidance of doubt any of its successors in title shall be so liable]

6.6 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.

6.7 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.

6.8 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.

6.9 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.

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

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

THE FIRST SCHEDULE

The Land

Land at Yew Tree Farm, Occupation Road, Nailstone and shown for identification edged red on the Plan

SECOND SCHEDULE

1. In this Schedule:-

"Index"	means 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
"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 date upon which the Off-Site Open Space Contribution is paid

2. The Off-Site Open Space Contribution shall be varied by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

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

   Where: "A" equals the Off-Site Open Space 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 but 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.
4. If any substitution for the said All Items Retail Prices Index, 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 any index previously substituted therefor on the other hand

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

Authorised Officer

SIGNED AS A DEED by)
JIM DAWSON in the presence of)

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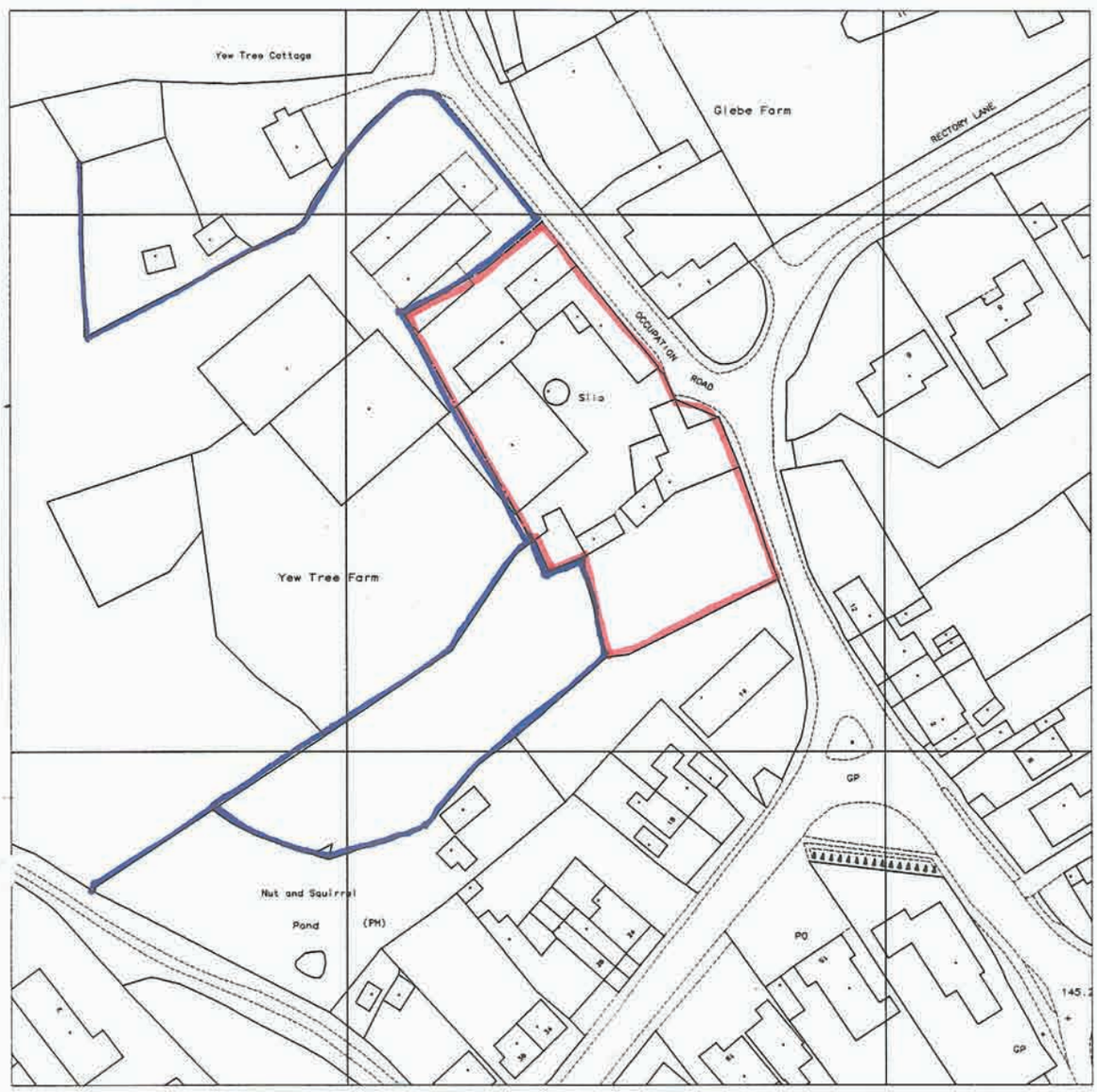

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20 0 20 40 60 80

Metres

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Centre Coordinates: 441738 307338

National Grid sheet reference at centre of this Siteplan: SK4107

Supplied by: Meridian Map Services Lt
Serial Number: 01292600

Yew Tree Farm
Occupation Road
Nailstone Leics