DATE 2011

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

LEICESTERSHIRE COUNTY COUNCIL

- and -

Mr R Wheatley

PLANNING AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

Relating to the residential development of

Land Situated at Canning Street & Mill Hill Road
Hinckley, Leicestershire

D.R.A.F.T

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

THIS AGREEMENT is made the _____ day of _____ 2011

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) MR RICHARD WHEATLEY of Touchstone Road, Leamington Spa, Warwickshire, CV34 6EE ("the Owner")

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RECITALS

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

2. The County Council is a Local Planning Authority and the Local Education Authority for the area within which the Application Land is situated

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

4. The Owner has applied to the Borough Council for planning permission to carry out the Development

5. To facilitate the Development the Borough Council require the payment of the Civic Amenity Contribution the Library Facilities Contribution the Off-Site Open Space Contribution the Police Contribution the Monitoring Costs 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:-

"Application Land"	means the land shown edged red on Plan 1 and more particularly described in the First Schedule hereto
"Civic Amenity Contribution"	the sum of (tbc) as a contribution towards the provision and/or improvement and maintenance of the civic amenity site at (tbc)
"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 Application Land pursuant to the Planning Permission
"Library Facilities Contribution"	the sum of (tbc) 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

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"Monitoring Costs Contribution"	the sum of (tbc) or 0.5% of the value of the contribution (whichever is the greater) for each contribution payable to the County Council 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 sixteen thousand two hundred and sixty pounds and forty pence (£16,260.40) comprising ten thousand six hundred and thirty one pounds and forty pence (£10631.40) in respect of the provision and/or improvement of open space ("the Provision Sum") and five thousand six hundred and twenty nine pounds 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 1"	the location plan annexed hereto and labelled accordingly
"Planning Act"	the Town and Country Planning Act 1990 (as amended)
"Planning Application"	the Planning Application made by the Owner to the Borough Council on (tbc) reference number (tbc) 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
"Police Contribution"	the sum of (tbc) Pounds

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.

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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 County Council" and "the Owner" 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 relevant 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 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 interests or a part thereof in the Obligation 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 Act and enforceable by the Borough Council

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

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4. THE OWNER'S COVENANT

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 Fourth Schedule

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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 such Occupation 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 Obligation 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 reasonable legal costs in respect of the preparation and completion of this Agreement.

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

THE FIRST SCHEDULE

The Application Land

1283 square metres of land at Mill Hill Road / Canning Street, Hinckley and shown for identification edged red on the Plan

SECOND SCHEDULE

The Owners' Covenants to the Borough Council

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

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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 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

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 Off-Site Open Space Contribution shall be repaid by the Borough Council to the payer with interest accrued thereon on written demand

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

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

   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

4. The Borough Council covenants with the Owners to pay the Police Contribution to the Leicestershire Constabulary to be used by it towards the cost of crime prevention measures in the area of the Development

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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 Amenities 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 with interested accrued thereon 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

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SIXTH SCHEDULE

1. In this Schedule:

"Index" means

(i) In respect of the Off-Site Open Space Contribution and the Police 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

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"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 Police Contribution the Off-Site Open Space Contribution and the Monitoring Costs Contribution are paid

2. The Library Facilities Contribution the Civic Amenity Contribution the Off-Site Open Space Contribution the Police 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:-

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 Police 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

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

Authorised Officer

PART

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

Authorised Officer

SIGNED AS A DEED by)
In the presence of:-)

Witness signature ……..

Witness name ……

Witness address ……

……

Witness occupation ……