

DATED 16 DECEMBER 2013

**THE COUNCIL OF THE BOROUGH
OF CHARNWOOD (1)**

- and -

SOWDEN INVESTMENTS LIMITED (2)

-and-

F S PROTECTOR LIMITED (3)

- and -

HUGH JOSEPH GALLAGHER & LINDA GALLAGHER (4)

**AGREEMENT
Pursuant to Section 106
of the Town and Country Planning Act 1990**

Land at Windmill Road & Moor Lane, Loughborough,
Leicestershire

Strategic Support (Legal Services)
Charnwood Borough Council
Southfield Road
Loughborough
Leicestershire
LE11 2TX

AN AGREEMENT is made the 16TH day of DECEMBER 2013

BETWEEN :

- (1) **THE COUNCIL OF THE BOROUGH OF CHARNWOOD** of Southfield Road, Loughborough, Leicestershire, LE11 2TX ("the Council")
- (2) **SOWDEN INVESTMENTS LIMITED** of Westbridge Court, 5-6 Westbridge Close, Leicester LE3 5DR ("the First Owner")
- (3) **F S PROTECTOR LIMITED** of Numerica, Stoughton House, Harborough Road, Oadby, Leicester LE2 4LP ("the Second Owner")
- (4) **HUGH JOSEPH GALLAGHER & LINDA GALLAGHER** of 2 Church Street, Bunny, Nottingham NG11 6QW ("the Third Owner")

RECITALS

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable
2. The First Owner is the owner of part of the Site in fee simple in possession and is registered with Absolute Title at HM Land Registry under Title No LT189919 and the Second Owner is the owner of a further part of the Site in fee simple in possession and is registered with Absolute Title at H M Land Registry under Title No LT 355597 and the Third Owner is the owner of part of the Site in fee simple in possession and is registered with Absolute Title at HM Land Registry under Title No LT311273
3. The First Owner by a written application dated 24 October 2012 has applied to the Council for permission to carry out development on the site consisting of the redevelopment by the erection of dwellings, a community building, parkland and associated access , parking and landscaping which development is more particularly described in Planning Application reference number P/12/2130/2 and the plans submitted therewith ("the Development")
4. Having regard to the provisions of its Development Plan and to all other material considerations the Council has decided to grant the Planning Permission for the Development in accordance with the Planning Application subject to certain conditions and to the making of this Agreement without which the Planning Permission for the Development would not have been granted

IT IS HEREBY AGREED:

1. Definitions and Interpretation

1.1. In this Deed unless the context requires otherwise the following words and expressions have the respective meanings as set out opposite to them:

- "the Act"** the Town and Country Planning Act 1990 and any statutory amendments or modifications thereto
- "Affordable Housing"** Housing available to those in housing need not otherwise able to purchase the same on the open market as the same is defined in the glossary to the National Planning Policy Framework published in March 2012
- "Affordable Housing Scheme"** A written scheme accompanied by appropriate plans and drawings indicating the overall quantum of Affordable Housing and providing the following matters of detail: (I) tenure; (II) scale; (III) location; and (IV) type of each proposed unit of affordable housing ; and (V) setting out in full a set of exemptions to protect the interests of persons to the extent then necessary to facilitate disposal of the Affordable Housing to an Affordable Housing Provider
- "Affordable Housing Provider"** means either:
i) a provider of Affordable Housing who is registered with the Homes and Communities Agency under the Housing and Regeneration Act 2008 or such successor authority ; or
ii) any other housing provider approved in writing by the Borough Council; or
iii) any other company or body approved in writing by the Borough Council
- "the Scrapyard Area"** The area within which the scrapyard and the waste transfer station are operated more particularly defined and shown edged and hatched brown on the plan annexed entitled Scrapyard Plan



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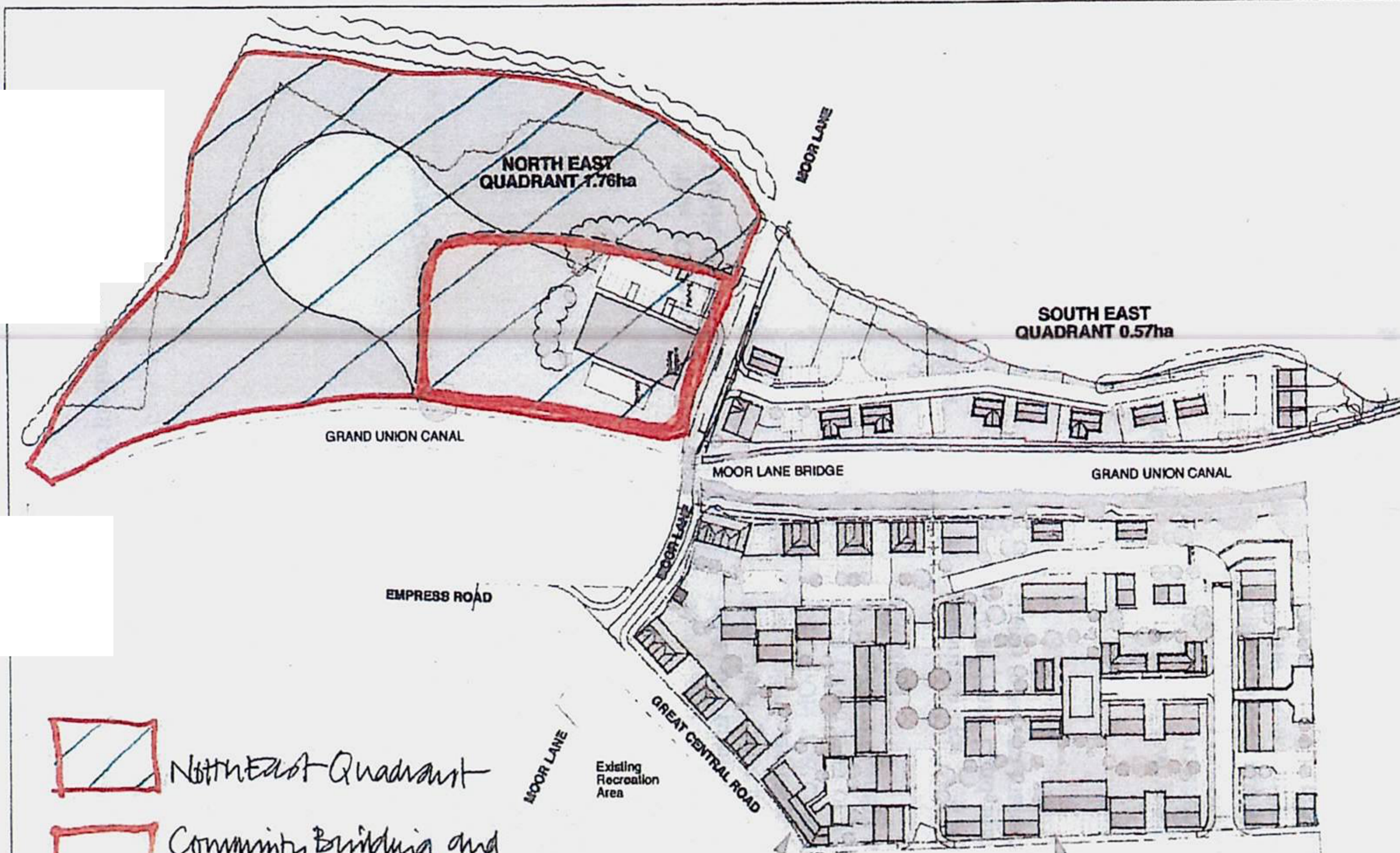
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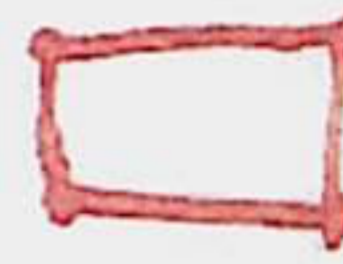
P/12/2130/2
Land adjacent to Windmill Road, Great Central Road, Empress Road and Moor Lane,
Loughborough, Leicestershire
1:3000



SCRAPYARD PLAN

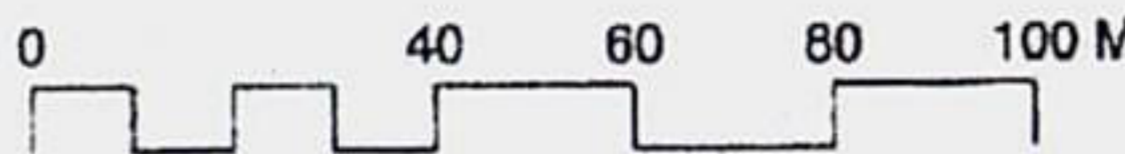
"the Commencement of Development"	the date upon which the First Owner shall begin the Development by the carrying out of a material operation in accordance with the provisions of Section 56(4)(a) (b) (c) or (d) of the Act (other than works of demolition site clearance decontamination fencing soil tests or archaeology tests or surveys) and "Commence" and "Commenced" shall be construed accordingly
"the Community Building Use"	such uses within use class D1 or D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) including without limitation ancillary workspace for such commercial uses as may be carried out within a residential area without detriment to the amenity thereof
"the 'Community Building and Public Park' Land"	such land in the North East Quadrant as shall have an area of 4250 square metres (1.05 acres) being the land shown edged orange on the plan annexed entitled in manuscript "SECTION 106 OVERALL SITE PLAN" or such other area or areas as shall be proposed by the Third Owners and agreed by the Council in writing
"Community Project"	proposals for the Community Building and Public Park Land and the Remainder Land for which reserved matters approval can be sought
"Community Project Period"	A period of five years beginning on the date of the Commencement of Development within which period the Stakeholders shall be at liberty to design and apply for all necessary consents for the Community Building and Public Park Works and for proposals for the Remainder Land.
"Community Building and Public Park Payment "	the sum of £ 27,000 (twenty-seven thousand pounds) being a commuted sum contribution towards the future maintenance costs of the Community Building and Public Park Land
"Development"	the development authorised by the Planning Permission



 North East Quadrant
 Community Building and Public Park Land.

SITE LAYOUT - all areas

SECTION 106 OVERALL SITE PLAN.



General Notes
 1. The user of this drawing agrees that they are to provide all necessary information and details to the Architect before the commencement of work on site.
 2. All dimensions are in millimeters unless otherwise stated.
 3. All dimensions are to the finished face of the work unless otherwise stated.
 4. All dimensions are to be checked on site. Any discrepancies are to be notified immediately to the Architect before the commencement of work on site.
 5. All levels are to be checked on site. Any discrepancies are to be notified immediately to the Architect before the commencement of work on site.
 6. This drawing is to be used in conjunction with all other drawings and specifications for the project.

CDM Regulations
 Designer is not a regulated profession or activity in terms of the Construction (Design Management) Regulations 2015. Please refer to Designated Person for further information regarding obligations of the role.

Revised Details

Rev	Date	Issue / Revision Notes	By	Checked By
A	2014.10.21	Final Issue PL005/05 CD/L	JA	SD

FRANKLIN ELLIS ARCHITECTS

Residential Development
 Windmill Road
 Loughborough

Drawing title
PROPOSED SITE LAYOUT
 All Areas
 Not to scale

Author/Checker
 Job Number
 Ben Dudley

Drawing Scale: 1:50 Sheet Size: A1

Issue Status
PLANNING

CDM No.
2120 | PL05 | A

"Design & Approval Sum"	the sum of £ 25,000 (twenty-five thousand pounds) in respect of a feasibility study for the Community Project for the purpose of meeting the reasonable proper and lawful expenses thereof including in respect of design and facilitation of a valid reserved matters application for all the reserved matters which were duly reserved on the Planning Permission for the part of the Development to be situated on the Community Building and Public Park Land and Remainder Land.
"Index"	means the RICS and Building Cost Inflation Service All in Tender Price Index or (during any period where no such index exists) the index which replaces the same or is the nearest equivalent to it
"Second Phase"	[that part of the Site shown edged with a solid red line on its northern eastern and southern sides and with a dashed red line on its western side on the Plan and thereon marked 'South West Quadrant'
"the Site"	all that freehold land known adjacent to the Grand Union Canal at Moor Lane Loughborough Leicestershire and shown edged red on the Plan
"the Plan"	the plan attached to this Agreement entitled in typescript " SITE LOCATION PLAN"
"the Planning Application"	The Planning Application submitted by the Owner to the Council on the 24 October 2012 and carrying reference number P/12/2130/2
"the Planning Permission"	Planning permission under Part III of the Act for the Development pursuant to the Planning Application
"Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

General Notes

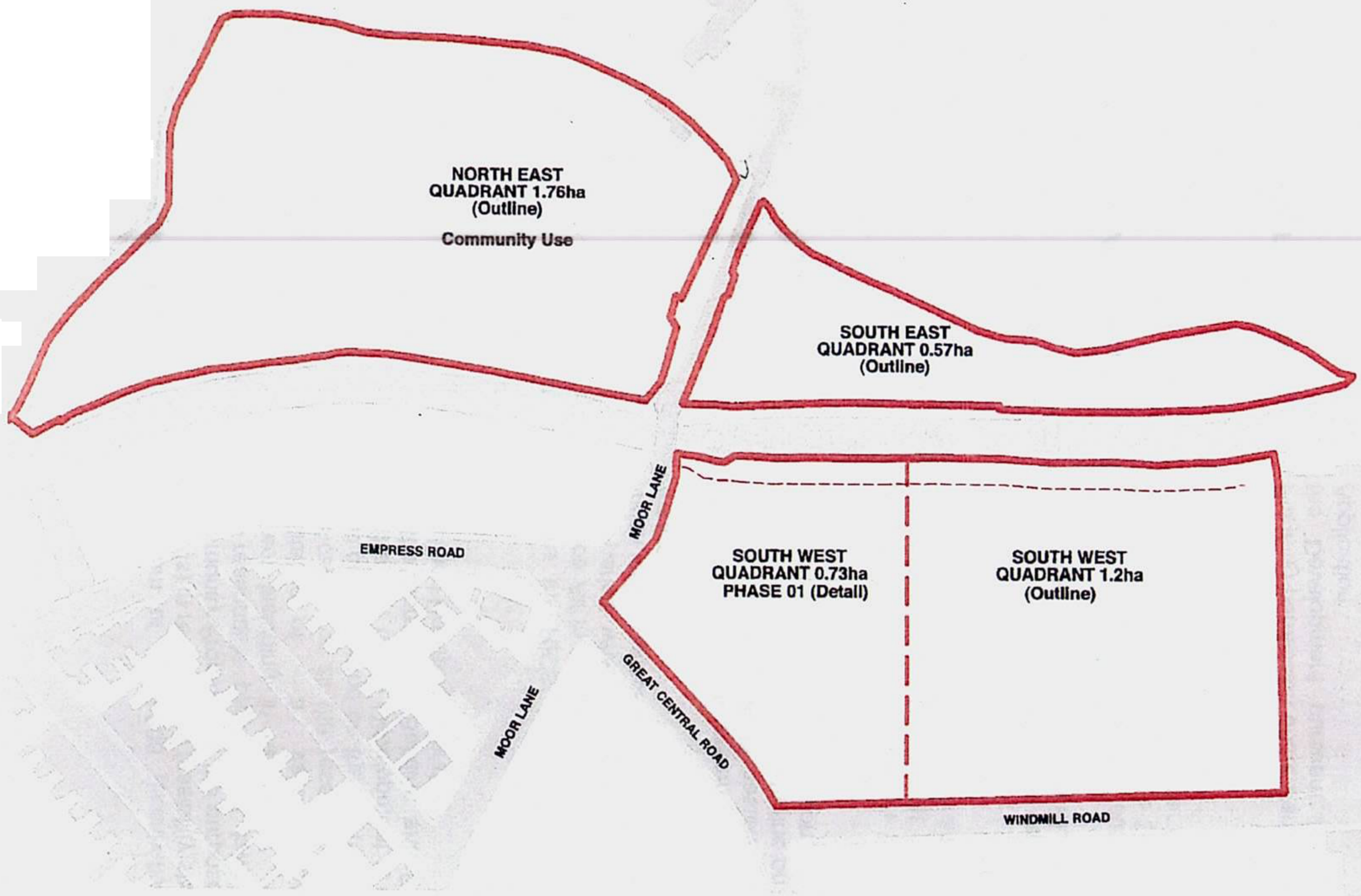
- The red lines of this drawing indicate a proposed boundary.
- The boundaries, dimensions and areas on this drawing should be verified on the ground before any construction work commences.
- All dimensions are in metres unless otherwise stated.
- All dimensions shown on this drawing are to the centre of the boundary unless otherwise stated.
- All dimensions are to be checked on site by the contractor and the contractor is to be responsible for any discrepancies.
- This drawing is to be used as a guide only and does not constitute a contract.
- This drawing is to be used in conjunction with all other relevant drawings and specifications for this project.

CDM Regulations

Contractor to provide a copy of the CDM Regulations to the client and to the principal contractor for their information regarding the project.

Revised Notes

Date	Issue	By	Checked
2012/09/10	Issue 1	Matthew Branton	Ben Durdley



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 www.franklinellis.co.uk

Residential Development
 Windmill Road
 Loughborough

Drawing title
SITE LOCATION PLAN

Author: Matthew Branton
 Designer: Ben Durdley

Drawing Scale: 1:1250 Sheet Size: A3

Project Name: **PLANNING**

Site No: 2120 | Planning No: PL01 | A

SITE LOCATION PLAN
 Scale 1:1250

"Owners"	means a collective reference to the First Owner the Second Owner and the Third Owner
"North East Quadrant"	the part of the Site shown edged red and cross-hatched green on the plan entitled in manuscript "SECTION 106 OVERALL SITE PLAN"
"Parkland Use"	use as public open space, formal and informal recreation, allotments, biodiversity/nature conservation enhancement, with associated planting, footpaths, fencing and parkland infrastructure including without limitation drainage, signs, seats or bins)
Public Transport Contribution"	the sum of eight thousand six hundred and thirty-eight pounds by way of a contribution to enable the provision of two bus stops with passenger shelters at such reasonable locations as shall be accessible from the part of the Site south of the Grand Union Canal on the pre existing public highway network as shall be agreed in writing between the First Owner and the Council or determined in event of dispute pursuant to clause 10
"Stakeholders"	All such persons or organisations as the Council shall approve in writing including without limitation Hastings Residents Association and the Developer as shall contribute towards the agreed design and specification of the Community Project.
"Transfer Date"	The date on which the Community Building and Public Park Land shall be transferred to the Council or its nominee pursuant hereto
"Release Date"	the date of the end of the Community Project Period unless the Transfer Date shall have occurred prior thereto
"Remainder Land"	the land in the North East Quadrant other than the 'Community Building and Public Park' Land

"Reserved Matters Approval"

any approval of reserved matters pursuant to the Planning Permission in respect of the part of the Development on the Community Building and Park Land and Remainder Land.

"Viability Assessment"

means a report containing but not limited to the following matters:

- Land values
- Costs of development
- Costs of remediation
- Anticipated sale costs
- Anticipated profit margins
- An Affordable Housing Scheme

- 1.2. Clause headings in this Deed are for convenience only and do not affect its interpretation
- 1.3. The masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa
- 1.4. A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement
- 1.5. A reference to a clause or schedule is a reference to a clause or a schedule contained in this Agreement
- 1.6. Reference to any party in this Agreement shall include the successors in title of that party

2. Enforceability

- 2.1. This Agreement is made in pursuance of Section 106 of the 1990 Act and the covenants contained in Clause 6 and Clause 7 are planning obligations for the purposes of that section
- 2.2. The parties to this Agreement have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Site, the First Owner the Second Owner and the Third Owner and any person or persons deriving title from any of them

- 2.3. Save for Clause 2.3 this Agreement is conditional and shall only have effect upon the later of:
- 2.3.1. the date upon which the Council grants the Planning Permission; and
 - 2.3.2. the date of the Commencement of Development
- 2.4. The obligations contained in this Deed shall not be binding upon:
- 2.4.1. any purchaser of an individual Dwelling or their mortgagee; or
 - 2.4.2. any successor in title from the persons in clause 2.5.1; or
 - 2.4.3. any future mortgagee of the Site or any part thereof unless it shall enter into possession of the Site or a part thereof ; or
 - 2.4.4. any statutory undertaker whose plant is situated in any part of the Site

3. Council's Legal Costs

- 3.1. The First Owner shall pay to the Council on the execution hereof the Council's reasonable legal costs of £800.00 in connection with the preparation, negotiation and execution of this Agreement

4. The First Owner's and the Second Owner's Covenants

- 4.1 The First Owner and the Second Owner covenant with the Council prior to the occupation of the first Dwelling to pay to the Council the Public Transport Contribution;
- 4.2 The First Owner and the Second Owner covenant with the Council not to cause or permit Commencement of Development until a contract has been entered into between either of them and Franklin Ellis Architects for a feasibility study for the Community Project including in respect of design and facilitation of a valid reserved matters application for all the reserved matters which were duly reserved on the Planning Permission for the part of the Development to be situated on the Community Building and Public Park Land and Remainder Land PROVIDED THAT the total cost of such services inclusive of value added tax shall not exceed the Design & Approval Sum

5. The Third Owner's Covenants

5.1. The Third Owner covenants with the Council:

- 5.1.1. prior to the occupation of the first Dwelling to cease the use of the Scrapyard Area as a scrap yard and waste transfer station and not to resume such use or begin to use any part of the Community Building and Public Park Land for any use other than the Development until the Transfer Date or the Release Date WHICHEVER SHALL BE THE SOONER
- 5.1.2. after the cessation of the scrap yard use to remove any buildings, materials and hard surfaced areas from the Scrapyard Area and the Community Building and Public Park Land.
- 5.1.3. to reserve the Community Building and Park Land and to carry out site clearance and fencing of the same in accordance with the Specification before the occupation of the first dwelling
- 5.1.4. Before the occupation of the first dwelling and following the works in 5.1.3 to offer to transfer the freehold estate in the Community Building and Public Park Land to the Council or its nominee for a nominal consideration (of £ 1) and if accepted to pay the Community Building and Public Park Payment to the Council PROVIDED THAT if the Release Date shall occur the Third Owners shall have no further obligation to observe or perform the requirements of this clause 5.1.4 in respect of the Community Building and Park Land which shall be permanently released from this clause
- 5.1.5. to reserve all the Remainder Land and within six months of any written request for the same from the Council or a determination of terms pursuant to clause 10 WHICHEVER SHALL BE THE LATER to transfer the same for a nominal consideration (of £ 1) PROVIDED THAT if at the end of the Community Project Period the said transfer shall not have taken place the Third Owners shall have no further obligation to observe or perform the requirements of this clause 5.1.5 in respect of the Remainder Land which shall be permanently released from this clause

6. Commencement of Development & Viability Review

- 6.1. The First Owner covenants with the Council to serve written notice upon the Council advising them of the date of Commencement of Development within 14 days of the occurrence of the same PROVIDED THAT default in giving notice shall not prevent Commencement of Development occurring
- 6.2. If the Second Phase has not Commenced within three years of the date of the grant of the Planning Permission the Owners' covenant that they shall not Commence the Second Phase nor continue constructing any other part of the Development until they have first submitted a Viability Assessment to the Council and paid for its independent review
- 6.3. No later than 90 days from receipt of the Viability Assessment the Council shall confirm what level of Affordable Housing, if any, the Owners should provide as part of the Development PROVIDED THAT in the absence of written confirmation in 90 days the restriction in clause 6.2 shall be released and the Owners shall be free to continue with the Development.
- 6.4. The First Owner and the Second Owner covenant to construct and provide the Affordable Housing, if any, in accordance with the Affordable Housing Scheme prior to 80% of the Dwellings comprising the Development being Occupied.

7. Council's Covenants

- 7.1. The Council covenants with the First Owner and the Second Owner that it will apply each of the Payments for the respective purpose for which it has been made pursuant hereto and that it will pay to the First Owner any of the Payments or any part of them which shall not have been expended for the respective defined purpose for which it was made within 5 years of receipt of the same by the Council together with such reasonable interest as it shall have accrued whilst held by the Council

8. Liability

- 8.1. No person shall be liable for any breach of the covenants, restrictions or obligations contained in this Agreement after he has parted with his interest in the Site or the part of it in respect of which such breach occurs but without prejudice to his liability for any subsisting breach of covenants prior to parting with such interest

8.2. Without prejudice to the generality of clause 8.1 :

8.2.1. the First Owner and Second Owner shall not be liable for any breach of this Agreement by the Third Owner in respect of the Community Building and Park Land; and

8.2.2. the Third Owner shall not be liable for any breach of this Agreement by the First Owner and the Second Owner in respect of the parts of the Site owned by them south of the Grand Union Canal ; and

8.2.3. the First Owner shall not be liable for any breach of this Agreement by the Second Owner in respect of the part of the Site owned by the Second Owner; and

8.2.4. the Second Owner shall not be liable for any breach of this Agreement by the First Owner in respect of the part of the Site owned by the First Owner

9. Council's General Rights

9.1. For the avoidance of doubt it is hereby declared:

9.1.1 that without prejudice to its duty to observe and perform the obligations on its part herein nothing contained or implied in this Agreement shall otherwise prejudice or affect the Council's rights powers duties and obligations in the exercise of its functions as a Local Authority and the rights powers duties and obligations of the Council under all public and private statutes bylaws orders and regulations may be as fully and effectually exercised in relation to the Land comprised within this Agreement or adjoining or adjacent thereto as if the Council were not a party to this Agreement and;

9.1.2 that the Council is not bound by anything contained or implied in this Agreement to provide or permit the use of its lands or any interest therein in any way so as to facilitate the use and development of the land

10. Dispute Resolution

10.1. In the event of any dispute or difference arising between [any of] the parties to this Deed in respect of any matter contained in this Deed (including without limitation a dispute in respect of the Affordable Housing Scheme such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 10.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 10.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 10.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

11. Local Land Charges

- 11.1. This Deed is a local land charge and shall be registered as such

12. Contracts (Rights of Third Parties) Act

- 12.1. The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement such that neither the Stakeholders nor any other person other than a party hereto or person deriving title therefrom shall be entitled to enforce the terms hereof against any party hereto or person deriving title therefrom (or in the case of the Council succeeding to the relevant statutory functions thereof)

13. Condition Subsequent

13.1. In the event of:

13.1.1. the expiration of the Planning Permission; or

13.1.2. the revocation or modification of the Planning Permission by the Council pursuant to section 97 of the Planning Act ; or

13.1.3. the quashing of the Planning Permission

the obligations of the First Owner the Second Owner and the Third Owner under this Agreement shall thereupon cease absolutely and the Council shall thereupon procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith

14. Future Alternative Planning Permission

14.1. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply

15. Issue of the Planning Permission for the Development

15.1. In consideration of the covenants on the part of the Owner herein contained the Council hereby covenants with the Owner that it will as soon as possible after the date of this Agreement issue the Planning Permission but in any event within 5 days

16. Confirmation of Compliance

16.1. The Council will upon the written request of any party at any time after the confirmation thereof to that party and thereafter cancel all related entries in the Register of local land charges

17. Notices

17.1. Any notice agreement consent or approval to be given under the terms of this Agreement shall be in writing and sent by first class post or delivered by hand; and in the case of the Council to be addressed to the Head of Strategic Support, Charnwood Borough Council, Southfields, Loughborough Leicestershire LE11 2TX; and in the case of the Owner to its address as stated herein (or such other address as the Owner from time to time has provided to the Council)

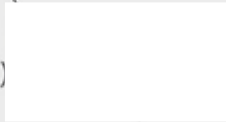
18. Indexation

18.1. Any sum referred to in Clauses 4 or 5 shall be increased by an amount proportionate to the increase in the Index from the date hereof until the date on which such sum is payable

IN WITNESS whereof the parties hereto have duly executed this Agreement as a Deed the day and year first before written

The Common Seal of
**THE COUNCIL OF
THE BOROUGH OF
CHARNWOOD**
was hereunto affixed to
this Deed
in the presence of

)
)
)
)
)
)



2013/14-218

Authorised Signatory

**SIGNED as a DEED by
HUGH JOSEPH GALLAGHER**
in the presence of:

Witness' signature:

Name (in block capitals): *WILL SMATTOCK*

Address: *13 DE MONTFORT ST
LEICESTER
LE1 7GE*

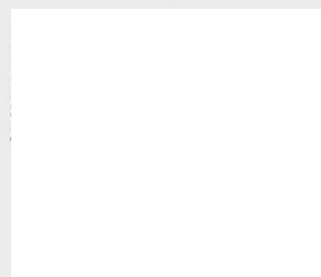
**SIGNED as a DEED by
LINDA GALLAGHER**
in the presence of:

Witness' signature:

Name (in block capitals): *WILL SMATTOCK*

Address: *13 DE MONTFORT ST
LEICESTER
LE1 7GE*

EXECUTED AS A DEED (but not delivered until the date hereof) by **SOWDEN INVESTMENTS LIMITED** acting by a Director and its secretary/two directors :



Director:



Director/Secretary:

[OR]

The Common Seal of)
SOWDEN INVESTMENTS)
LIMITED was affixed)
to this Deed in the presence of :)

Authorised Signatory

EXECUTED AS A DEED (but not)
delivered until the date hereof) by)
F S PROTECTOR LIMITED)
acting by a Director and its secretary/two directors :)

Director:

Director/Secretary:

[OR]

The Common Seal of)
F S PROTECTOR LIMITED was)
affixed to this Deed)
in the presence of :)

Authorised Signatory