JELSON LIMITED (1)

and

THE COUNCIL OF THE BOROUGH OF CHARNWOOD (2)

and

LEICESTERSHIRE COUNTY COUNCIL (3)

PLANNING AGREEMENT

Section 106 of the Town and Country Planning Act 1990
relating to proposed residential development on land adjacent
to Link Road/Bradgate Road Anstey Leicestershire

Marrons
Solicitors
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY
Ref: JTE/CM 1205-21-6
THIS AGREEMENT is made the 23rd day of March Two Thousand and Eight

BETWEEN:

1. JELSON LIMITED (Company Registration Number 571641) whose registered office is situate at 370 Loughborough Road Leicester LE4 5PR (“the Owner”)

2. THE COUNCIL OF THE BOROUGH OF CHARNWOOD of Council Offices Southfields Loughborough Leicestershire (“the Borough Council”)

3. LEICESTERSHIRE COUNTY COUNCIL of County Hall Glenfield Leicester LE3 8RA (“the County Council”)

RECITALS:

A. By means of the Planning Application planning permission was sought from the Borough Council to carry out the Development

B. The Borough Council is the Local Planning Authority for the purposes of the Act for the Borough of Charnwood within which the Application Land is situated

C. The Borough Council and the County Council are both Principal Councils within the meaning of the Local Government Act 1972

D. The County Council is responsible for the provision of education library and civic amenity facilities for the area in which the Application Land is situate

E. The Owner is the freehold owner of the Application Land which comprises

i. The land shown for identification purposes only coloured green on Plan 1 is registered at HM Land Registry with title absolute
under title number LT352771

ii. The land shown for identification purposes only coloured yellow on Plan 1 is comprised in a Conveyance dated 19 December 1958 and made between George Collins Roberts David Martin Charles-Jones and Richard Fearnson (1) and Jelson (Estates) Limited (2)

F. The Owner by the Planning Application applied to the Borough Council for detailed planning permission for the Development as described in the Planning Application

G. The Borough Council has granted the Planning Permission subject to certain conditions and has restricted the Commencement of Development until this Agreement has been completed

H. The Owner has agreed to enter into this Agreement with the intent that its interest in the Application Land shall be subject to the covenants and obligations entered into by it and with the intention that the covenants and obligations entered into by it should create planning obligations pursuant to Section 106 of the Act

I. The Borough Council and the County Council are satisfied that the provisions of this Agreement and the planning obligations contained herein comply with its policy in relation to Section 106 of the Act and are sufficient in respect thereof

OPERATIVE PROVISIONS:

I. DEFINITIONS AND INTERPRETATION

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

“Act” the Town & Country Planning Act 1990

“Affordable Dwelling/s” means the 14 units to be constructed as part of the Development as Affordable Housing and to be provided at plot numbers 5, 6, 13, 14, 15, 31, 32, 33,
34, 35, 36, 37, 46 and 47 as shown coloured brown on Plan 2 to be provided in accordance with the Affordable Housing Scheme and to comprise the following:

i) 11 units to be provided as Social Rented Housing

ii) 3 units to be provided as Shared Ownership Accommodation

"Affordable Housing" means housing provided by means of a subsidy enabling the rental or sale price to be lower than the prevailing market rents or sale price in the Borough of Charnwood and to be made available to people who because of their low incomes cannot afford to rent or purchase, houses generally available on the open market

"Affordable Housing Scheme" means the scheme for the provision of the Affordable Dwellings which shall specify those details in clause 3.1.6.2

"Application Land" the land edged red on Plan 1

"Bus Passes" means two adult bus passes for each dwelling entitling the holder of the bus pass to travel free of charge on local bus services over a period of three months commencing from the first occupation of each dwelling

"Bus Pass Contribution" the sum of Seventeen Thousand Pounds (£17,000) as a single one off financial contribution towards the provision of Bus Passes in accordance with the provisions of clause 4.1.5

"Civic Amenity Contribution" means the sum of One Thousand Nine Hundred and Sixty Pounds (£1,960.00) as a single one off financial contribution towards the provision and/or improvement of existing civic amenity facilities and maintenance thereof in Anstey Leicestershire in accordance with the provisions of clause 4.1.3

"Commencement of Development" the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of
Section 56 (4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development

i. trial holes or other operations to establish the ground conditions of the Application Land, site survey work, or works of remediation

ii. archaeological investigations on the Application Land

iii. any works of demolition or site clearance

iv. any structural planting or landscaping works

v. ecological or nature conservation works associated with the Development

vi. construction of site compounds boundary fencing or hoardings

vii. construction of access or highway works or provision of services (including drainage and media)

viii. any other preparatory works agreed in writing with the Borough Council

“Development” the development described in the Planning Application and to be carried out pursuant to the Planning Permission

“Dwelling” a dwelling built pursuant to the Planning Permission

“Education Contribution” means the sum of Seventy Five Thousand Five Hundred and Seventy Six Pounds (£75,576.00) payable by the Owner to the County Council for the provision/improvement of educational facilities at Bristall Longsade College in accordance with the provisions of clause 4.1.1

“Healthcare Contribution” means the sum of Thirty Eight Thousand Eight Hundred Pounds (£38,800.00) payable by the Owner to the Borough Council as a single one-off financial contribution towards the provision of health care facilities in Anstey Leicestershire in accordance with the provisions of clause 3.1.1

“Library Facilities Contribution” means the sum of Two Thousand Two Hundred and Ninety Pounds (£2,290.00) payable by the Owner to
the County Council as a single one-off financial contribution towards the provision and enhancement of library facilities at libraries which would ordinarily be expected to be attended by residents of the Development in accordance with the provisions of clause 4.1.2

“Market Dwelling/s” means any dwelling constructed as part of the Development which is not an Affordable Dwelling

“Monitoring Costs of Borough Council Contribution” means the sum of Two Hundred and Fifty Pounds (£250.00) or 0.5% of the value of the total Recreational Facilities Contribution the total NEAP Contribution the total Healthcare Contribution and the total On Site Open Space Area Maintenance Contribution whichever is the greater per individual contribution towards the Borough Council’s costs of monitoring compliance with the Owner’s obligations contained in clause 3.1 of this Agreement

“Monitoring Costs of County Council Contribution” means the sum of Two Hundred and Fifty Pounds (£250.00) or 0.5% of the value of the total Education Contribution the total Library Contribution the total Civic Amenity Contribution the Bus Pass Contribution the Traffic Calming Contribution and the obligation to provide Travel Packs whichever is the greater per individual obligation towards the County Council’s costs of monitoring compliance with the Owner’s obligations contained in clause 4.1 of this Agreement

“NEAP Contribution” means the sum of Forty Two Thousand Eight Hundred Pounds (£42,800.00) payable by the Owner to the Borough Council as a single one-off payment towards the provision of a Neighbourhood Equipped Area of Play (to NPFA standards) on the adjacent site on Bradgate Road in accordance with the provisions of clause 3.1.2

“On Site Open Space Area” means the area of open space to be provided by the Owner within the Development and subsequently adopted and maintained in accordance with the terms of clause 3.1.4

“On Site Open Space Area Maintenance Contribution” means the sum of Fifty Three Thousand Seven Hundred and Sixty Nine Pounds (£53,769.00) per hectare or pro rata per hectare as the case may be of the On Site Open Space Area provided as part of the Development payable by the Owner to the Borough Council for the maintenance of the On Site Open
Space Area in accordance with the provisions of clause 3.1.4.6.2

"On Site Open Space Area Scheme" means a scheme for the provision of the On Site Open Space Area to be submitted to the Borough Council in accordance with the provisions of clause 3.1.4.1

"On Site Open Space Area Maintenance Scheme" means the scheme to be submitted by the Owner to the Borough Council specifying details for the maintenance and management of the On Site Open Area by the Owner pursuant to Clause 3.1.4.5

"Plan 1" means the Plan attached hereto and labelled Plan 1

"Plan 2" means the Plan attached hereto and labelled Plan 2

"Planning Application" means the Planning Application submitted to the Borough Council and allocated reference number P/07/2671/2 applying for the erection of 47 dwellings and formation of access on site of 327 Link Road and land adjacent to Link Road/Bradgate Road Anstey

"Planning Permission" means the planning permission granted pursuant to the Planning Application for the Development

"Public Art Contribution" means the public art to be provided within the Development in accordance with the provisions of clause 3.1.5

"Public Art Scheme" means a scheme for the provision of Public Art within the Development to be prepared by the Owner and submitted to the Borough Council pursuant to the provisions of sub clause 3.1.5.1

"Recreational Facilities Contribution" means the sum of Fifty Thousand One Hundred and Two Pounds (£50,102.00) payable the Owner to the Borough Council as a single one off contribution towards the provision of and/or improvements to local recreational facilities in Anstey in accordance with the provisions of clause 3.1.3

"Registered Social Landlord" means a registered social landlord registered with the Housing Corporation under the Housing Act 1996

"Shared Ownership Accommodation" means dwellings purchased on a shared equity basis whereby not more than 75% and not less than 25% of the equity initially sold to the purchaser by the Registered Social Landlord with flexibility to increase their degree of ownership if they so wish
“Social Rented Housing” means housing let under a tenancy by a Registered Social Landlord at Housing Corporation target rent levels

“Traffic Calming Contribution” means the sum of Fifty Thousand Pounds (£50,000.00) payable by the Owner to the County Council as a single one off contribution towards traffic calming measures on Link Road in accordance with the provisions of clause 4.1.4

“Travel Packs” means a pack of information containing details of local walking and cycling routes, local bus services/stop/timetables, shops and other local amenities and details of any community transport, car sharing or car club scheme operating in the vicinity and application forms for the free bus passes available in pursuance of clause 4.1.7 of this agreement

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 Schedule or Plan such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of or in the case of a Plan attached to 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 "the 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 is a planning obligation and is made pursuant to
Section 106 of the Act

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

Liability

2.3 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 2.6 those deriving title under the Owner PROVIDED THAT
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

2.4 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 PROVIDED THAT the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owner and the Borough Council as evidenced by a memorandum endorsed on this Agreement

2.5 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

2.6 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 a Dwelling) it shall within twenty-eight 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

Contingencies

2.7 With the exception of the obligation contained in clause 2.9 and clause 2.16 the obligations in this Agreement are conditional upon the Commencement of Development and until such time as this condition is satisfied the obligations contained herein shall be of no effect

2.8 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
Commencement of Development

2.9 The Owner shall give the Borough Council seven days notice in advance of the Commencement of Development and shall send a copy of such notice to the County Solicitor of the County Council and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and the Borough Council and the County Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring.

Determination by Expert

2.10 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:

2.10.1 The person to be appointed pursuant to Clause 2.10 shall if possible be a person having five 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.

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

2.10.2.1 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;

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

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

2.10.2.4 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;

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

2.10.2.6 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

2.11 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

2.12 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

2.13 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

2.14 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.

2.15 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

2.16 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.

2.17 Perpetuity Period

For the purposes of such parts of this Agreement as may be subject to the law against perpetuities, the perpetuity period shall be a period of 80 years from the date hereof.

2.18 Void Provisions

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 foregoing provisions would be to defeat the original intention of the parties.

2.19 Application of this Agreement

If the Borough Council agrees pursuant to an application under Section 73 of the Town and Country Planning Act 1990 to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the Town and Country Planning Act 1990 the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission.
No Fetter of Discretion

2.20 Save as permitted by law in equity 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

2.21 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

2.22 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 OWNERS PLANNING OBLIGATIONS WITH THE BOROUGH COUNCIL

3.1 The Owner covenants with the Borough Council:

Healthcare Contribution

3.1.1 To pay the Healthcare Contribution in accordance with the following:
3.1.1.1 50% of the Healthcare Contribution prior to the first occupation of the 30th Dwelling

3.1.1.2 50% of the Healthcare Contribution prior to the first occupation of the final Dwelling

**NEAP Contribution**

3.1.2 To pay the NEAP Contribution prior to the first occupation of the first Market Dwelling

**Recreational Facilities Contribution**

3.1.3 To pay the Recreational Facilities Contribution prior to the first occupation of the first Market Dwelling

**On Site Open Space Area and On Site Open Space Area Maintenance Contribution**

3.1.4 To provide the On Site Open Space Area in accordance with the following:

3.1.4.1 To submit the On Site Open Space Area Scheme to the Borough Council for approval within six months of the Commencement of Development

3.1.4.2 Not to permit the first occupation of the final Dwelling until the Owner has provided the On Site Open Space Area in accordance with the On Site Open Space Area Scheme

3.1.4.3 To maintain the On Site Open Space Area for a period of 12 months after notice of practical completion of the works for the On-Site Open Space Area has been offered to and accepted by the Borough Council and if any tree or shrub or other planting seeding or turving dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed
3.1.4.4 At the end of the maintenance period referred to in clause 3.1.4.3 to serve written notice on the Borough Council confirming whether the Owner wishes to maintain the On Site Open Space Area or alternatively that it requires the Borough Council to maintain the On Site Open Space Area

3.1.4.5 In the event the Owner elects to maintain the On Site Open Space Area pursuant to Clause 3.1.4.4 it shall submit the On Site Open Space Area Maintenance Scheme to the Borough Council for approval (such approval not to be unreasonably withheld or delayed) and shall maintain the On Site Open Space Area in accordance with the On Site Open Space Area Maintenance Scheme PROVIDED THAT if the Owner elects to maintain the On Site Open Space Area pursuant to Clause 3.1.4.4 there shall be no requirement for the Owner to pay to the Borough Council the On Site Open Space Area Maintenance Contribution.

3.1.4.6 In the event the Owner elects for the Borough Council to maintain the On Site Open Space Area the following shall apply

3.1.4.6.1 The Owner shall give the Borough Council notice in writing that the twelve month maintenance period has expired and subject to the Borough Council being satisfied on an inspection that all requirements of this clause 3.1.4 have been satisfactorily carried out and the covenants performed the Borough Council shall issue a certificate to such effect provided that if the Borough Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the area of open space in question as the case may be and the maintenance period for such land shall be extended until such time as the Borough Council certifies in writing that the outstanding work has been completed or the defects have been remedied as the case may be.

3.1.4.6.2 The Owner shall transfer to the Borough Council the On Site Open Space Area for the sum of £1.00 within six months of the issue of the
certificate issued pursuant to clause 3.1.4.6.1 such transfer to be in accordance with the relevant provisions of the Second Schedule and to be accompanied by the On Site Open Space Area Maintenance Contribution which shall be payable to the Borough Council in respect of the On Site Open Space Area and for the avoidance of doubt the Owner shall maintain the On Site Open Space Area in a clean and tidy condition until the transfer to the Borough Council has been completed.

Public Art Contribution

3.1.5 At the election of the Owner (in its absolute discretion) to provide the Public Art Contribution in either of the following ways:

3.1.5.1 To submit the Public Art Scheme to the Borough Council for approval prior to the first occupation of the first Dwelling and to carry out the Public Art Scheme prior to the first occupation of the final Dwelling

Or

3.1.5.2 To pay to the Borough Council a single one off commuted sum of £15,000.00 (Fifteen Thousand Pounds) prior to the first occupation of the first dwelling as a contribution to the provision of public art within the Development in the area coloured blue on Plan 2.

Affordable Housing

3.1.6 To provide the Affordable Dwellings in accordance with the Affordable Housing Scheme

3.1.6.1 To submit to the Borough Council prior to the first occupation of the first Market Dwelling the Affordable Housing Scheme for approval (such approval not to be unreasonably withheld or delayed) for the provision of the Affordable Dwellings on the Development

3.1.6.2 The Affordable Housing Scheme shall include the following details:

a) The intended Registered Social Landlord
b) The intended funding arrangements for the Affordable Housing Scheme

c) The programme for the construction of the Affordable Dwellings

d) Any nomination rights to be granted to the Borough Council

e) The anticipated rent levels for the Social Rented Dwellings

3.1.6.3 To promote the Affordable Housing Scheme in accordance with the approved programme and shall secure the provision of the Affordable Housing Scheme by agreement with the Registered Social Landlord

3.1.6.4 To use its reasonable endeavours to ensure that the Affordable Housing Scheme is implemented and the Affordable Dwellings are transferred to the Registered Social Landlord within 18 months of the completion of the Affordable Dwellings

3.1.6.5 If the Affordable Dwellings are not transferred within 18 months of their completion the Affordable Dwellings shall be offered to a Registered Social Landlord nominated by the Borough Council for a further period of one year

3.1.6.6 If the Affordable Dwellings are not taken up within the 18 months period pursuant to clause 3.1.6.4 then the Owner may develop the Affordable Dwellings itself for the purpose of affordable housing as defined within Planning Policy Statement 3: Housing or its equivalent or replacement in accordance with a further scheme to be approved by the Borough Council

3.1.6.7 The covenant contained in this clause shall not bind:

a) any present or future mortgagee of the Affordable Dwellings

b) any receiver appointed by such a mortgagee or chargee

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 To pay the Monitoring Costs of the Borough Council Contribution to the Borough Council prior to the first occupation of the first Dwelling

Borough Council’s Legal Costs

3.1.8 To pay the Borough Council’s reasonable legal costs in respect of the preparation of this agreement on its completion in the sum of £800 (Eight Hundred Pounds)

4. THE OWNERS PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

4.1 The Owner covenants with the County Council:

Education Contribution

4.1.1 To pay the Education Contribution to the County Council as follows and not to allow or permit further development to occur until such payments have been made:

4.1.1.1 10% of the Education Contribution prior to the first occupation of the first Dwelling

4.1.1.2 45% of the Education Contribution prior to first occupation of the
twelfth Dwelling

4.1.3 45% of the Education Contribution prior to first occupation of the thirty sixth Dwelling

Library Facilities Contribution

4.1.2 To pay the Library Facilities Contribution prior to the first occupation of the first Dwelling

Civic Amenity Contribution

4.1.3 To pay the Civic Amenity Contribution prior to the first occupation of the first Dwelling

Traffic Calming Contribution

4.1.4 To pay the Traffic Calming Contribution prior to first occupation of the first Dwelling

Bus Pass Contribution

4.1.5 To pay the Bus Pass Contribution prior to the first occupation of the first Dwelling

Monitoring Costs of the County Council Contribution

4.1.6 To pay the Monitoring Costs of County Council Contribution prior to the first occupation of the first Dwelling

Travel Packs

4.1.7 i. to provide to every new household on first occupation a travel pack in a form agreed with the County Council containing details of the free bus pass scheme and application forms for the bus passes to enable the occupiers to apply to the County Council for up to two bus passes at any time prior to the expiry of the period ending six months immediately following the legal completion date of the first transfer of the relevant
iii. to provide within the contract for sale of the first sale of each dwelling a covenant by the occupier that the occupier and any subsequent occupier (within a six month period from the date of first occupation) who is provided with a bus pass will sign a written acknowledgement of receipt to be provided to the County Council within fourteen days of receipt of the bus pass.

iii. to notify the County Council of the date of completion of sale of the last dwelling to be occupied.

County Council’s Legal Costs

4.1.8 To pay the County Council’s reasonable legal costs in respect of the preparation of this agreement on its execution in the sum of £600 (Six Hundred Pounds)

5. THE OWNERS PLANNING OBLIGATIONS TO THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

5.1 The Owner hereby covenants to pay to the Borough Council and to the County Council in addition to the sum payable under clauses 3.1.1 3.1.2 3.1.3, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5 and 4.1.6 and sub clause 3.1.5.2 in the event the Owner elects to pay the Public Art Contribution set out therein respectively above such sum as shall reflect the increase in that sum as calculated in accordance with the provisions of the First Schedule hereto.

6. BOROUGH AND COUNTY COUNCIL COVENANTS

6.1 The Borough Council covenants with the Owner as follows:

6.1.1 to apply the Healthcare Contribution to the provision or improvement of health care facilities serving the Development in Anstey Leicestershire

6.1.2 to apply the NEAP Contribution towards the provision of a
Neighbourhood Equipped Area of Play to NPFA standards on the adjacent site on Bradgate Road

6.1.3 to apply the Recreational Facilities Contribution towards the cost of the provision and/or enhancement of local recreational facilities in Anstey Leicestershire

6.1.4 to apply the On Site Open Space Area Maintenance Contribution for the maintenance of the On Site Open Space Area

6.1.5 to apply the Public Art Contribution (in the event the Owner elects to pay the Public Art Contribution pursuant to clause 3.1.5.2) towards the provision of public art within the Development in the area coloured blue on the Plan

6.1.6 to apply the Monitoring Costs of Borough Council Contribution towards the administrative costs of confirming compliance with Healthcare Contribution Recreational Contribution NEAP Contribution and On Site Open Space Area Maintenance Contribution

6.1.7 in the event that any monies payable pursuant to this Agreement are not applied to the purposes specified within 5 years of the receipt of the last contribution to refund to the Owner any unexpended contribution along with interest thereon calculated at the base rate of HSBC plc from time to time from the date of any payment until the date of repayment

6.1.8 To produce full details of the expenditure of all monies paid pursuant to the provisions of this Agreement which details shall be provided following receipt of a request for the same from the Owner

6.1.9 Upon 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) from the relevant obligation and procure that a note thereof is entered on the Register of Local Land Charges
6.2 The County Council covenants with the Owner as follows:

6.2.1 to apply the Education Contribution for the provision of educational facilities at Birstall Longslade College

6.2.2 to apply the Library Facilities Contribution for the provision or enhancement of library facilities at libraries which would ordinarily be expected to be attended by residents of the Development

6.2.3 to apply the Civic Amenity Contribution towards the provision and/or improvement of existing civic amenity facilities and maintenance thereof in Anstey Leicestershire

6.2.4 To apply the Traffic Calming Contribution towards the provision of the proposed Link Road traffic calming scheme

6.2.5 To apply the Bus Pass Contribution to the provision of two free three month bus passes per dwelling

6.2.5.1 In the event of any change of occupier(s) of any of the Dwellings during the six month period commencing with the first occupation the new owners will be provided with (subject to the proviso set out in this clause) two free Bus Passes for all subsequent occupiers of the aforesaid Dwelling for the remainder of the three month period commencing from the first occupation of the aforesaid Dwelling PROVIDED THAT no more than two Bus Passes shall be issued to the adult occupiers of the Dwellings at any one time

6.2.5.2 It will account in writing to the developer at six monthly intervals commencing from the payment of the Bus Pass Contribution with full details of the number of bus passes issued

6.2.5.3 At the end of a period of nine months after the notification of the occupation of the last dwelling to be constructed pursuant to the planning permission it will repay to the person who made the payment any unexpected portion of the Bus Pass Contribution
6.2.5.4 to apply the Monitoring Costs of County Council Contribution towards the administrative costs of confirming compliance with the Education Contribution the Library Facilities Contribution the Civic Amenity Contribution the Bus Pass Contribution and the Traffic Calming Contribution and the obligation to provide Travel Packs.

6.2.6 in the event that any monies payable pursuant to this Agreement are not applied to the purposes specified within 5 years of the receipt of the last contribution to refund to the Owner any unexpended contribution along with interest thereon calculated at the base rate of HSBC plc from time to time from the date of any payment until the date of repayment.

6.2.7 To produce full details of the expenditure of all monies paid pursuant to the provisions of this Agreement which details shall be provided following receipt of a request for the same from the Owner.

6.2.8 Upon 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) from the relevant obligation and procure that a note thereof is entered on the Register of Local Land Charges.
THE FIRST SCHEDULE
INDEXATION PROVISIONS

1. In this Schedule:

"Index" means in the case of the Healthcare Contribution the NEAP Contribution the Recreational Facilities Contribution the On Site Open Space Area Maintenance Contribution the Civic Amenity Contribution the Library Facilities Contribution the Traffic Calming Contribution the Bus Pass Contribution the Monitoring Costs of the County Council Contribution and the Education Contribution the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute 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 EXCEPT in respect of the Healthcare Contribution and the NEAP Contribution which date shall be 27 October 2004 and EXCEPT in respect of the Civic Amenity Contribution the Library Facilities
Contribution the Traffic Calming Contribution the Bus Pass Contribution the Monitoring Costs of the County Council Contribution and the Education Contribution which date shall be the date of the grant of planning permission, i.e. 20 December 2007

"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 Healthcare Contribution the NEAP Contribution the Recreational Facilities Contribution the On Site Open Space Area Maintenance Contribution Civic Amenity Contribution the Library Facilities Contribution the Traffic Calming Contribution the Bus Pass Contribution the Monitoring Costs of the County Council Contribution and the Education Contribution is paid

2. The Healthcare Contribution the NEAP Contribution the Recreational Facilities Contribution the On Site Open Space Area Maintenance Contribution Civic Amenity Contribution the Library Facilities Contribution the Traffic Calming Contribution the Bus Pass Contribution the Monitoring Costs of the County Council Contribution and the Education 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 Healthcare Contribution the NEAP Contribution the Recreational Facilities Contribution the On Site Open Space Area Maintenance Contribution Civic Amenity Contribution the Library Facilities Contribution the Traffic Calming Contribution the Bus Pass Contribution the Monitoring Costs of the County Council Contribution and the Education 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 the BCIS, or any index previously substituted therefore 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 therefore on the other hand
SECOND SCHEDULE
PROVISIONS RELATING TO TRANSFER OF LAND

1. GENERAL

The following provisions shall apply to all transfers of land pursuant to this Agreement

1.1 The transfer shall be in accordance with the Law Society's Standard Conditions of Sale (4th Edition) "Standard Conditions" in so far as they are not inconsistent with the terms of this Agreement

1.2 Standard Conditions 2.1, 2.2, 2.3, 4.3, 4.4.2, 5.1.1, 5.1.2, 5.2 and 6.1 shall not apply to the transfer

1.3 The Transferor granting all reasonable easements and rights to allow the development and use of the land for the purposes specified in this Agreement.

1.4 The Transferor making such reservations of rights as are reasonable in favour of the remainder of the development including but not limited to the right to lay new services and build even if the passage of light and air to the land transferred is affected.

1.5 The inclusion of a nuisance clause providing that the transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the owners or occupiers of the remainder of the Development.

1.6 No unduly restrictive or burdensome covenant or clause being imposed upon the transferee in addition to the provisions contained in this Schedule

1.7 The land will be transferred subject to:
a) all local land charges, whether or not registered before the date of this agreement, and all matters capable of registration as local land charges whether or not actually registered;

b) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this agreement;

c) all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the Property;

d) all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining owners affecting the Property, and all liability to repair or covenants to repair roads, pavements, paths, ways, passages, sewers, drains, gutters, fences, and other like matters, without obligation on the Vendor to provide evidence of the creation of or to define or apportion any such liability; and

e) any interests overriding the title to the land

1.8 An indemnity from the transferee to observe and perform the covenants affecting the title to the land as at the date of the Transfer will be included in the Transfer.

1.9 The following restrictive covenants will be included in the Transfer for the benefit of the Owners retained land

a) restriction preventing use for any purpose other than public open space
b) not to be used for a trade or business
c) not to be used for residential purposes
d) to keep land in good repair and condition
e) not to obstruct public highway
f) to keep and properly maintain the boundaries in good repair and condition  
g) to properly keep and maintain any landscaping  
h) to keep and maintain the land in a clean and tidy condition  
i) not to cause or permit any nuisance on the land  
j) on any transfer of the land or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner/developer or the whole or relevant parts of the retained land to observe and perform these covenants  
k) not to erect any buildings or other erections except equipment ancillary to the purpose for which the land is transferred  

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

THE COMMON SEAL OF THE COUNCIL  
OF THE BOROUGH OF CHARNWOOD  
was hereunto affixed in the presence of: -  

Authorized Officer

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

Authorized Officer
SIGNED as a DEED on behalf of
JEelson LIMITED

Director

Director/Secretary