Without prejudice and subject to contract

DATED 2009

(1) THE COUNCIL OF THE BOROUGH OF CHARNWOOD
    - and -

(2) LEICESTERSHIRE COUNTY COUNCIL
    - and -

(3) NAMPAK CARTONS AND HEALTHCARE LIMITED

AGREEMENT

made pursuant to section 106 of the Town and Country Planning Act 1990

Land at Linkfield Road, Mountsorrel,
Leicestershire
CONTENTS

1. DEFINITIONS AND INTERPRETATION.........................................................2

THE SCHEDULE ..........................................................................................10

The Draft Planning Permission..................................................................10
AN AGREEMENT is made the 2009

BETWEEN

(1) THE COUNCIL OF THE BOROUGH OF CHARNWOOD of Southfields Loughborough Leicestershire LE11 2TX ("the Council");

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

(3) NAMPYAC CARTONS AND HEALTHCARE LIMITED (company number 00709093) whose registered office is at Windlebrook House, Guildford Road, Bagshot, Surrey GU19 5NG ("the 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 County Council is the local education, library and waste management authority for the area within which the Site is situated.

3 The Owner is owner of the Site in fee simple in possession. The Owner's title is registered with Absolute Title at HM Land Registry under title numbers LT148653 and LT152273.

4 The Owner by a written application dated ☟ has applied to the Council for permission to carry out development on the site consisting of a residential development comprising the erection of 46 dwellings which development is more particularly described in Planning Application reference number ☟ and the plans submitted therewith ("the Development").

5 Having regard to the provisions of its Development Plan and to all other material considerations the Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to certain conditions and to the making of this Agreement without which Planning Permission for the Development would not have been granted.
IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

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

1.1 "the Act" means the Town and Country Planning Act 1990 and any statutory amendments or modifications thereto;

1.2 "the Affordable Housing" means subsidised residential accommodation to meet the needs of households whose income is not sufficient to allow them access to open market housing in the area administered by the Council;

1.3 "Affordable Housing Scheme" means a scheme containing the details and mechanisms for the provision of Affordable Housing to be provided on the Site pursuant to the Planning Permission provided that the number of units of Affordable Housing on the Site shall comprise no more than 30% of the total number of Residential Units on the Site;

1.4 "the Commencement of Development" means the date upon which the Owner shall begin the Development by the carrying out of a material operation in accordance with the provisions of Section 56(4) of the Act provided that for the avoidance of doubt the carrying out of archaeological investigations, demolition, remediation works, site clearance, site preparation, surveys, construction of boundary fencing or hoardings shall be deemed not to constitute a material operation and shall not amount to Commencement of Development;

1.5 "the Development" means the development authorised by the Planning Permission;

1.6 "Occupation" means the use of the buildings and land at the Site for the purposes permitted by the Planning Permission save for temporary occupation for the purposes of construction, fitting out, show home and the word "Occupy" and "Occupation" are cognate expressions and shall be construed accordingly;

1.7 "Open Market Units" means the Residential Units forming part of the Development which are not units of Affordable Housing;

1.8 "the Plan" means the Plan attached to this Agreement;
1.9 "the Planning Application" means the Planning Application submitted by the Developer to the Council on the and carrying reference number ;

1.10 "the Planning Permission" means Planning Permission under Part III of the Act for the Development pursuant to the Planning Application a draft of which is attached as the Schedule to this Agreement;

1.11 "the Public Art Strategy" means the strategy for the provision of public art within the Site;

1.12 "the Residential Units" means the units of Affordable Housing and the Open Market Units;

1.13 "the Site" means all that freehold land known as Former My Cartons Site, Linkfield Road, Mountsorrel, Leicestershire and shown edged red on the Plan;

1.14 Clause headings in this Deed are for convenience only and do not affect its interpretation.

1.15 The masculine feminine and neuter genders include each of the other genders and the singular include the plural and vice versa.

1.16 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement.

1.17 A reference to a clause or schedule is a reference to a clause or a schedule contained in this Agreement.

1.18 Reference to any party in this Agreement shall include the successors in title of that party.

1.19 Where any approval, consent, agreement or the like is required to be given pursuant to the terms of this Agreement no party shall unreasonably withhold or delay any such approval, consent, agreement or the like.

2. This Agreement is made in pursuance of Section 106 of the Act 1990 and the covenants contained in Clauses 5 and 6 are planning obligations for the purposes of that section.
3. 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 Owner and any person or persons deriving title from the Owner.

4. Save for Clause 5.6 (costs) this Agreement is conditional and shall only have effect upon the date of the Commencement of Development.

5. The Owner covenants with the Council:

5.1 Adult Recreation Facilities Contribution

Not to permit the Occupation of more than 16 Open Market Units until the Owner has paid to the Council the sum of [£ ( )] as a contribution towards the provision or enhancement of adult recreation facilities in the vicinity of the Development ("the Adult Recreation Facilities Contribution").

5.2 Children's Play Facilities Contribution

Not to permit the Occupation of more than 16 Open Market Units until the Owner has paid to the Council the sum of [£ ( )] as a contribution towards the provision or enhancement of children's play facilities in the vicinity of the Development ("the Children's Play Facilities Contribution").

5.3 Healthcare Contribution

Not to permit the Occupation of more than 16 Open Market Units until the Owner has paid to the Council the sum of [£ ( )] as a contribution towards the provision of healthcare facilities in the vicinity of the Development ("the Healthcare Contribution")

5.4 Not to permit Commencement of Development until the Owner has submitted the Affordable Housing Scheme to the Council for its approval and the Council has given its approval in writing to the Affordable Housing Scheme.

5.5 Not to permit Commencement of Development until the Owner has submitted the Public Art Strategy to the Council for its approval and the Council has given its approval in writing to the Public Art Strategy.

5.6 To pay to the Council on the execution hereof the Council's reasonable legal costs in connection with the preparation and execution of this Agreement.
6. The Owner covenants with the County Council:

6.1 Education Contribution

Not to permit the Occupation of more than 16 Open Market Units until the Owner has paid to the County Council the sum of [£ ( )] as a contribution towards the provision or enhancement of education facilities in the vicinity of the Development ("the Education Contribution").

6.2 Library Contribution

Not to permit the Occupation of more than 16 Open Market Units until the Owner has paid to the County Council the sum of [£ ( )] as a contribution towards the provision or enhancement of library facilities in the vicinity of the Development ("the Library Contribution").

6.3 Civic Amenity Contribution

Not to permit the Occupation of more than 16 Open Market Units until the Owner has paid to the County Council the sum of [£ ( )] as a contribution towards the provision or enhancement of civic amenity facilities in the vicinity of the Development ("the Civic Amenity Contribution").

7. The Council covenants with the Owner:

7.1 To use the Adult Recreation Facilities Contribution for the provision or enhancement of adult recreation facilities in the locality;

7.2 In the event that at the expiry of the period of 5 years from the date of the payment of the Adult Recreation Facilities Contribution any of the Adult Recreation Facilities Contribution remains unexpended to repay the unexpended portion thereof with any interest accrued thereon;

7.3 To use the Children's Play Facilities Contribution for the provision or enhancement of children's play facilities in the locality;

7.4 In the event that at the expiry of the period of 5 years from the date of the payment of the Children's Play Facilities Contribution any of the Children's Play Facilities Contribution remains unexpended to repay the unexpended portion thereof with any interest accrued thereon;
7.5 To use the Healthcare Contribution for the provision of healthcare facilities in the locality;

7.6 In the event that at the expiry of the period of 5 years from the date of the payment of the Healthcare Contribution any of the Healthcare Contribution remains unexpended to repay the unexpended portion thereof with any interest accrued thereon.

8. The County Council covenants with the Owner:

8.1 To use the Education Contribution for the provision or enhancement of education facilities in the locality;

8.2 In the event that at the expiry of the period of 5 years from the date of the payment of the Education Contribution any of the Education Contribution remains unexpended to repay the unexpended portion thereof with any interest accrued thereon;

8.3 To use the Library Contribution for the provision or enhancement of library facilities in the locality;

8.4 In the event that at the expiry of the period of 5 years from the date of the payment of the Library Contribution any of the Library Contribution remains unexpended to repay the unexpended portion thereof with any interest accrued thereon;

8.5 To use the Civic Amenity Contribution for the provision or enhancement of civic amenity facilities in the locality;

8.6 In the event that at the expiry of the period of 5 years from the date of the payment of the Civic Amenity Contribution any of the Civic Amenity Contribution remains unexpended to repay the unexpended portion thereof with any interest accrued thereon.

9. 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 which is the subject of this Agreement but without prejudice to his liability for any subsisting breach of covenants prior to parting with such interest.

10. Purchasers (including purchasers of leases) of individual Residential Units for their own Occupation or for tenants who Occupy those individual units (or any person or mortgagee claiming through or under such person) are not bound by this Agreement.
11. For the avoidance of doubt it is hereby declared:

(a) that nothing contained or implied in this Agreement shall 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

(b) 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.

12. Third Party Rights

The parties intend that no person who is not a party to this Agreement is to have the benefit or be capable of enforcing any term of this Agreement as a result of the Contracts (Rights of Third Parties) Act 1999.

13. Dispute Resolution

In the event of any dispute or difference between the Owner, the Council and the County Council or either of them arising out of this Agreement (other than a dispute or difference relating to a question of law or in relation to the interpretation of this Agreement) the Owner, the Council and the County Council agree that the matter in dispute will on the application of either of the parties be referred to the Expert and it is further agreed that:

13.1 the determination of the Expert shall be final and binding on the parties save in the case of manifest error;

13.2 the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;

13.3 the Expert's costs shall be borne in such proportions as he/she may direct failing which the parties shall each bear their own costs of the reference and determination and the Expert’s costs calculated by dividing the Expert's costs by the number of sides to the reference; and
13.4 the Expert may be replaced by a fresh appointee in the event of his/her becoming at
any time unable or unwilling for any reason to proceed to discharge his/her function
and such fresh appointee shall be appointed in the same manner as the Expert.

14. Variations

No variation to this Agreement shall be effective unless made by deed or pursuant to the
determination of an application made under section 106A of the 1990 Act.

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

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:

Head of Legal Services / Senior Solicitor

THE COMMON SEAL of THE )
COUNTY COUNCIL OF )
LEICESTERSHIRE was hereunto )
affixed to this Deed in the presence of:

Head of Legal Services / Senior Solicitor
THE COMMON SEAL of
NAMPYAK CARTONS AND
HEALTHCARE LIMITED was
hereunto affixed to this Deed in the
presence of:

Director

Director/Secretary
THE SCHEDULE

The Draft Planning Permission