

DATED 8th February 2017

(1) PERSIMMON HOMES LIMITED

and

(2) ASHFIELD DISTRICT COUNCIL

PLANNING OBLIGATION BY AGREEMENT

Section 106 of the Town and Country Planning Act 1990

**relating to the development of land at
Former Bath House and Headstocks, Annesley Colliery,
Newstead Road, Annesley, Nottinghamshire**



Pinsent Masons

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THIS AGREEMENT is made on

8th February

2017

BETWEEN:-

- (1) **PERSIMMON HOMES LIMITED** (Company No 04108747) whose registered office is situate at Persimmon House, Fulford, York, YO19 4FE (the "Owner"); and
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA (the "Council").

hereinafter referred to as the Parties and Party shall be construed accordingly.

WHEREAS:-

- (A) The Owner is the freehold owner of land situated at the Former Bath House and Headstocks, Annesley Colliery, Newstead Road, Annesley, Nottinghamshire registered at HM Land Registry under title number NT431897 and which is shown edged red on the Plan appended hereto which land is hereinafter referred to as the "Site".
- (B) The Owner has submitted a planning application for the Development which has been allocated reference number V/2015/0449 ("the Application").
- (C) The Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area in which the Site is situated.
- (D) This Deed seeks to release the Site from the obligations in the following documents and impose fresh obligations in light of the submission of the Application to develop part of the land which was the subject of the following documents for residential use which is an alternative use than referred to in the following permissions :
 - i. a S106 Agreement dated 4 June 2007 (the "2007 S106 Agreement") made between the parties in respect of the grant of planning permission under reference number V/2005/0886 for a mixed use scheme for housing development, employment land and provision of public open space, footpaths, landscaping, access and associated works (the "2007 Permission")
 - ii. a Unilateral Undertaking dated 15 January 2009 (the "2009 Undertaking") given by the Owner to the Council in respect of the grant of planning permission under reference numbers V/2007/1017 and V/2007/1015 for the development of a heritage park including a health centre pharmacy / retail unit heritage centre and associated parking and infrastructure and an application for the variation of condition 5(f) and (g) of the Original Permission together with conservation area consent applications under reference number V/2007/1012 for the demolition of a former bath House Building to facilitate the development of the heritage park on the Site and V/2007/1014 for the demolition of the Headstocks on the Site (the "2009 Permissions").
 - iii. a S106 Agreement dated 20 September 2011 (the "2011 S106 Agreement") made between the parties in respect of the grant of planning permission under reference number V/2011/0184 for the erection of 52 dwellings (the "2011 Permission").
- (E) The Council is minded to grant planning permission for the Development in accordance with the Application ("the Planning Permission") but requires the Owner to enter into this Deed to secure measures aimed at mitigating the impact of the development before granting such planning permission.

IT IS AGREED as follows:-

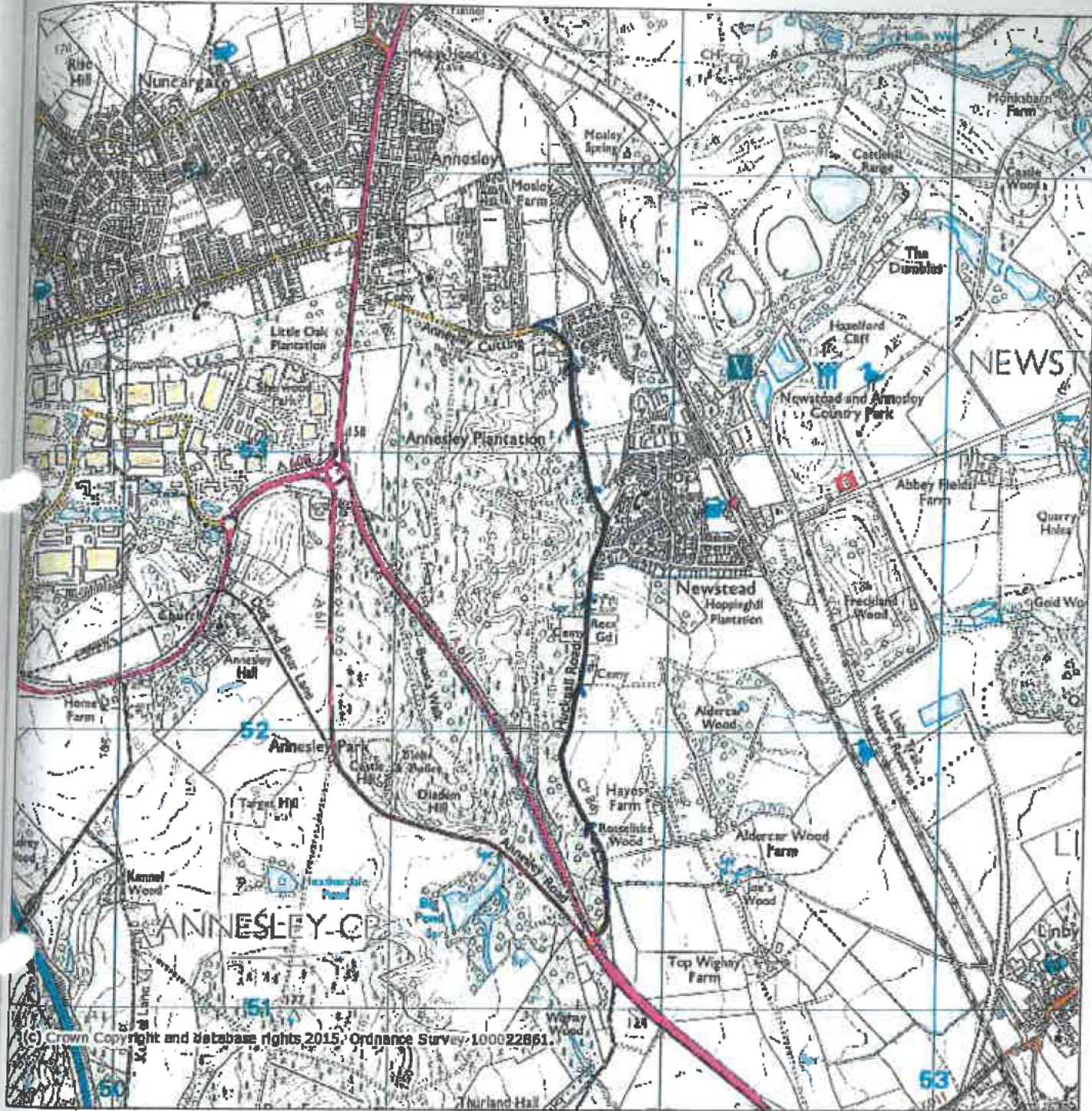
1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed words and expressions shall have the same meaning assigned to them as in the as hereinafter agreed and declared:-

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|--------------------------------------|--|
| "the Act" | means the Town and Country Planning Act 1990 (as amended) |
| "Commencement of Development" | the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices of advertisements and "Commence Development" shall be construed accordingly |
| "Designated Route" | means those roads annotated with blue arrows on the Routing Map between the A611 at its Hucknall Road junction and the Site |
| "Development" | means the erection of 10 no. dwellings and associated infrastructure |
| "Financial Contributions" | means the Healthcare Contribution and the Gateway Contribution and the Primary Education Contribution together |
| "Gateway Contribution" | means the sum of £30,000 (thirty thousand pounds) paid to the Council in accordance with the provisions of paragraph 1 of Schedule 1 towards the provision of the Annesley Gateway Project |
| "Healthcare Contribution" | means the sum of £150,000 (one hundred and fifty thousand pounds) paid to the Council in accordance with the provisions of paragraph 1 of Schedule 1 towards the provision of increased capacity of local GP facilities including the transformation of a clinical room into a minor procedure room |
| "Healthcare Authority" | means NHS Mansfield and Ashfield Clinical Commissioning Group |
| "HGV Construction Traffic" | means heavy goods road vehicles having a gross weight of 7.5 tonnes or above which enter or leave or stop in the immediate vicinity of the Site for any purpose connected to the carrying out of the Development |
| "Occupation" | means occupation of any dwelling forming part of the Development for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration in connection with the carrying out of the Development or occupation in connection with marketing or display of the Development or occupation in connection with security operations during the carrying out of the Development and "Occupy" and "Occupied" shall be construed accordingly |
| "Plan" | means the plan attached to this Deed with drawing number Ann-RP-PLANNING 01 REVISION C |

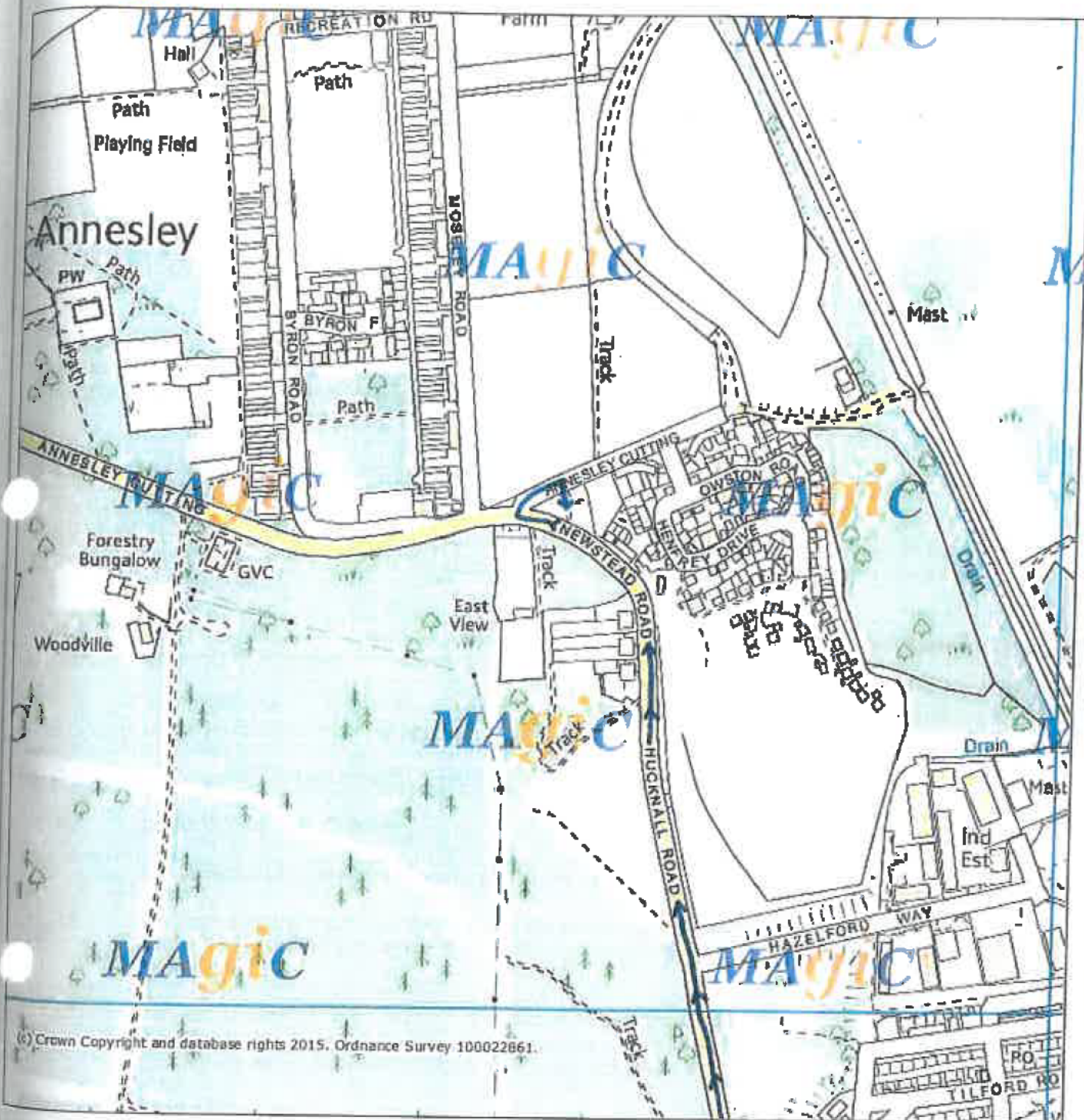
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| "Primary Education Contribution" | means the sum of £22,910 (Twenty Two Thousand Nine Hundred and Ten Pounds) to be paid to the Council in accordance with paragraph 1 of Schedule 1 towards the provision of educational facilities at Newstead Primary School |
| "Relevant Index" | means the relevant index to be applied to the Financial Contributions as set out at Schedule 3 to this Deed |
| "Routing Map" | means the two maps of the area neighbouring the Application Site attached to this Deed and marked 'Routing Maps' |
| "Site" | means the land against which this Deed may be enforced as shown edged red on the Plan |

- 1.2 the expressions the "Owner" and the "Council" shall include their respective successors in title and/or any successor body and where appropriate their assignees;
- 1.3 where appropriate the singular includes the plural and vice versa and words importing one gender include all other genders;
- 1.4 unless otherwise stated all references to clause numbers schedules and paragraph numbers of schedules are references to the clauses schedules and paragraphs of schedules contained within this Deed;
- 1.5 references to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted;
- 1.6 any matter that requires the consent or approval of any party hereunder shall be subject to a proviso that such consent or approval may not be unreasonably withheld or delayed; and
- 1.7 the obligations herein relate to the Site and each and every part thereof.

2. LIABILITY OF THE OWNER

The covenants and obligations on the part of the Owner set out in this Deed:-

- 2.1 are made with the intent that they will bind the Site and be binding on and enforceable against the Owner and its successors in title or assigns and subject to clause 6 those deriving title under the Owner; and
- 2.2 shall not be such as to render the Owner liable for any breach which may occur in relation to the Site after it shall have parted with all its respective interest therein or the part in respect of which such breach occurs save and unless such breach occurred during its ownership of the Site or such part.

3. ENABLING POWERS

- 3.1 This Deed is made pursuant to the provisions of Section 106 of the Act and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act and in the event of a breach it shall be enforceable by the Council as local planning authority pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein.
- 3.2 Without prejudice to the generality to Clause 3.1 this Deed is further made pursuant to Sections 111 120 and 139 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and any other enactment insofar as the same may be relevant to the enforcement of the obligations contained herein.

4. CONDITIONS PRECEDENT

4.1 This Deed is conditional and the obligations in the Schedules shall only have effect upon:-

4.1.1 the grant of Planning Permission; and

4.1.2 the Commencement of the Development.

4.2 For the avoidance of doubt this Deed is entered into on the understanding that in the event of the Planning Permission being quashed as a result of any legal proceedings or pursuant to Section 97 of the Act or expires before the Commencement of Development or for any other reason then this Deed shall absolutely determine and shall become null and void.

5. PAYMENT OF MONIES

The obligations in this Deed to pay monies to the Council shall be enforceable against any and all parties having a freehold interest in the Site subject to clause 6 at the date on which the obligation arises.

6. LIABILITY OF INDIVIDUAL HOUSEHOLDERS AND UTILITY COMPANIES

The covenants contained in this Deed shall not be enforceable against individual purchasers or lessees of any dwelling on the Site constructed pursuant to the Planning Permission or their mortgagees or chargees nor shall any obligation be enforceable against utility companies or the like in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies or against anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant.

7. MONITORING

7.1 The Owner hereby agrees to notify the Council of the Commencement of Development within 7 days of the occurrence of the same PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed.

7.2 The Owner hereby agrees to notify the Council of the Occupation of the first dwelling constructed as part of the Development such notification to be given within 7 days of such Occupation occurring.

8. OWNER COVENANTS TO THE COUNCIL

The Owner covenants with the Council to fully perform and observe the covenants set out in Schedule 1.

9. COUNCIL'S COVENANTS TO THE OWNER

The Council covenants with the Owner to fully perform and observe the covenants set out in Schedule 2.

10. RESOLUTION OF DISPUTES

10.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by and on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may be in dispute and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall

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determine and failing such determination shall be borne by the parties to the dispute in equal shares.

- 10.2 In the absence of agreement between the parties to the dispute or difference as to the 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 any party to a Solicitor appointed by or on behalf of the President for the time being of the Law Society of England Wales and such Solicitor shall act as an expert and his decision as to the professional qualifications of such person or appropriateness of the professional body shall be final and binding on the parties to the dispute or difference 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 to the dispute in equal shares.

11. NOTICES

- 11.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post Recorded Delivery post and any such notice addressed to the Council shall be marked for the attention of Head of Planning Service.
- 11.2 The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the parties to all the other parties to this Deed save that payments of any monies to the Council shall be addressed specifically for the attention of the Head of Planning Services and detailing the obligations to which the payment relates.
- 11.3 A notice consent or approval under this Deed shall be deemed to have been served as follows:-
- 11.3.1 If personally delivered at the time of delivery; and
- 11.3.2 at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.
- 11.4 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) as the case may be.

12. RELEASE OF (I) 2007 S106 AGREEMENT (II) 2009 UNDERTAKING (III) 2011 S106 AGREEMENT

- 12.1 From the date of this Deed the parties agree that the Site shall be released from the obligations and liabilities contained in the 2007 S106 Agreement and the 2009 Undertaking and the 2011 S106 Agreement and shall no longer be binding on the Owner or its successors in title as regards the Site.
- 12.2 The Council shall immediately after completion of this Deed remove the 2007 S106 Agreement and the 2009 Undertaking and the 2011 S106 Agreement from the Local Land Charges Register to the extent that those documents relate to the Site.

13. REGISTRATION OF THE DEED

This Deed shall be registered as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

14. WAIVER

No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

15. INDEXATION

Save unless otherwise provided in this Deed any sum which is payable to the Council shall be adjusted by an amount (if any) equivalent to the change in the Relevant Index (as set out in Schedule 3 to this Deed) from the date of this Deed until the date on which such sum is payable.

16. INTEREST

If any payment or repayment due to the Council or the Owner under this Deed is paid late, interest will be payable from the date payment is due to the date of payment at 2% above the Bank of England base lending rate prevailing at the time.

17. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

18. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England.

19. VARIATION OF DEED

No variation or amendment to this Deed shall be valid unless in writing and signed by or on behalf of all the parties referred to in this Deed save where such party no longer has any interest in the Site which is the subject of the variation in which case the variation shall be signed by the Owner for the time being of the Site but not any purchaser of an individual dwelling nor by any utility company who acquires an interest in the Site for operational purposes nor anyone whose interest in the Site is of a type specified in Clause 6.

20. CERTIFICATE OF SATISFACTION

Any party to this Deed or who is bound by this Deed may make application to the Council for written confirmation to the effect that any of the provisions of this Deed have been completed and/or satisfied and the Council shall if satisfied that such provision has been completed and/or satisfied they shall provide such written confirmation as soon as reasonably practicable.

21. APPLICATION OF DEED

Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission referred to herein) granted or deemed to be granted by any order or where granted expressly by the Council or on appeal.

22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed.

23. NO FETTER OF DISCRETION

Save as permitted by law nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the 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 Council were not a party specified in this Deed.

24. COSTS OF THIS AGREEMENT

Upon execution of this Deed the Owner shall pay to the Council their reasonable legal costs to the Council in connection with the negotiation and preparation of this Deed.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1

Part 1 – PAYMENTS OF THE FINANCIAL CONTRIBUTIONS BY THE OWNER TO THE COUNCIL

1. The Owner covenants with the Council as follows:
 - 1.1 To pay the Financial Contributions to the Council prior to Occupation of any dwelling to be constructed as part of the Development.
 - 1.2 Not to Occupy nor cause nor permit Occupation of any dwelling to be constructed as part of the Development until the Financial Contributions have been paid to the Council.

Part 2 – LORRY ROUTING

2. The Owner covenants with the Council as follows:
 - 2.1 The obligations in Part 2 of this Schedule shall have effect from the Commencement of Development and shall apply to all HGV Construction Traffic until final completion of the Development on the Site pursuant to the Planning Permission.
 - 2.2 The Owner shall issue or cause to be issued directives to all drivers of HGV Construction Traffic entering, leaving or stopping in the immediate vicinity of the Site to travel to and from the Site only on the Designated Route
 - 2.3 The Owner shall use its best endeavours to ensure compliance with such directives referred to in paragraph 2.2 above and such best endeavours shall include:
 - 2.3.1 the inclusion of such routing requirements within the conditions of contract with all haulage contractors and all other bodies of whatsoever description employed or instructed by the Owner employing the HGV Construction Traffic to travel to and from the Site
 - 2.3.2 the enforcement of such contractual routing requirements where breaches come to the attention of the Owner and such enforcement to include termination of such contracts where applicable;
 - 2.3.3 informing the Council when required of the enforcement steps they have taken in accordance with this paragraph 2.3;
 - 2.3.4 the issuing to any drivers of HGV Construction Traffic of a map and lorry routing directive including the Designated Route to be used (and also any prohibited routes) with a written warning that failure on the part of such drivers to comply with such directive (except in emergencies) will result in disciplinary action.
 - 2.4 The Owner shall take all steps as are proper and necessary to ensure that all HGV Construction Traffic travelling to and from the Site shall only travel the Designated Route which shall include the provision and maintenance by the Owner of suitable traffic signs and notices at such locations as the Council shall reasonably require.

SCHEDULE 2

COUNCIL'S COVENANTS WITH THE OWNER

The Council covenants with the Owner as follows:

1. Healthcare Contribution

1.1 To pass to the Healthcare Authority the Healthcare Contribution following receipt of written confirmation from the Healthcare Authority that:

1.1.1 Such monies shall be used solely for the provision of increased capacity of local GP facilities including the transformation of a clinical room into a minor procedure room and for no other purpose whatsoever; and

1.1.2 If all or part of the monies shall remain unexpended after the period of five years from the date of payment by the Owner to the Council it shall following receipt of a request from the Council or the Owner repay such unexpended monies to the Council together with interest thereon calculated from the date of payment to the date of repayment.

1.2 Upon receipt of monies paid to the Council by the Healthcare Authority pursuant to paragraph 1.1.2 above, to immediately forward the sum total of those monies to the party that paid the Healthcare Contribution to the Council or any other person that the party that paid the Healthcare Contribution to the Council shall nominate in writing to the Council to receive any repayment of monies.

2. Gateway Contribution

2.1 To use the Gateway Contribution solely for the purposes of the Annesley Gateway Project and for no other purpose whatsoever.

2.2 Upon the receipt of a written request from the Owner it will repay to the Owner such amount of the Gateway Contribution which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest that has accrued thereon in the period from the date of receipt to the date of repayment and for the purposes of this paragraph the Owner shall mean the party that paid the Gateway Contribution to the Council or any other person that the party that paid the Gateway Contribution to the Council shall nominate in writing to the Council to receive any repayment of monies

3. Primary Education Contribution

3.1 To pass to Nottinghamshire County Council the Primary Education Contribution following receipt of written confirmation from Nottinghamshire County Council that:

3.1.1 Such monies shall be used solely for the provision of educational facilities at Newstead Primary School and for no other purpose whatsoever; and

3.1.2 If all or part of the monies shall remain unexpended after the period of five years from the date of payment by the Owner to the Council it shall following receipt of a request from the Council or the Owner repay such unexpended monies to the Council together with interest thereon calculated from the date of payment to the date of repayment.

3.2 Upon receipt of monies paid to the Council by Nottinghamshire County Council pursuant to paragraph 3.1.2 above, to immediately forward the sum total of those monies to the party that paid the Primary Education Contribution to the Council or any other person that the party that paid the Primary Education Contribution to the Council shall nominate in writing to the Council to receive any repayment of monies.

SCHEDULE 3

INDEXATION

1. In this Schedule:-

"Relevant Index"

means 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 the Arbitrator appointed by the President of the RICS of the purposes of this Deed in all cases to ensure as nearly as possible that the sum of money involved shall fluctuate in accordance with the general level of the building industry costs

"Base Index Date"

means the date of the this Deed

"Base Index Figure"

means the figure published in respect of the Index immediately prior to the Base Index Date

"Final Index Date"

means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the date upon which the relevant Financial Contribution is paid pursuant to the provisions of this Deed

2. The Financial Contributions shall be adjusted by such sum if any in pounds sterling as shall be equal to the sum calculated according to the following formula:-

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

Where "A" equals the relevant Financial 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 Relevant Index are calculated, the figure taken to be shown in the Relevant Index after such change shall be the figure which would have been shown in the Relevant Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

4. If any substitution for the said Relevant Index or any index previously substituted therefor shall occur the parties hereto shall endeavour to agree the appropriate reconciliation between the Relevant Index substituted on the one hand and the BCIS Index or any index previously substituted therefor on the other hand.

EXECUTED as a Deed (but not delivered until dated) by
PERSIMMON HOMES LIMITED
acting by two Directors or a Director
and the Secretary:-

EXECUTED as a Deed (but not delivered until dated)
by affixing
the Common Seal of
ASHFIELD DISTRICT COUNCIL
in the presence of:-

