

04/0356

THIS AGREEMENT is made the 21st day of December 2005

BETWEEN:

- (1) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall West Bridgford, Nottinghamshire, ('the County') and
- (2) **THE CO-OPERATIVE GROUP (CWS) LIMITED** of PO Box 53 New Century House, Manchester M60 4ES ('the Co-op') (together called 'the Owner')
- (3) **ASHFIELD DISTRICT COUNCIL** of Council Offices Urban Road Kirkby-in-Ashfield Nottinghamshire NG17 8DA ('the Council')

1. **Definitions**

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

- 1.1 'the Act' means the Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 'Affordable Housing Units' means the Dwellings to be constructed on the Application Site pursuant to the Planning Permission developed specifically for those whose incomes generally deny them the opportunity to purchase or rent houses on the open market, and dwellings for owner occupation, on either a wholly owned or shared ownership basis, at the lower cost end of the market, or housing for rent, and which are designated as the Affordable Housing Units in any approval given to a Subsequent Application and which shall be provided by the Owner in accordance with the terms of Paragraph 6 and the Third Schedule

- 1.3 'non-Affordable Housing Units' means the Dwellings to be constructed pursuant to the Planning Permission on the Application Site other than the Affordable Housing Units
- 1.4 'the Application' means the Planning Application dated 16th April 2004 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2004/0356
- 1.5 'the Application Site' means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Site Plan
- 1.6 'agreed' or 'approved' means agreed or approved in writing and given for the purpose of this Agreement and where this Agreement requires any matter to be approved by the Council such approval shall not be unreasonably withheld or delayed
- 1.7 'the Blue Land' means the land shaded blue on the Site Plan
- 1.8 'the Green Land' means the land shaded green on the Site Plan
- 1.9 'the Pink Land' means the land shaded pink on the Site Plan
- 1.10 'Commencement of Development' or cognate terms means the point at which the Owner has implemented the Planning Permission (or as the case may be the detailed consent pursuant to a Subsequent Application) by carrying out a material operation as defined in Section 56(4) (a)-(d) of the Act provided that the carrying out of development comprising trial holes, bore pits, or other ground investigation works, or any other works relating to archaeology, ground surveys, works of demolition, laying out of accesses and the installation of services within those accesses, or the erection of advertisement hoardings shall not constitute Commencement of the Proposed Development except for the purposes of paragraph 7.8

- 1.11 'the Council's Surveyor' means a surveyor acting on behalf of the Council to make an inspection of any part of the Application Site in accordance with any Part of the Fifth Schedule
- 1.12 'Dwelling(s)' means (a) separate residential unit(s) and shall include both Affordable Housing Unit(s) and non-Affordable Housing Unit(s)
- 1.13 'Education Authority' means Nottinghamshire County Council or such other Local Government Authority or public body as shall for the time being have the statutory duty to provide compulsory state education within the area of Hucknall
- 1.14 'Education Need' means the provision within the electoral wards of Hucknall North, Hucknall Central, Hucknall East and Hucknall West of
- 1.14.1 additional primary school pupil accommodation necessitated by the Proposed Development
- 1.14.2 additional secondary school pupil accommodation necessitated by the Proposed Development
- and for the avoidance of doubt this term shall not necessarily mean the provision of new or extended buildings
- 1.15 'Education Contribution' means a payment to be made to the Council pursuant to paragraph 2.1 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of Part Two of the Second Schedule.
- 1.16 'the Primary School' means the primary school with any necessary social, educational and welfare ancillary facilities intended to be built in the location shown on the Illustrative Plan
- 1.17 'the Illustrative Plan' means the plan numbered [JWC.2434-21-01-B] attached to this Agreement and any reference to a Phase shall be to the relevant area designated on the said plan or such approved variation

thereof or any other phasing plan for the proposed development to be approved by the Council pursuant to condition 16 of the Planning Permission

- 1.18 'the Master Plan' means the master plan for the Proposed Development to be approved by the Council pursuant to Condition 4 of the Planning Permission or any subsequent variation of it which shall be approved by the Council.
- 1.19 'Net Developable Hectare' means land developed for housing excluding the main spine roads shown on the Illustrative Plan, verges thereto, schools and public open spaces, land for sub-stations, gas governors and the like and easement corridors for major infrastructure which cannot be incorporated within private curtilages
- 1.20 'the Obligations' means the planning obligations contained or referred to in Paragraph 6 and the Schedules to this Agreement
- 1.21 'Open Market Value' means the best price at which the sale of the freehold interest in the Affordable Housing Unit concerned, together with any rights, easements, provisions, covenants and other matters benefiting it, but subject to any encumbrances, restrictions, stipulations, or covenants which may affect it, and which still subsist and are capable of taking effect, would have been completed unconditionally for cash consideration by private treaty at the date of the valuation with vacant possession on completion of the sale, assuming:
- a) a willing seller;
 - b) that prior to the date of the valuation there has been a reasonable period having regard to the nature of the property and the state of the market. Full and proper marketing of the interest and agreement of price and the terms and the completion of sale;
 - c) that no account is taken of any additional bid by a buyer with a special interest;

d) that both parties to the transaction had acted knowledgeably, prudently and without compulsion;

e) but disregarding the existence of any rights or obligations created by or in consequence of this agreement

and 'Open Market Rental' shall have the equivalent meaning *mutatis mutandis*

1.22 'Public Transport Contribution' means a payment to be made to the Council pursuant to paragraph 1 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of Part Four of the Second Schedule for the improvement of public transport infrastructure including bus priority measures, bus stop facilities, rail facilities, associated highway infrastructure to support public transport modes, the cycling network, pedestrian facilities and park and ride sites

1.23 'the Temporary Classroom Contribution' means a payment to be made pursuant to paragraph 2.2 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of Part One of the Second Schedule

1.24 'the Street Art Contribution' means a payment to be made pursuant to paragraph 4 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Fourth Schedule

1.25 'the Site Plan' means the plan numbered [JWC.2434:32/1B] and attached to this Agreement showing by a red line the Application boundary

1.26 'Maintenance Payment' means a payment to be made pursuant to paragraph 3 of the First Schedule of this Agreement for the continuing costs of maintaining the public open space to be transferred to the Council pursuant to the provisions of the Fifth Schedule

1.27 'the Planning Permission' means the grant of planning permission pursuant to the Application in the form of the draft annexed to this

Agreement.

- 1.28 'the Proposed Development' means the erection of dwellings, a local centre to accommodate local services, amenities and commercial outlets; construction of roads and means of access, provision of public open space, footpaths, landscaping, balancing pond and associated works as more particularly described in the Application
- 1.29 'Registered Social Landlord' means a registered social landlord within the meaning of the Housing Act 1996
- 1.30 'a Subsequent Application' means any application for the approval of reserved matters following the issue of the Planning Permission and pursuant thereto
- 1.31 Any reference to a payment to the Council being 'ring fenced' for a specified purpose shall require the Council to place the same in an interest bearing account in such manner as shall enable it to be identified and distinguished from all other moneys for the time being held in such account and to calculate the proportion of the interest accruing on the account attributable to that payment
- 1.32 Where in this Agreement there is reference to any public body or authority or to any officer or functionary of such body or authority that reference shall where the context permits include reference to any similar body, officeholder or functionary which has taken over the duties, functions or engagements of any such body, office or function which has ceased to exist.

2. Recitals

WHEREAS:-

- 2.1 The County is registered at H.M. Land Registry as the proprietor of the Blue Land as to part with title absolute under title number NT 383509 and as to part with unregistered freehold title in fee simple free from mortgage
- 2.2 The Co-op is registered at H.M. Land Registry as the proprietor of the Green Land with title absolute under title numbers NT 218492, NT326349, NT195006 and NT320010 and lays claim to ownership of the Pink Land to which it has no documentary title.
- 2.3 The Owner has submitted the Application
- 2.4 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.5 The Council's Local Plan Review adopted in November 2002 allocates the Application Site for housing purposes and contains inter alia policies HG6 (Public Open Space requirements on new housing development), HG4 (Affordable Housing) and TR6 (Contribution to costs of Transport Initiatives from new development)
- 2.6 The Proposed Development will create Education Need estimated at 22 new primary places and 16 new secondary places per 100 dwellings built on the Application Site and the Council has on 11th March 2004 adopted a development brief in respect of the Application Site which seeks a contribution towards meeting the Education Need in accordance with paragraph 8.55 of the Local Plan Review.
- 2.7 The Council resolved on 19th August 2004 to grant planning permission for the Proposed Development in accordance with the Application subject to conditions and subject to the making of this Agreement without which planning permission for the Proposed Development would not have been granted

- 2.8 The Council has the power to exercise certain functions of a highway authority pursuant to an agreement dated 2nd January 2002 and made between the Council and the County in its capacity as the statutory highway authority under the Highways Act 1980 and Road Traffic Regulations Act 1984 and other Acts as set out in that agreement
- 2.9 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

3. **Enabling Powers**

THE parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.

4. **Planning Obligations**

4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations (subject to the provisions of sub-paragraphs 7.5 and 7.6 below) shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.

4.2 The Council is the Authority entitled to enforce the Obligations.

5. **Conditionality**

The Obligations are conditional upon the issue of the Planning Permission.

6. **Covenant**

6.1 The Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site excluding the Pink Land shall be subject to the Obligations and that the Owner shall duly carry out and perform the Obligations

6.2 Notwithstanding the provisions of paragraph 6.1 above, where any Obligation contained in a Schedule assumes that the Master Plan or the Phasing Plan will conform broadly to the Illustrative Plan, and the Council subsequently approves a version or variation of the Master Plan or the Phasing Plan which is different in a material respect to the Illustrative Plan, whereby the provisions of such Obligation can no longer be performed as provided for in this Agreement, the Council shall when approving the Master Plan (or variation thereof) or a variation of the Phasing Plan approve and agree such variation to the Obligation(s) as the Owner shall submit in writing as shall seem to the Council to deliver the same or equivalent planning gain as is provided by this Agreement and thereafter such amended Obligation(s) shall (except to the extent provided by paragraph 6.3 below) be performed by the Owner in substitution for the original one(s) provided in this Agreement.

6.3 For the purposes of paragraph 6.2 only (and for the avoidance of doubt) where the Owner for the time being comprises more than one party but the land affected by the variance between the Master Plan or the Phasing Plan and the Illustrative Plan is in the ownership of only one or some of such parties then the Council may at its discretion agree the amendment of the Obligation(s) only with the one or more of the parties comprising the Owner whose land is affected by the variation PROVIDED THAT thereafter performance of neither the amended nor the original Obligation may be enforced against any other party comprising the Owner by reason of owning land unaffected by the variance.

7. Agreements and Declarations

It is agreed and declared as follows:

7.1 Any reference to a party to this Agreement shall where the context so admits (in the case of the Owner) include their successors in title and

assigns and (in the case of the Council) include its successors in function

- 7.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 7.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 7.4 Any reference to a numbered paragraph, schedule or plan is to one in or attached to the Agreement but any reference to a numbered paragraph occurring within a Schedule is to one within that same Schedule unless the contrary intention appears
- 7.5 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest, or in the circumstances arising in the proviso to clause 6.3
- 7.6 Upon the first transfer of the legal estate in each completed Dwelling comprised within the proposed development or any building within the local centre shown on the Illustrative Plan, that completed Dwelling or building shall by operation of this paragraph be released from the Obligations (save that an Affordable Housing Unit shall not be released from the transfer provisions contained in paragraphs 4 to 12 of the Third Schedule) and the Obligations shall not be enforceable against statutory undertakers in relation to any parts of the Application Site acquired by them for electricity sub-stations, gas governor stations, or pumping stations, or against anyone whose only interest in the Application Site, or part of it, is in the nature of the benefit of an easement or covenant.

- 7.7 In the event of the Council's Surveyor issuing a Certificate pursuant to any of paragraphs 4, 14, 24, 34, 44, 54, 64, 74 and 85, of the Fifth Schedule, the Council shall (subject always to its statutory powers and duties) take a transfer of the land to which that Certificate relates within the two month period referred to in paragraphs 8, 18, 28, 38, 48, 58, 68, 78 and 89 respectively of the Fifth Schedule.
- 7.8 If the Planning Permission having been granted shall expire before the Proposed Development is commenced, or shall at any time be quashed or revoked, this Agreement shall forthwith determine and cease to have effect
- 7.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement
- 7.10 Where any land falls to be transferred between any two parties to this Agreement or their successors in title pursuant to the terms hereof those parties or their successors in title shall use all reasonable endeavours to agree the precise boundaries of the areas of land to be transferred not later than the submission of the appropriate Subsequent Application, and in doing so shall take account of any changes to the configuration of the Proposed Development as shown on the Illustrative Plan, and any other change in the position of any adjoining or continuous land or roads to the intent that the land transferred shall abut such areas of land and roads broadly in the manner indicated on the Illustrative Plan and in the event that the boundaries shall not have been agreed as aforesaid, the precise boundaries shall be the boundaries shown on a plan marked "Precise Boundaries" contained in a Subsequent Application approved by the Council.
- 7.11 The Agreement is a Local Land Charge and shall be registered as such

7.12 The parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

8. Costs

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £18,388.10 (receipt whereof is acknowledged by the Council)

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

FIRST SCHEDULE

COMMUTED SUM PAYMENTS

1. There shall be paid to the Council in accordance with the provisions of paragraph 5.1 the Public Transport Contribution a sum calculated at the rate of FIFTEEN THOUSAND POUNDS (£15,000) (adjusted for inflation in accordance with paragraph 6.1) per Net Developable Hectare on those parts of the Application Site lying within the 300 metre circumference of Hucknall District Centre as shown on the Illustrative Plan and THIRTY THOUSAND POUNDS (£30,000) (adjusted for inflation in accordance with paragraph 6.1) per Net Developable Hectare elsewhere on the Application Site PROVIDED that if consent is given to more than one Subsequent Application in respect of the same part of the Application Site the Owner shall elect in writing to the Council prior to making payment of such sum which consent is to be implemented and no other consent pursuant to a different Subsequent Application in respect of the same part of the Application Site (whether granted before or after a Subsequent Application pursuant to which payment has already been made) shall thereafter be implemented unless the Owner shall first have paid to the Council any shortfall between the sum already paid to the Council and the sum due under the provisions of this First Schedule calculated with reference to the consent to the different Subsequent Application which the Owner then wishes to implement BUT FURTHER PROVIDED that nothing herein shall require the Council to make refund of any sum already paid to and committed to be spent by the Council before the approval of the different Subsequent Application. The amounts so payable shall be calculated in respect of any area covered by a Subsequent Application by the Council (whose decision shall be final) when approving the same and shall be notified in writing to the Owner or, if different, the person submitting the Subsequent Application.
2. There shall be paid as commuted sums to the Council

- 2.1 an Education Contribution calculated at the rate of £2520 per Dwelling in respect of the total number of Dwellings authorised to be erected on the Application Site for which consent is given pursuant to Subsequent Applications (but subject in any event to a minimum of ONE MILLION FOUR HUNDRED AND FORTY THOUSAND POUNDS (£1,440,000)) (adjusted for inflation in accordance with paragraph 6.2) but the Due Date for actual payment of such sum shall be as set out in the provisions of paragraph 5.2
- 2.2 the Temporary Classroom Contribution in the sum of SEVENTY-FIVE THOUSAND POUNDS (adjusted for inflation in accordance with paragraph 6.2) of which the Due Date for actual payment shall be as set out in the provisions of paragraph 5.2.5
3. There shall be paid to the Council
- 3.1 the First Maintenance Payment in the sum of FIVE HUNDRED AND TWENTY-THREE THOUSAND FIVE HUNDRED POUNDS (£523,500) (adjusted for inflation in accordance with paragraph 6.1), and
- 3.2 the Second Maintenance Payment in the sum of ONE HUNDRED AND THREE THOUSAND FIVE HUNDRED POUNDS (£103,500)(adjusted for inflation in accordance with paragraph 6.1) and
- 3.3 the Third Maintenance Payment in the sum of SEVENTY-FIVE THOUSAND POUNDS (£75,000)(adjusted for inflation in accordance with paragraph 6.1)
- 3.4 the Fourth Maintenance Payment in the sum of ONE HUNDRED AND SIXTY-FIVE THOUSAND POUNDS (£165,000)(adjusted for inflation in accordance with paragraph 6.1)
- 3.5 the Fifth Maintenance Payment in the sum of ONE HUNDRED AND FIFTY THOUSAND POUNDS (£150,000)(adjusted for inflation in accordance with paragraph 6.1)

3.6 the Sixth Maintenance Payment in the sum of TWENTY-EIGHT THOUSAND EIGHT HUNDRED AND SEVENTY-FIVE POUNDS (£28,875)(adjusted for inflation in accordance with paragraph 6.1)

3.7 the Seventh Maintenance Payment in the sum of NINETEEN THOUSAND EIGHT HUNDRED POUNDS (£19,800) (adjusted for inflation in accordance with paragraph 6.1)

3.8 the Eighth Maintenance Payment in the sum of FIFTY-FIVE THOUSAND POUNDS (£55,000) (adjusted for inflation in accordance with paragraph 6.1)

3.9 the Ninth Maintenance Payment in the sum of FIVE THOUSAND FIVE HUNDRED POUNDS (£5,500) plus a further £5.03 per square metre covered by the Lagoon as contained in the Specification (as defined in paragraph 81 of the Fifth Schedule)(adjusted for inflation in accordance with paragraph 6.1)

all of which payments shall be made and dealt with in accordance with the terms of the Fifth Schedule

4. There shall be paid to the Council the Street Art Contribution in the sum of ONE HUNDRED AND TWENTY THOUSAND POUNDS (£120,000) (adjusted for inflation in accordance with paragraph 6.1) and the Due Date for actual payment of such sum shall be as set out in the provisions of paragraph 5.4. All sums received by the Council pursuant to this Paragraph 4 shall be dealt with in accordance with the terms of the Fourth Schedule

5. The 'Due Date' for payment of the above sums shall be

5.1 Under paragraph 1 the Public Transport Contribution prior to the Commencement of Development in the area covered by a Subsequent Application, of the sum calculated by the Council and notified in accordance with paragraph 1 in respect of that Subsequent Application

5.2 Under Paragraph 2 the Education Contribution

- 5.2.1 £1,440,000 (adjusted for inflation in accordance with paragraph 6.2) on the day prior to the first occupation of the 200th dwelling erected on the Application Site and
- 5.2.2 £324,000 (adjusted for inflation in accordance with paragraph 6.2) on the day prior to the first occupation of the 350th dwelling erected on the Application Site UNLESS Subsequent Applications covering the whole of the Application Site shall have been approved prior to the first occupation of the 350th Dwelling pursuant to which less than 700 Dwellings in total can be built on the entire Application Site IN WHICH CASE this payment shall be of (E-P) where $E = £(2520 \times \text{the number of Dwellings which can be built pursuant to the Subsequent Applications})$ and $P = £1,440,000$ ('the Lesser Sum')
- 5.2.3 In the event that the Lesser Sum has been paid pursuant to paragraph 5.2.2 above and a further Subsequent Application is granted pursuant to which more Dwellings can be built in total on the Application Site than the number of Dwellings in respect of which the Lesser Sum has been calculated, the difference between the Lesser Sum and the sum which would have been payable had the Subsequent Application been granted prior to the making of the payment of the Lesser Sum, shall be paid prior to the Commencement of Development implementing that further Subsequent Application, and this paragraph 5.2.3 shall apply as often as may be mutatis mutandis until Subsequent Applications covering the whole of the Application Site shall have been approved pursuant to which no less than 700 Dwellings can be built in total on the Application Site and for the avoidance of doubt the maximum sum having a Due Date for payment pursuant to the combined provisions of paragraph 5.2.2 and this paragraph 5.2.3 shall be £324,000 (but nevertheless adjusted for inflation in accordance with paragraph 6.2)

5.2.4 a further £25,200 on the day prior to the first occupation of the 701st, 711th and each subsequent 10th Dwelling erected on the Application Site thereafter PROVIDED THAT if the remaining number of Dwellings still to be occupied on the Application Site pursuant to the only remaining Subsequent Application which can be implemented is less than 10 ('the Residual Dwellings') then that final payment shall be of (£2520 x D) (adjusted for inflation in accordance with paragraph 6.2) where D is the number of Dwellings yet to be occupied on the Application Site and shall be paid prior to the occupation of the first of the Residual Dwellings

5.2.5 the Temporary Classroom Contribution due pursuant to paragraph 2.2 shall be paid prior to the Commencement of the Proposed Development

5.3 Under Paragraph 3 the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Maintenance Payments as the case may be as provided in the Fifth Schedule

5.4 Under Paragraph 4 the Street Art Contribution

5.4.1 as to the first £60,000 (adjusted for inflation in accordance with paragraph 6.1) on the day prior to the first occupation of the 100th Dwelling erected on the Application Site

5.4.2 as to the second £60,000 (adjusted for inflation in accordance with paragraph 6.1) on the day prior to the first occupation of the 300th Dwelling erected on the Application Site

6. Inflation Provisions:

6.1 Where any amount is payable pursuant to the provisions of paragraphs 1,3 and 4 of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$(P \div A) \times B$$

Where:-

P = the amount payable pursuant to paragraphs 1,3 and 4 of this First Schedule as the case may be

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of January 2003.

B = the RPI figure for the month in which the relevant Due Date falls

But so that if at any time B shall be less than A the amount payable pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

6.2 Where any amount is payable pursuant to the provisions of paragraph 2 of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$\frac{(P \div A) \times B}{100} \times 104$$

Where:-

P = the amount payable pursuant to Paragraph 2 of this First Schedule

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of January 2003.

B = the RPI figure for the month in which the relevant Due Date falls

PROVIDED ALWAYS that:

- (a) if such sum or any part thereof shall not be paid on or before its Due Date it shall carry interest at 4% per annum over the Base Lending Rate for the time being of Barclays Bank plc from the Due Date until actual payment and
- (b) if any payment due under this Agreement is to be paid prior to the first occupation of a particular Dwelling, no more than the number of Dwellings which is the trigger for that payment may be occupied until that payment has been made, and
- (c) payment of any commuted sum shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

SECOND SCHEDULE

PART ONE

TREATMENT OF THE TEMPORARY CLASSROOM CONTRIBUTION

Where in this Agreement reference is made to the Temporary Classroom Contribution the following provisions shall apply to such payment:-

1. The Temporary Classroom Contribution shall be ring fenced by the Council and be spent only in accordance with the following provisions of this Part of this Schedule.
2. The Council will, upon being satisfied that pending expenditure being undertaken by the Education Authority to make provision for the Education Need there is a decision of the Director of Education of the Education Authority by which the Education Authority has committed itself to a programme of works to install equip and maintain at an existing primary school with sufficient space to locate the same temporary classroom(s) to accommodate children of primary school age living on the Application Site, release to the Education Authority the Temporary Classroom Contribution (or such part of it as the Council shall be satisfied the Director of Education has committed the Education Authority to spend) and will, if at any time requested by the Owner in writing, advise the Owner of any payment made pursuant to this paragraph.
3. If the Temporary Classroom Contribution has not been paid by the Council to the Education Authority by the fifth anniversary of the date on which the Temporary Classroom Contribution was made then upon receipt by the Council of written notice by the Owner requiring the Temporary Classroom Contribution to be repaid the Council shall repay it (together with such interest as shall have accrued thereon) to the Owner (which for the purposes of this paragraph only shall mean the Owner by whom the Temporary Classroom Contribution is made and not its successors in title). For the avoidance of doubt, any sum paid out of the Temporary Classroom Contribution by the Council to the Education Authority after the second anniversary

of its payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner.

PART TWO

TREATMENT OF EDUCATION CONTRIBUTIONS

Where in this Agreement reference is made to an Education Contribution the following provisions shall apply to such payment:-

4. Any Education Contribution received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Part of this Schedule.
5. In this Part Two of this Second Schedule 'Repayment Terms' shall mean an agreement between the Council and the Education Authority which provides that in the event that the Education Authority does not use money transferred to it by the Council pursuant to this Part Two of this Second Schedule for the purpose for which it has been so transferred by the fifth anniversary of the transfer the money shall be re-transferred to the Council with the same interest for the period that it shall have been held by the Education Authority as if it had remained ring fenced by the Council.
6. As soon as the Council is satisfied that the Education Authority has committed the funding to build the Primary School on the School Land (of which the recorded decision of the cabinet of the Education Authority pursuant to a report to that cabinet made by the Director of Education authorising expenditure of a capital or other nature to commit to the building thereof shall be sufficient evidence) the Council shall release to the Education Authority upon Repayment Terms the sum of £1,440,000 plus the pro rata interest accrued thereon less any proper and reasonable administration charges of the Council from the Education Contribution
7. As soon as the Council is satisfied that the Education Authority has let a contract for work(s) to meet the Education Need or has otherwise entered into a binding

expenditure commitment to meet it the Council shall release to the Education Authority upon Repayment Terms such further sum from the Education Contribution up to an amount which the Council is satisfied that the Education Authority has committed to meet the Education Need.

8. Where the Council has received more than one Education Contribution in respect of the same Education Need, whether from the Owner or other owners of sites which also give rise to the same Education Need, the Education Contributions received by the Council shall be applied by them in payment to the Education Authority in the order in which they were received by the Council.
9. If any part of the Education Contribution has not been paid by the Council to the Education Authority by the seventh anniversary of the date on which it was made then upon receipt by the Council of written notice by the Owner requiring the Education Contribution to be repaid the Council shall repay it (with the interest accrued thereon) to the Owner (which for the purposes of this and the next following three paragraphs only shall mean the person by whom the Education Contribution is made and not its successors in title). For the avoidance of doubt, any sum paid out of an Education Contribution by the Council to the Education Authority after the seventh anniversary of its payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner.
10. If any part of the Education Contribution has been transferred by the Council to the Education Authority but has not been spent or committed to be spent by it by the fifth anniversary of the date on which it was transferred then upon receipt by the Council of written notice by the Owner requiring the Education Contribution to be repaid the Council shall seek repayment of it from the Education Authority and repay it (with the interest accrued thereon) to the Owner. For the avoidance of doubt, any sum spent or committed out of an Education Contribution by the Education Authority after the fifth anniversary of its transfer but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner.

11. At any time prior to the seventh anniversary of the making of an Education Contribution or the fifth anniversary of a transfer of an Education Payment to the Education Authority (whichever is the later) the Council shall upon written request by the Owner supply to the Owner reasonable short particulars, amounts and dates of any payments made by the Council to the Education Authority from that Education Contribution pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Education Contribution has been expended.
12. The Council shall (at the expense of the Owner) use reasonable endeavours to recover from the Education Authority any sum transferred to it on Repayment Terms which has not been spent by the Education Authority by the fifth anniversary of it being transferred, but if such sum shall not be repaid by the Education Authority to the Council for whatever reason the Council shall be under no further liability to repay to the Owner any sum transferred to the Education Authority in good faith.

PART THREE

PROVISION OF THE SCHOOL LAND

13. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 1.9 hectares to be used for the construction of the Primary School and associated playing field ('the School Land'). If the Education Authority grants to itself permission to erect a school on the School Land pursuant to the provisions of the Town and Country Planning General Regulations 1992 (S.I. 1992 No. 1492) or any subsequent statutory amendment or re-enactment thereof) and such permission is thereafter implemented the Owner shall offer to transfer to the Education Authority such part of the School Land as it does not already own in accordance with the provisions of the following paragraphs of this Part Three of this Second Schedule.

14. Prior to the Commencement of Development on Phase 3 or the first occupation of the 200th Dwelling anywhere on the Application Site the Owner shall offer to transfer without consideration the freehold interest with Title Absolute of such part of the School Land as is not at that date owned by the Education Authority to the Education Authority such offer to remain open for a period of at least six months and such transfer to contain covenants to the following effect:-

14.1. The School Land shall be used solely for the purpose of providing the Primary School

14.2. The Education Authority shall take reasonable steps to ensure that use of the School Land shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

14.3. No development shall take place on the School Land other than for the purpose of erecting the Primary School

and if at the date of transfer the School Land cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access not later than the completion of the 200th Dwelling on the Application Site to the School Land from the nearest public highway.

15. The Owner shall also on the date of transfer pay the reasonable legal costs of the Education Authority relating to the transfer of the School Land

16. For the avoidance of doubt the use and occupation of the Primary School once erected on the School Land shall not be restricted only to children living on the Application Site.

PART FOUR

TRANSPORT CONTRIBUTION

17. Any Transport Contribution received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule and shall be kept at all times in an interest bearing account until used for the purposes herein specified

18. The Transport Contribution shall only be spent for any of the purposes mentioned in Clause 1.19, policy TR6 of the Local Plan Review adopted in November 2002 or those projects listed below and for no other purpose whatsoever

- (a) Hucknall Inner Relief Road
- (b) Broomhill Farm to By-Pass Bus Lane
- (c) Hucknall By-Pass Southern Roundabout Bus/Cycle Priority measure
- (d) The Sustrans cycle network connecting with and within the Application Site
- (e) Other transport or traffic alleviation schemes within the Hucknall-Nottingham Transport Corridor

19. If any Transport Contribution has not been used by the Council by the fifth anniversary of the date on which the Transport Contribution was made then upon receipt by the Council of written notice by the Owner requiring the Transport Contribution to be repaid the Council shall repay it (together with interest that has accrued thereon) to the Owner (which for the purposes of this paragraph only shall mean the person by whom the Transport Contribution is made and not its successors in title). For the avoidance of doubt, any part of the Transport Contribution spent by the Council after the fifth anniversary of the payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner

THIRD SCHEDULE

AFFORDABLE HOUSING OBLIGATIONS

1. Subject to the provisions of this Schedule the Owner shall in every Subsequent Application which includes the erection of Dwellings make provision for not less than 18.5% of the total Dwellings to be provided pursuant to that Subsequent Application to be constructed as Affordable Housing Units and if approval is given to that Subsequent Application any units designated as Affordable Housing Units in the approval shall be constructed in accordance with the plans submitted with the Subsequent Application and the Owner may not dispose of such units save in accordance with the following terms of this Schedule provided that this Obligation shall not apply to a subsequent application for Dwellings, which if approved would not reduce the number of Affordable Housing Units on the Application Site in all the Subsequent Applications approved up to that date to below 18.5% of the total number of Dwellings permitted by such Subsequent Applications
2. All Affordable Housing Units shall be provided with a vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Proposed Development and connected ultimately (unless that the relevant authority shall refuse (except for reasonable cause) to accept their adoption) to highways and sewers maintainable at the public expense.
3. The Owner of any Phase shall not permit the first occupation of more than 50% of the non-Affordable Housing Units to be built on that Phase pursuant to any Subsequent Application to which this Schedule applies until the Affordable Housing Units to be erected on that Phase pursuant to the Subsequent Application have been transferred in accordance with paragraph 4 to a Registered Social Landlord

4. The transfer to the Registered Social Landlord (which may be by way of freehold transfer or long lease) shall be on terms that will ensure that 75% of the Affordable Housing Units (rounded to the nearest unit) erected pursuant to the Subsequent Application are made available on a rental basis with the remaining Affordable Housing Units being provided by way of shared ownership leases (but always provided that a different split may be agreed between the transferor and the Council at the date of the transfer having regard to the relevant up to date information on housing need)
5. Beginning not later than the date of Commencement of Development pursuant to any Subsequent Application the Owner shall enter into negotiations with a Registered Social Landlord or Landlords drawn from the Council's approved list (such list to comprise no less than 10 in number of Registered Social Landlords operating within Ashfield District) or such other Registered Social Landlord(s) as may be approved in writing by the Council for the transfer to that Registered Social Landlord or Landlords of the Affordable Housing Units herein specified on that part of the Application Site. The negotiations shall be pursued by the Owner in good faith and details shall be supplied to the Council upon written request.
6. Provided always that the Owner shall have complied with paragraph 5 in respect of the Affordable Housing Units constructed pursuant to any Subsequent Application but no Registered Social Landlord has been approved by the Council or no Registered Social Landlord is willing to take a transfer of the Affordable Housing Units by the date when 50% of the non-Affordable Housing Units constructed pursuant to that Subsequent Application have been occupied the restrictions on transfer of the Affordable Housing Units (but not the restrictions on occupation of the non-Affordable Housing Units) contained in paragraph 4 may be varied by the Owner giving written notice to the Council that with effect from the date of such notice the provisions of paragraph 7 following shall apply instead of the said paragraph 4
7. From the date of a notice given pursuant to paragraph 6 the Owner may transfer the Affordable Housing Units to any Registered Social Landlord and upon such terms as the Council may agree and upon the making of such a transfer the restrictions on

occupation of the non-Affordable Housing Units constructed pursuant to that Subsequent Application shall cease

8. If not less than six months have elapsed from the giving of a notice pursuant to paragraph 6 and the Owner shall have been unable to transfer any of the Affordable Housing Units pursuant to paragraph 7 be the Owner shall then be free to dispose of such units to

8.1. a Registered Social Landlord on such terms as may be agreed between the Owner and the Registered Social Landlord; or

8.2. the Council; or

8.3. any other organisation or body whose principal business is the provision of affordable housing on such terms as may be agreed between the Owner and that body

8.4. a person or persons approved by the Council as being on its housing register for the time being or in need of housing accommodation of the type which it is proposed to transfer to him and always provided that any transfer made pursuant to this sub-paragraph 8.4 is of the freehold interest and on the following terms:

8.4.1. the maximum price payable to the Owner in respect of the sale of an Affordable Housing Unit shall not exceed 75% of the Open Market Value as certified by a Surveyor drawn from a list prepared by the Council or in default of preparing or maintaining such a list who practices within a 15 mile radius of the Application Site

8.4.2. The transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of eighty years from the date of the first transfer by the Owner that

8.4.2.1. no subsequent transfer shall take place within the said period of eighty years save a disposal of the freehold or leasehold interest in the Affordable Housing Unit at a price or premium which does not exceed

75% of the Open Market Value of the said Unit at the date of disposal as certified by a Valuer or Surveyor in the manner described in 8.4.1, and

8.4.2.2. no letting of the Affordable Housing Unit shall take place within the said period except at a rental not exceeding 75% of the Open Market Rent for a property of that type as certified by a Valuer or Surveyor in the manner above described

8.4.3. The transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of eighty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will procure a direct covenant from each successive transferee in favour of the Council to observe and perform all of the covenants specified in this sub-paragraph 8.4

8.4.4. The transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of eighty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will on each transfer of the Affordable Housing Unit apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title in the property:-

“Except under an order of the Registrar no transfer, assent or other dealing by the Proprietor of the property is to be registered without the transferee’s solicitor producing to the Land Registry a Certificate confirming that the purchase price for the property does not exceed 75% of the Open Market Value as determined in accordance with an Agreement dated [DATE] and made under Section 106 of the Town and Country Planning Act 1990 between Nottinghamshire County Council (1) The Co-Operative Group (CWS) Limited (2) and Ashfield District Council (3)”

- 8.4.5 Nothing in the Transfer shall operate to restrict delay limit or prevent the immediate occupation or disposal of any Affordable Housing Units to or by a person and those living with him where such occupation or disposal arises as a result of a Court Order or any other statutory provision or presumption or will or intestacy but subject always to the strict compliance by any transferee of the legal estate with the provisions of this sub-paragraph 8.4 before any further disposal for value of the legal estate takes place
- 8.5 If all the Affordable Housing Units constructed pursuant to that Subsequent Application as the case may be shall have been transferred pursuant to the provisions of this paragraph 8 the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to that Subsequent Application shall cease
- 9 If not less than twelve months have elapsed from the giving of a notice pursuant to paragraph 6 the Owner may dispose of the freehold interest in any of the Affordable Housing Units constructed pursuant to that Subsequent Application to any person (whether or not that person qualifies with the requirements of sub-paragraph 8.4) provided that the transfer to him complies in all respects with the requirements of the said sub-paragraph 8.4, its sub-sub-paragraphs and sub-sub-sub-paragraphs
- 10 If at any stage the Owner and the Council so agree any of the Affordable Housing Units may be sold in the open market without restriction and the Owner shall be entitled to retain the proceeds of sale therefrom save that the Owner shall pay to the Council not later than 14 days from the date of the legal completion of the relevant sale a sum equal to 40% of the agreed sale price of the Unit inclusive of standard fixtures and fittings but disregarding the value of any additions made thereto or extras included by the Owner as part of the sale and always provided that

10.1 any sums paid to the Council pursuant to paragraph 10 shall be held by them in an interest bearing account and shall be applied solely for the purpose of providing affordable housing be it for rental shared ownership or discounted market sale within the District of Ashfield

10.2 if any of the sums paid to the Council for the purpose of providing affordable housing have not been spent within 5 years of the date of the last such payment then those such sums shall be repaid together with interest to the person who paid the sums to the Council and where there is more than one such person the sums paid by each shall be clearly identifiable whether held in the same account or not

11. If all the Affordable Housing Units constructed pursuant to that Subsequent Application shall have been transferred pursuant to the provisions of paragraphs 8,9 or 10 the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to that Subsequent Application shall cease

12. The covenants within this Schedule shall not be binding on a mortgagee in possession exercising a power of sale under their mortgage or any persons deriving title under the mortgagee in possession nor the right to acquire the freehold interest in any of the said Affordable Housing Units pursuant to any statutory right to acquire the same

FOURTH SCHEDULE

STREET ART

Where in this Agreement reference is made to the Street Art Contribution the following provisions shall apply to such payment:-

1. The Council shall ring fence the Street Art Contribution which shall be spent only in accordance with the following provisions of this Schedule.
2. The Owner shall provide that in the Master Plan there shall be provision for at least 2 pieces of street art sited on land to be transferred to the Council pursuant to the Fifth Schedule in positions to be approved by the Council.
3. The Council shall use the Street Art Contribution to commission, construct and install street art features within the Proposed Development as provided on the Master Plan and for no other purpose.
4. Without prejudice to the generality of Paragraph 3 the Council may out of the funds for the time being comprising the Street Art Contribution held by it:
 - 4.1 Spend any part of the funds on suitable consultants to advise the Council on features to be created, commissioned or purchased as street art for the Application Site
 - 4.2 Spend any part of the funds on the acquisition of any street art
 - 4.3 Make payment from the funds to any artist or manufacturer working under the direction of such artist for the creation or realisation of any street art
 - 4.4 Spend any part of the funds on the erection of any street art including the provision of any walling or fencing, lighting, drainage or associated highway work
5. At any time prior to the fifth anniversary of the making of the Street Art Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any payments made by the Council

from the Street Art Contribution pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Street Art Contribution has been expended.

6. If any part of the Street Art Contribution has not been spent by the Council by the fifth anniversary of the date on which it was made then upon receipt by the Council of written notice by the Owner requiring the unspent part of the Street Art Contribution to be repaid the Council shall repay it (with the interest accrued thereon) to the Owner (which for the purposes of this paragraph only shall mean the person by whom the Street Art Contribution is made and not its successors in title). For the avoidance of doubt, any sum paid out of the Street Art Contribution by the Council after the fifth anniversary of its payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner.

FIFTH SCHEDULE

OPEN SPACE PROVISION

PART ONE

THE PITCHES

1. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 5.15 hectares to be used as five football pitches with ten players' changing rooms equipped with showers, five officials' changing rooms equipped with showers, storerooms, plant room, toilets, kitchen interpretation/meeting room car park and recreation area ('the Pitches'). The Pitches shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which the Pitches are sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of the Pitches and if it is approved and thereafter implemented the Owner shall build, lay out and thereafter maintain the Pitches in accordance with any relevant conditions in the approval ('the Conditions').
2. No more than 100 houses anywhere on the Application Site may be occupied for the first time and neither may the existing two football pitches owned by the County at Wigwam Lane Hucknall cease to be available for use either in their existing location or such alternative location as may be approved by the Council until the Pitches have been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part One of this Fifth Schedule
3. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it shall invite the Council in writing to make an inspection of the Pitches for the purposes of this Part One of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.

4. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
 - 4.1 give his written certificate that the Specification and Conditions have been complied with and that the Pitches are ready to be transferred to the Council, or
 - 4.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and
 - 4.3 forthwith serve his certificate pursuant to paragraph 4.1 or his report pursuant to paragraph 4.2 as the case may be on the Owner and the Council
5. If the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1 then the Owner shall proceed to transfer the Pitches to the Council in accordance with paragraphs 7-10 following but if the Council's Surveyor shall have given a report pursuant to paragraph 4.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Pitches whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 4.1
6. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties
7. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Pitches for the purposes of this Part One of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice

8. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1 the Owner shall transfer the freehold interest with Title Absolute of the Pitches to the Council such transfer to contain covenants to the following effect:-

8.1 The Pitches shall be used solely for the purpose of providing recreation and amenity space for use by the general public.

8.2 The Council shall take reasonable steps to ensure that use of the Pitches shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

8.3 No development shall take place on the Pitches other than for the purpose of facilitating their use for recreation and amenity purposes

and if at the date of transfer the Pitches cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Pitches from the nearest public highway.

9. On the date of transfer the Owner shall pay to the Council the First Maintenance Payment
10. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Pitches

PART TWO

SINGLE PITCH AND CAR PARK

11. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 1.24 hectares to be used as a football

pitch with two players' changing rooms with showers, one officials' changing rooms with showers and a car park for at least 20 cars ('the Single Pitch and Car Park'). The Single Pitch and Car Park shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which the Single Pitch and Car Park are sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of the Single Pitch and Car Park and if it is approved and thereafter implemented the Owner shall build, lay out and thereafter maintain the Single Pitch and Car Park in accordance with any relevant conditions in the approval ('the Conditions').

12. No more than 125 houses within Phase 2 may be occupied for the first time until the Single Pitch and Car Park has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Two of this Fifth Schedule
13. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it shall invite the Council in writing to make an inspection of the Single Pitch and Car Park for the purposes of this Part Two of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
14. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
 - 14.1 give his written certificate that the Specification and Conditions have been complied with and that the Single Pitch and Car Park are ready to be transferred to the Council, or
 - 14.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and

- 14.3 forthwith serve his certificate pursuant to paragraph 14.1 or his report pursuant to paragraph 14.2 as the case may be on the Owner and the Council
15. If the Council's Surveyor shall have given his certificate pursuant to paragraph 14.1 then the Owner shall proceed to transfer the Single Pitch and Car Park to the Council in accordance with paragraphs 17-20 following but if the Council's Surveyor shall have given a report pursuant to paragraph 14.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Single Pitch and Car Park whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 14.1
16. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties
17. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Single Pitch and Car Park for the purposes of this Part Two of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice
18. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 14.1 the Owner shall transfer the freehold interest with Title Absolute of the Single Pitch and Car Park to the Council such transfer to contain covenants to the following effect:-
- 18.1 The Single Pitch and Car Park shall be used solely for the purpose of providing recreation and amenity space for use by the general public.

18.2 The Council shall take reasonable steps to ensure that use of the Single Pitch and Car Park shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

18.3 No development shall take place on the Single Pitch and Car Park other than for the purpose of facilitating its use for recreation and amenity purposes

and if at the date of transfer the Single Pitch and Car Park cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Single Pitch and Car Park from the nearest public highway.

19. On the date of transfer the Owner shall pay to the Council the Second Maintenance Payment

20. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Single Pitch and Car Park

PART THREE

THE URBAN SQUARE

21. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 0.25 hectare to be used as an urban focal point and informal meeting area ('the Urban Square'). The Urban Square shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which the Urban Square are sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of the Urban Square and if it is approved and thereafter implemented the Owner shall build, lay out and thereafter maintain the Urban Square in accordance with any relevant conditions in the approval ('the Conditions').

22. No more than 50 houses within Phase 3 may be occupied for the first time until the Urban Square has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Three of this Fifth Schedule
23. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it shall invite the Council in writing to make an inspection of the Urban Square for the purposes of this Part Three of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
24. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
- 24.1 give his written certificate that the Specification and Conditions complied with and that the Urban Square is ready to be transferred to the Council, or
- 24.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and
- 24.3 forthwith serve his certificate pursuant to paragraph 24.1 or his report pursuant to paragraph 24.2 as the case may be on the Owner and the Council
25. If the Council's Surveyor shall have given his certificate pursuant to paragraph 24.1 then the Owner shall proceed to transfer the Urban Square to the Council in accordance with paragraphs 27-30 following but if the Council's Surveyor shall have given a report pursuant to paragraph 24.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Urban Square whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 24.1

26. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties

27. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Urban Square for the purposes of this Part Three of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice

28. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 24.1 the Owner shall transfer the freehold interest with Title Absolute of the Urban Square to the Council such transfer to contain covenants to the following effect:-

28.1 The Urban Square shall be used solely as amenity space for use by the general public.

28.2 The Council shall take reasonable steps to ensure that use of the Urban Square shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

28.3 No development shall take place on the Urban Square other than for the purpose of facilitating its use for amenity purposes

and if at the date of transfer the Urban Square cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Urban Square from the nearest public highway.

29. On the date of transfer the Owner shall pay to the Council the Third Maintenance Payment

30. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Urban Square

PART FOUR

PAPPLEWICK PARK

31. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 1.1 hectare to be used as a public park which shall include a LEAP standard children's play area to be provided at the Owner's expense ('Papplewick Park'). Papplewick Park shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which Papplewick Park is sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of Papplewick Park and if it is approved and thereafter implemented the Owner shall build, lay out and thereafter maintain Papplewick Park in accordance with any relevant conditions in the approval ('the Conditions').
32. No more than 50 houses in Phase 4 may be occupied for the first time until Papplewick Park has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Four of this Fifth Schedule
33. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it shall invite the Council in writing to make an inspection of Papplewick Park for the purposes of this Part Four of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
34. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either

- 34.1 give his written certificate that the Specification and Conditions have been complied with and that the LEAP facility has been satisfactorily installed and that Papplewick Park is ready to be transferred to the Council, or
- 34.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with or that the LEAP facility has not been satisfactorily installed and the steps which the Owner must make in order to rectify such omissions, and
- 34.3 forthwith serve his certificate pursuant paragraph 34.1 or his report pursuant to paragraph 34.2 as the case may be on the Owner and the Council
35. If the Council's Surveyor shall have given his certificate pursuant to paragraph 34.1 then the Owner shall proceed to transfer Papplewick Park to the Council in accordance with paragraphs 37-40 following but if the Council's Surveyor shall have given a report pursuant to paragraph 34.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of Papplewick Park whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 34.1
36. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties
37. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of Papplewick Park for the purposes of this Part Four of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice

38. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 34.1 the Owner shall transfer the freehold interest with Title Absolute of Papplewick Park to the Council such transfer to contain covenants to the following effect:-

38.1 Papplewick Park shall be used solely for the purpose of providing recreation and amenity space for use by the general public.

38.2 The Council shall take reasonable steps to ensure that use of Papplewick Park shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

38.3 No development shall take place on Papplewick Park other than for the purpose of facilitating their use for recreation and amenity purposes

and if at the date of transfer Papplewick Park cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to Papplewick Park from the nearest public highway.

39. On the date of transfer the Owner shall pay to the Council the Fourth Maintenance Payment
40. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of Papplewick Park

PART FIVE

THE LEEN VALLEY CORRIDOR

41. The Master Plan shall provide that the land to the east of the areas of built development shown on the Illustrative Plan shall be improved and managed as a nature reserve and wildlife habitat ('the Leen Valley Corridor'). No Development

anywhere on the Application Site shall Commence until a management scheme has been agreed by the Council as required by Condition 15 of the Planning Permission ('the Agreed Scheme') which shall thereafter be implemented by the Owner who shall improve and thereafter manage the Leen Valley Corridor in accordance with the requirements of the Agreed Scheme.

42. No more than 400 houses anywhere on the Application Site may be occupied for the first time until the Leen Valley Corridor has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Five of this Fifth Schedule

43. At any time after the Owner shall in its opinion have complied with those parts of the Agreed Scheme which shall therein be specified as the pre-requisites of the transfer of the Leen Valley Corridor to the Council ('the Requirements') it may invite the Council in writing to make an inspection of the Leen Valley Corridor for the purposes of this Part Five of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made by the Council's Surveyor (who shall for the purposes of this Part Five of this Fifth Schedule be a qualified ecologist).

44. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either

44.1 give his written certificate that the Requirements have been complied with and that the Leen Valley Corridor is ready to be transferred to the Council, or

44.2 make a written report setting out any respects in which the Requirements have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and

44.3 forthwith serve his certificate pursuant to paragraph 44.1 or his report pursuant to paragraph 44.2 as the case may be on the Owner and the Council

45. If the Council's Surveyor shall have given his certificate pursuant to paragraph 44.1 then the Owner shall proceed to transfer the Leen Valley Corridor to the Council in accordance with paragraphs 47-50 following but if the Council's Surveyor shall have given a report pursuant to paragraph 44.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Leen Valley Corridor whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 44.1
46. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties
47. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Leen Valley Corridor for the purposes of this Part Five of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice
48. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 44.1 the Owner shall transfer the freehold interest with Title Absolute of the Leen Valley Corridor to the Council such transfer to contain covenants to the following effect:-
- 48.1 The Leen Valley Corridor shall be used solely as a nature reserve and wildlife habitat.
- 48.2 The Council shall take reasonable steps to ensure that use of the Leen Valley Corridor shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

48.3 No development shall take place on the Leen Valley Corridor other than for the purpose of protecting them as a nature reserve and wildlife habitat.

and if at the date of transfer the Leen Valley Corridor cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Leen Valley Corridor from the nearest public highway.

49. On the date of transfer the Owner shall pay to the Council the Fifth Maintenance Payment
50. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Leen Valley Corridor

PART SIX

THE VILLAGE GREEN

51. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 0.25 hectare to be used as an informal recreation area ('the Village Green') shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which the Village Green is sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of the Village Green and if it is approved and thereafter implemented the Owner shall lay out and thereafter maintain the Village Green in accordance with any relevant conditions in the approval ('the Conditions').
52. No more than 60 houses in Phase 6 may be occupied for the first time until the Village Green has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Six of this Fifth Schedule

53. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it may invite the Council in writing to make an inspection of the Village Green for the purposes of this Part Six of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
54. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
- 54.1 give his written certificate that the Specification and Conditions have been complied with and that the Village Green are ready to be transferred to the Council, or
- 54.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and
- 54.3 forthwith serve his certificate pursuant to paragraph 54.1 or his report pursuant to paragraph 54.2 as the case may be on the Owner and the Council
55. If the Council's Surveyor shall have given his certificate pursuant to paragraph 54.1 then the Owner shall proceed to transfer the Village Green to the Council in accordance with paragraphs 57 - 60 following but if the Council's Surveyor shall have given a report pursuant to paragraph 54.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Village Green whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 54.1
56. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties

57. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Village Green for the purposes of this Part Six of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice

58. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 54.1 the Owner shall transfer the freehold interest with Title Absolute of the Village Park to the Council such transfer to contain covenants to the following effect:-

58.1 The Village Green shall be used solely for the purpose of providing recreation and amenity space for use by the general public.

58.2 The Council shall take reasonable steps to ensure that use of the Village Green shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

58.3 No development shall take place on the Village Green other than for the purpose of facilitating its use for recreation and amenity purposes

and if at the date of transfer the Village Green cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Village Green from the nearest public highway.

59. On the date of transfer the Owner shall pay to the Council the Sixth Maintenance Payment

60. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Village Green

PART SEVEN

THE LINEAR WALKWAY

61. The Master Plan shall provide in approximately the position shown on the Illustrative Plan linking the School Land to the Pitches an area of not less than 0.35 hectares and not less than 10 metres in average width to be used as a recreational footpath link ('the Linear Walkway'). The Linear Walkway shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which the Linear Walkway is sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of the Linear Walkway and if it is approved and thereafter implemented the Owner shall lay out and thereafter maintain the Linear Walkway in accordance with any relevant conditions in the approval ('the Conditions').
62. No more than 100 houses within Phases 2 and 3 may be occupied for the first time until the Linear Walkway has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Seven of this Fifth Schedule
63. At any time after the Owner shall in its opinion have complied the Specification and Conditions it may invite the Council in writing to make an inspection of the Linear Walkway for the purposes of this Part Seven of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
64. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
- 64.1 give his written certificate that the Specification and Conditions have been complied with and that the Linear Walkway are ready to be transferred to the Council, or

64.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and

64.3 forthwith serve his certificate pursuant to paragraph 64.1 or his report pursuant to paragraph 64.2 as the case may be on the Owner and the Council

65. If the Council's Surveyor shall have given his certificate pursuant to paragraph 64.1 then the Owner shall proceed to transfer the Linear Walkway to the Council in accordance with paragraphs 67-70 following but if the Council's Surveyor shall have given a report pursuant to paragraph 64.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Linear Walkway whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 64.1

66. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties

67. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Linear Walkway for the purposes of this Part Seven of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice

68. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 64.1 the Owner shall transfer the freehold interest with Title Absolute of the Linear Walkway to the Council such transfer to contain covenants to the following effect:-

68.1 The Linear Walkway shall be used solely for the purpose of providing recreation and amenity space for use by the general public.

68.2 The Council shall take reasonable steps to ensure that use of the Linear Walkway shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

68.3 No development shall take place on the Linear Walkway other than for the purpose of facilitating its use for recreation and amenity purposes

and if at the date of transfer the Linear Walkway cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Linear Walkway from the nearest public highway.

69. On the date of transfer the Owner shall pay to the Council the Seventh Maintenance Payment

70. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Linear Walkway

PART EIGHT

THE LINEAR LINK

71. The Master Plan shall provide in approximately the position shown on the Illustrative Plan an area of not less than 0.2 hectare and not less than 10 metres in average width to be used as a recreational footpath link ('the Linear Link'). The Linear Link shall be constructed and laid out in all respects in accordance with specifications which shall be submitted to and approved by the Council prior to or concurrent with any Subsequent Application including that part of the Application Site in which the Linear Link is sited ('the Specification'). Such Subsequent Application shall seek detailed consent for the provision of the

Linear Link and if it is approved and thereafter implemented the Owner shall lay out and thereafter maintain the Linear Link in accordance with any relevant conditions in the approval ('the Conditions').

72. No more than 140 houses in Phase 1 may be occupied for the first time until the Linear Link has been laid out and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Eight of this Fifth Schedule
73. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it may invite the Council in writing to make an inspection of the Linear Link for the purposes of this Part Eight of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
74. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
 - 74.1 give his written certificate that the Specification and Conditions have been complied with and that the Linear Link are ready to be transferred to the Council, or
 - 74.2 make a written report setting out any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and
 - 74.3 forthwith serve his certificate pursuant to paragraph 74.1 or his report pursuant to paragraph 74.2 as the case may be on the Owner and the Council
75. If the Council's Surveyor shall have given his certificate pursuant to paragraph 74.1 then the Owner shall proceed to transfer the Linear Link to the Council in accordance with paragraphs 77-80 following but if the Council's Surveyor shall have given a report pursuant to paragraph 74.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further

inspection of the Linear Link whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 74.1

76. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties

77. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the Linear Link for the purposes of this Part Eight of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice

78. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 74.1 the Owner shall transfer the freehold interest with Title Absolute of the Linear Link to the Council such transfer to contain covenants to the following effect:-

78.1 The Linear Link shall be used solely for the purpose of providing recreation and amenity space for use by the general public.

78.2 The Council shall take reasonable steps to ensure that use of the Linear Link shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

78.3 No development shall take place on the Linear Link other than for the purpose of facilitating its use for recreation and amenity purposes

and if at the date of transfer the Linear Link cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Linear Link from the nearest public highway.

79. On the date of transfer the Owner shall pay to the Council the Eighth Maintenance Payment
80. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Linear Link

PART NINE

THE LAGOON

81. The Master Plan shall provide in approximately the position shown to the west of the Leen Valley Corridor on the Illustrative Plan an area sufficient to accommodate a balancing pond to trap the surface run-off to be created by the Proposed Development ('the Lagoon'). No Development anywhere on the Application Site shall Commence until
- 81.1 The details of the Lagoon and risk assessment as required by condition 12 of the Planning Permission shall have been agreed with the Council which shall include the calculation of the number of square metres covered by the Lagoon ('the Specification')
- 81.2 a Subsequent Application providing for the siting and creation of the Lagoon shall have been submitted to and approved by the Council seeking detailed consent for the improvement and management of the Lagoon and that Subsequent Application shall thereafter be implemented by the Owner who shall thereafter create the Lagoon in accordance with any relevant conditions in the approval of the Subsequent Application and conditions 5 and 6 of the Planning Permission ('the Conditions').
82. At any time after the completion of the Proposed Development and subject to the provisions of paragraphs 83 - 91 the Council will accept a transfer of the Lagoon

in accordance with the provisions of the following paragraphs of this Part Nine of this Fifth Schedule

83. At any time after the Owner shall in its opinion have complied with the Specification and Conditions it shall commission from a qualified ecologist to be approved by the Council ('the Ecologist') a report on the then current condition and recommended future management of the Lagoon as a wildlife habitat and shall thereafter

83.1 Serve a copy of the report on the Council, and

83.2 (unless otherwise agreed with the Council) implement any recommendations in the Report which are in the opinion of the Ecologist desirable to be carried out within fifteen months of the date of the report ('the Recommendations')

84. At any time after the Owner shall in its opinion have complied with the Recommendations it may invite the Council in writing to make an inspection of the Lagoon for the purposes of this Part Nine of this Fifth Schedule and the Council shall as soon as practical thereafter arrange for such inspections to be made by the Council's Surveyor (who shall for the purposes of this Part Nine of this Fifth Schedule be a qualified drainage engineer) and the Ecologist.

85. The Council's Surveyor and the Ecologist shall with all reasonable diligence make their inspections and either

85.1 give his written certificate that

85.1.1 in the case of the Council's Surveyor the Specification and Conditions have been complied with and that the Lagoon is ready to be transferred to the Council,

85.1.2 in the case of the Ecologist the Recommendations have been complied with and that the Lagoon is ready to be transferred to the Council or

85.2 make a written report setting out

85.2.1 in the case of the Council's Surveyor any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions

85.2.2 in the case of the Ecologist the Recommendations any respects in which the Specification and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and

85.3 forthwith serve their certificates pursuant paragraph 85.1 or their reports pursuant to paragraph 85.2 as the case may be on the Owner and the Council

86. If both the Council's Surveyor and the Ecologist shall have given their certificates pursuant to paragraph 85.1 then the Owner shall proceed to transfer the Lagoon to the Council in accordance with paragraphs 87-91 following but if either the Council's Surveyor or the Ecologist shall have given a report pursuant to paragraph 85.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Lagoon whereupon the Council shall as soon as practical thereafter arrange for such further inspection(s) to be made the Council's Surveyor and/or the Ecologist as the case may be and so on as often as may be necessary (*mutatis mutandis*) until both the Council's Surveyor and the Ecologist shall have given their certificates pursuant to paragraph 85.1

87. For the avoidance of doubt the Council's Surveyor and the Ecologist shall act for the purposes of paragraph 85 as an expert and not an arbitrator and their respective opinions shall be binding on the parties

88. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor and the Ecologist incurred in making any inspection of the Lagoon for the purposes of this Part Nine of this Fifth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice
89. Not later than two months after the Council's Surveyor and the Ecologist shall have given the later of their certificates pursuant to paragraph 85.1 the Owner may transfer the freehold interest with Title Absolute of the Lagoon to the Council and if at the date of transfer the Lagoon cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Lagoon from the nearest public highway.
90. On the date of transfer the Owner shall pay to the Council the Ninth Maintenance Payment
91. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Lagoon

PART TEN

92. Where in any of the previous Parts One to Nine of this Fifth Schedule any land within the Application Site is to be provided by the Owner and transferred to the Council before a specified event may happen ('the Trigger') the Council may on or after approving a Subsequent Application or on approving the Master Plan and the timetable for implementation in discharging condition 4 of the Planning Permission, or in approving the Phasing Scheme and discharging condition 16 of the Planning Permission, or at any other time on application by the Owner also approve a variation to the Trigger and thereafter all references in this Agreement

to the Trigger shall be to the Trigger as amended and not to the Trigger as specified in Parts One to Nine (as the case may be) above.

93. Where in any of the previous Parts One to Nine of this Fifth Schedule any person is to be appointed by the Council to carry out any functions as an expert and that person shall fail or neglect to carry them out or shall die or before completing those functions then the Council may either at its own discretion or upon receipt of a reasonable request by the Owner so to do appoint any other person (but without prejudice to any requirement that the appointee shall in any particular case have specified qualifications) to carry out or complete the functions which the original appointee shall have failed to carry out, and so on as often as may be necessary (*mutatis mutandis*) until the requisite functions of the expert shall have been completed.

EXECUTED AS A DEED

by affixing the common seal of

CO-OPERATIVE GROUP (CWS) LIMITED

In the presence of



C.J. WOOD
Authorised Sealing Officer

~~Director~~

Director / Secretary

3228

EXECUTED AS A DEED by

NOTTINGHAMSHIRE COUNTY COUNCIL

having affixed its **COMMON SEAL**

to this deed in the presence of



Authorised Signatory

Chairman



County's Solicitor

EXECUTED AS A DEED by

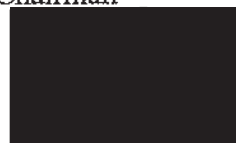
ASHFIELD DISTRICT COUNCIL

having affixed its **COMMON SEAL**

to this deed in the presence of



Chairman



Authorised Officer

