

DATED

7th April

2015

GEDLING BOROUGH COUNCIL

AND

NOTTINGHAMSHIRE COUNTY COUNCIL

AND

HARWORTH ESTATES (AGRICULTURAL LAND) LIMITED

AND

STRATA HOMES YORKSHIRE LIMITED

PLANNING OBLIGATION

under

Section 106 of the Town and Country Planning Act 1990

relating to

Land at Wighay Road, Linby in the County of Nottinghamshire

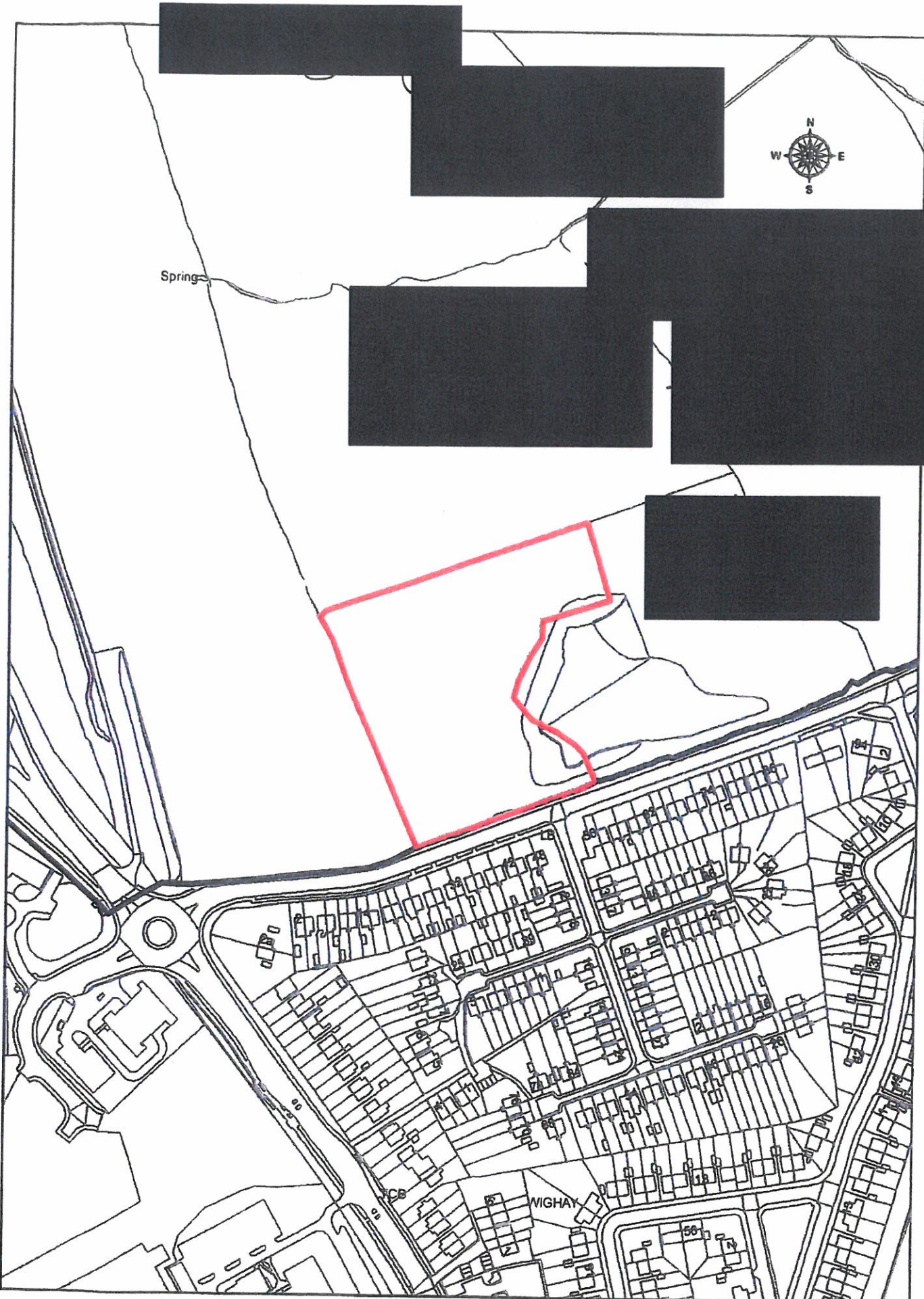
H E Barrington
Council Solicitor & Monitoring Officer
Gedling Borough Council
Civic Centre
Arnot Hill Park
Arnold
Nottingham NG5 6LU

THIS AGREEMENT is made the 7th day of April Two Thousand and Fifteen
BETWEEN

1. **THE GEDLING BOROUGH COUNCIL** of the Civic Centre Arnot Hill Park Arnold in the County of Nottingham ("the Council")
2. **THE NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall West Bridgford Nottingham NG2 7QP ("the County Council")
3. **HARWORTH ESTATES (AGRICULTURAL LAND) LIMITED** (Co. Regn. No. 02835767) of AMP Technology Centre, Advanced Manufacturing Park, Brunel Way, Catcliffe Rotherham S60 5WG ("the Owner")
4. **STRATA HOMES YORKSHIRE LIMITED** (Co Regn. No. 01596961) of Quay point, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL ("the Developer")

WHEREAS

1. The Owner is the freehold owner of the Site registered at the Land Registry under title number NT 320395 free from incumbrances that would prevent it from entering in to this Agreement
2. The Developer has entered into an agreement to acquire the Owner's interest in the Site
3. For the purposes of the Town and Country Planning Act 1990 as amended (the "Act") the Council is the Local Planning Authority for the area within which the Site is situated
4. The County Council is the local highway authority and the local education authority for the area within which the Site is located and is a local planning authority
5. The obligations restrictions and provisions on the part of the Owner contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and enforceable as such by the Council and the County Council
6. The Developer has applied to the Council for full planning permission under Reference No 2014/0950 ("the Application") for residential development on the Site ("the Development")
7. The Council has authorised that subject to the completion of this Agreement to make provision for regulating the Development as hereinafter specified the Permission should be granted



NOW THIS DEED WITNESSES as follows:-

1.

Enabling Powers

- 1.1. This Agreement is made pursuant to Section 106 of the Act and pursuant to Sections 111, 120 and 139 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers to the intent it shall bind (so far as provided by this Agreement) the Owner and the successors in title of the Owner to each and every part of the Site and its assigns

- 1.2. To the extent that the obligations contained herein fall within the terms of Section 106 of the Act they are planning obligations for the purpose of Section 106 of the Act and are enforceable by the Council and the County Council

Liability for the Covenants herein

- 1.3. No person will be liable for any breach of this Agreement unless they hold an interest in the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach

Conditions Precedent

- 1.4. This Agreement is conditional upon the grant of Planning Permission and Commencement of Development, save for the provisions of Clauses 1.8, 1.9 and 6 which shall come into effect immediately upon completion of this Agreement

- 1.5. If the Permission shall expire within the meaning of Sections 91,92 or 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or its successors in title modified by any statutory procedure this Agreement shall cease to have effect and any monies paid to the Council or the County Council under the terms of this Agreement (save for any monies paid pursuant to clause 1.8) shall be returned to the party that made payment

Application of Agreement

- 1.6. Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission other than the Permission granted by the Council or by the Secretary of State on appeal or by reference to him or any other competent authority after the date of this Agreement

General

- 1.7. Where any consent approval or action is required on the part of the Council or the County Council in respect of any aspect of this Agreement then such consent approval or action shall not be unreasonably withheld or delayed by the Council or the County Council
- 1.8. The Owner will pay the Council's reasonable legal costs for the preparation and completion of this Agreement in the maximum sum of £2,500.
- 1.9. The Owner will pay the County Council's reasonable legal costs for the preparation and completion of this Agreement in the maximum sum of £1,500.
- 1.10. In the event of the Owner disposing of its interest in the Site or any part thereof before all the obligations under this Deed have been discharged the Owner shall within twenty eight days of such disposal give written notice of the name and address of their successors to the Council together with sufficient details of the land included in the disposal to allow its identification PROVIDED THAT this covenant will not apply to the disposal of individual newly constructed residential dwellings on the Development
- 1.11. In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act in respect of the conditions in the Permission (and for no other purpose whatsoever) references in this Agreement to the Application Permission and Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly
- 1.12. This Agreement is a Local Land Charge and shall be registered as such
- 1.13. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

2. DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings

- 2.1 "the Act" shall have the meaning given in Recital 2
- 2.2 "Affordable Housing" is defined in Annex 2 of the National Planning Policy Framework 2012 and means social rented or affordable rented and intermediate housing provided to eligible

households whose needs are not met by the market or who cannot afford to rent or buy housing generally available on the open market

- 2.3 "the Affordable Housing Contribution" means the sum of £ 550, 0000 (Five hundred and fifty thousand pounds) being a financial contribution paid to the Council in lieu of provision of 30% Affordable Housing on the Site as part of the Development (based on 70% being either social rent or affordable rent and 30% being either shared ownership or discount price)
- 2.4 "the Application" shall have the meaning given in Recital 6
- 2.5 "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, levelling, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, construction of access roads, laying out and construction of sustainable urban drainage systems, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" and "Commenced" shall be interpreted accordingly
- 2.6 "the Development" shall have the meaning given in Recital 6
- 2.7 "Dwelling" means any unit of residential accommodation authorised to be constructed by the Permission
- 2.8 "Education Contribution" means the sum of £91,640.00 (ninety one thousand six hundred and forty pounds) PUBSC Index Linked equating to eight pupils at a cost of £11,455 per pupil as a contribution to the provision of new or enhanced educational facilities to accommodate the pupils generated by the Development
- 2.9 "Occupation" means occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the terms "Occupy" and "Occupied" shall be construed accordingly
- 2.10 "Open Spaces Off Site Contribution" means the sum of £133,175.22 (one hundred and thirty three thousand, one hundred and seventy five pounds twenty two pence) RPI Index Linked comprising £94,093.02 payable to the Council by the Owner in lieu of the provision of on site open space to be used by the Council towards the improvement or provision of open spaces/recreational facilities within a radius of 2km from the centre of the Development together with £39,082.20 towards the maintenance of those open spaces for a period of 10 years

- 2.11 "the Permission" means the planning permission granted pursuant to the Application
- 2.12 "Plan " means the plan attached to this Agreement
- 2.13 "Primary Healthcare Contribution" means the sum of £20,938.00 (twenty thousand, nine hundred and thirty eight pounds) RPI Index Linked as a contribution towards the provision of increased healthcare services to be paid in accordance with Schedule Three
- 2.14 "PUBSEC Index Linked" means increased annually from April 2012 in accordance with the Pubsec Tender Price Index as published and reviewed quarterly by the Building Cost Information Service of the Royal Chartered Institute of Surveyors
- 2.15 "RPI Index Linked" means the relevant sum increased by a percentage equivalent to the percentage increase in the All Items index of Retail Prices issued by the Office for National Statistics from the date of this Agreement to the date of actual payment
- 2.16 "Site" means the land against which this Agreement may be enforced being land at Wighay Road Linby Nottinghamshire and shown edged red on the Plan

3 OBLIGATIONS

- 3.1 The Owner covenants with the Council and the County Council to observe and perform the obligations contained in the Schedules on the part of the Owner
- 3.2 The Council covenant with the Owner to observe the requirements of the Schedules on the Part of the Council
- 3.3 The County Council covenants with the Owner to observe the requirements of the Schedules on the Part of the County Council
- 3.4 The Developer acknowledges that it shall be bound by the obligations contained herein on the part of the Owner following its acquisition of an interest in the Site

4 EXCLUSIONS OF LIABILITY

- 4.1 Upon the first transfer of a legal estate in each individual completed Open Market Dwelling comprised within the Development, the owner of the interest in that completed dwelling derived from the Owner shall by operation of this clause be automatically released from all obligations contained within this Agreement

5 MONITORING

5.1 For the purposes of monitoring compliance with this Agreement the Owner shall notify the County Council and Borough Council's respective Service Managers for Planning and Economic Development for Housing and for Parks and Street Care in writing of:-

5.1.1 the proposed date of Commencement of Development not less than 14 days prior to the date thereof;

5.1.2 Occupation of the first Dwelling constructed on the Site within 14 days thereof; and

5.1.3 the dates when 25%, 75% and 90% of the Dwellings on the Site become Occupied within 14 days thereof

5.2 The Owner shall notify the County Council's 106 Contributions Manager for and on behalf of both the Group Manager for Strategic Place Planning and School Admissions (Children Families and Cultural Services) and its Highway Manager Development Control in writing of the date of the proposed Commencement of Development and the dates on which first, 11th, 21st and 31st Dwelling shall be Occupied not less than seven days in advance of such dates

6 RESOLUTION OF DISPUTES

In the event of any dispute or difference arising between the parties in relation to any matter under this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by and on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may be in dispute and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference (save in the case of manifest error) and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares

7 NOTICES

7.1 Any notice consent or approval required to be given under this Agreement shall be in writing and shall be delivered personally or sent by prepaid first class Recorded Delivery post telex or facsimile transmission

7.2 The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall

have been previously notified in writing by the parties to all the other parties to this Agreement

7.3 A notice consent or approval under this Agreement shall be deemed to have been served as follows:-

- (i) if personally delivered at the time of delivery
- (ii) at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
- (iii) if sent by email, telex or facsimile transmission at the time of successful transmission

7.4 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) or that the email, telex or facsimile was successfully transmitted on a tested line as the case may be

8 INTERPRETATION

8.1 The expressions "the Owner" "the Council" and "the County Council" shall include their respective successors in title and assigns and/or any successor body

8.2 Where appropriate the singular includes the plural and vice versa. Words importing one gender include all other genders

8.3 Unless otherwise stated all references to clause numbers schedules and paragraph numbers of schedules are references to clause numbers schedules and paragraph numbers of schedules contained within this Agreement

8.4 References to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted

8.5 The obligations herein relate to the Site and each and every part thereof

8.6 The clause headings in this Agreement are for ease of reference only and shall not affect the construction thereof

IN WITNESS whereof this Agreement has been duly executed as a Deed by all the parties hereto the day and year first above written

SCHEDULE 1
PUBLIC OPEN SPACE

1. Not to cause or permit the first occupation of Dwellings on the Site until the Open Spaces Off Site Contribution (RPI Index Linked) has been paid to the Council.

2. The Council covenants with the Owner as follows:-
 - 2.1. not to use any sum paid to it pursuant to paragraph 1 above except towards the improvement or provision of open spaces/recreational facilities within a radius of 2km from the centre of the Development; and

 - 2.2. if so requested by the person who made payment of the Open Spaces Off Site Contribution (RPI Index Linked) at any time after the 10th anniversary of payment to the Council of the whole of the said Contribution (RPI Index Linked), to provide written information to that person of how the Contribution (RPI Index Linked) has been expended and forthwith to repay to that person any part of the Open Spaces Off Site Contribution (RPI Index Linked) not expended or committed for expenditure for the purposes of paragraph 2.1 above by the date of the request.

3. For the purposes of paragraph 2.2 above, references to the person who made the payment means that person or other person notified to the Council in writing by the person who made the payment and not otherwise any successor in title to, or owner of a derivative title from, the person who made the payment.

SCHEDULE 2
AFFORDABLE HOUSING

1. Not to cause or permit the first Occupation of Dwellings on the Site unless 25% of the Affordable Housing Contribution (RPI Index Linked) has been paid to the Council
2. Not to cause or permit the first Occupation of more than 25% of the Dwellings on the Site unless a further 50% of the Affordable Housing Contribution (RPI Index Linked) has been paid to the Council
3. Not to cause or permit the first Occupation of more than 75% of the Dwellings on the Site unless the remaining 25% of the Affordable Housing Contribution (RPI Index Linked) has been paid to the Council
4. The Council shall use the Affordable Housing Contribution (RPI Index Linked) towards the development of new Affordable Housing in the Borough of Gedling or for the improvement of existing Affordable Housing in the borough to secure its retention or extend its lifetime as Affordable Housing and for no other purpose whatsoever
5. The Council covenants that if so requested by the person who made payment of the Affordable Housing Contribution (RPI Index Linked) at any time after the tenth anniversary of payment to the Council of the whole of the Affordable Housing Contribution (RPI Index Linked) to provide written confirmation to that person of how the Affordable Housing Contribution (RPI Index Linked) has been expended and forthwith to repay to that person any part of the Affordable Housing Contribution (RPI Index Linked) not expended or committed for expenditure for the purposes of paragraph 4 above by the date of the request

SCHEDULE THREE
PRIMARY HEALTHCARE CONTRIBUTION

1. Not to cause or permit the first Occupation of Dwellings unless 50% of the Primary Healthcare Contribution (RPI Index Linked) has been paid to the Council
2. Not to cause or permit the first Occupation of more than 90% of the Dwellings unless the remaining balance of the Primary Healthcare Contribution (RPI Index Linked) has been paid to the Council
3. The Council covenants with the Owner as follows:-
 - 3.1. not to use any sum paid to it pursuant to paragraphs 1 and 2 above except towards the provision or improvement of healthcare facilities within the town of Hucknall;
 - 3.2. if so requested by the person who made payment of the Primary Healthcare Contribution (RPI Index Linked) at any time after the 10th anniversary of payment to the Council of the whole of the said Contribution (RPI Index Linked), to provide written information to that person of how the Contribution (RPI Index Linked) has been expended and forthwith to repay to that person any part of the Primary Healthcare Contribution (RPI Index Linked) not expended or committed for expenditure for the purposes of paragraph 3.1 above by the date of the request;
 - 3.3. For the purposes of paragraph 3.2 above, references to the person who made the payment means that person or other person notified to the Council in writing by the person who made the payment and not otherwise any successor in title to, or owner of a derivative title from, the person who made the payment.

SCHEDULE FOUR
EDUCATION CONTRIBUTIONS

1. The Owner agrees with the County Council to pay to the County Council the Education Contribution as follows:
 - 1.1 25% of the Education Contribution on or prior to the first occupation of the first dwelling comprising the Development
 - 1.2 25% of the Education Contribution on or prior to the first occupation of the 11th dwelling comprising the Development ("the Second Instalment")
 - 1.3 50% of the Education Contribution on or prior to the occupation of the 21st dwelling comprising the Development ("the Third Instalment")

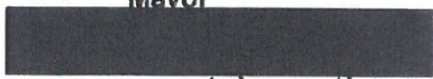
2. The County Council agrees with the Owner as follows:
 - 2.1 to apply the Education Contribution only toward the provision of new or improved primary school educational facilities within the vicinity of or to serve the needs generated by the Development PROVIDED THAT if the whole or any part of the relevant Education Contribution has not been expended or committed within the period of five years from the receipt in full of the Education Contribution then the County Council will on receipt of a written request at any time after the expiration of the said period of five years from the person who paid the Education Contribution (whether or not that person remains the Owner at such time) ("the Payer") pay the balance unexpended or uncommitted at the date of the request together with duly apportioned interest thereon based on the County Council's average external interest rate applicable (being the base rate of Barclays Bank Plc less 0.5% as calculated by the County Treasurer using 7 day averages) to such person within 3 months of such request.

 - 2.2 Upon receipt of a written request referred to in paragraph 1 of this Schedule to provide to the Payer a certificate from the Accounts Officer of the County Council's Children's Families and Cultural Services Department showing all payments made during the previous five years from the account into which the Education Contribution have been paid when received and the purposes to which they have been applied

THE COMMON SEAL of)
GEDLING BOROUGH COUNCIL)
was hereunto affixed in the)
presence of:-



Mayor

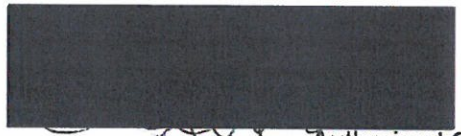


Monitoring Officer



11706

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



Authorised Signatory

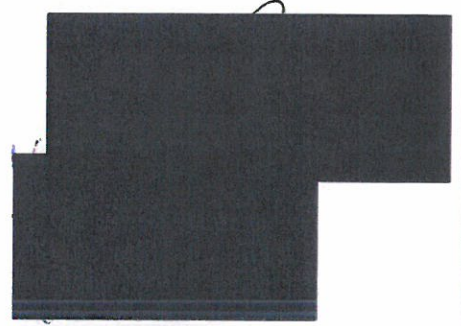
SEAL REGISTER
NO. 41570

EXECUTED AS A DEED by)
HARWORTH ESTATES)
AGRICULTURAL LAND LIMITED)
In the presence of)



Authorised Signatory

EXECUTED AS A DEED by)
STRATA HOMES YORKSHIRE)
LIMITED in the presence of)



Director



Company Secretary