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- telephone: 01623 457313.

THIS AGREEMENT is made the 21st day of December 2005

BETWEEN:

- (1) **THOMAS OSWALD BROWN** of 14 Paddock Close Edwinstowe Nottinghamshire ('the Owner')
- (2) **PERSIMMON HOMES NORTH MIDLANDS LIMITED** whose registered office is Persimmon House, Fulford, York YO19 4FE ('Persimmon')
- (3) **WILSON CONNOLLY LIMITED** whose registered office is 2 Princes Way, Solihull, West Midlands B91 3ES ('Wilson Connolly')
- (4) **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 as detailed in paragraphs 1 and 2 of the Third Schedule to be provided by the Owner but subject to the restrictions on disposal contained in the Third Schedule
- 1.3 'non-Affordable Housing Units' means the Dwellings to be constructed on the Application Site other than the Affordable Housing Units

- 1.4 'the Application' means the Planning Application dated 14th February 2003 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2003/0750
- 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 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 edged blue on the Plan
- 1.8 'the Green Land' means the land edged green on the Plan
- 1.9 'the Orange Land' means the land edged orange on the Plan
- 1.10 'Commencement of Development' means the point at which the Owner has implemented the Planning Permission by carrying out a material operation as defined in Section 56 of the Act other than the carrying out of development comprising only of trial holes bore pits or other ground investigation works or any other works relating to archaeology or ground surveys or works of demolition.
- 1.11 'Dwelling(s)' means (a) separate residential unit(s) and shall include both Affordable Housing Unit(s) and non-Affordable Housing Unit(s)
- 1.12 '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.

- 1.13 'Education Need' means any or all of the following according to the context
- 1.13.1 The provision of additional secondary school places within Hucknall.
- 1.13.2 The provision of additional primary school places within Hucknall
- 1.14 'Education Contribution' means a payment to be made pursuant to paragraph 2 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Second Schedule.
- 1.15 'the Obligations' means the planning obligations contained or referred to in the First, Third and Fourth Schedules to this Agreement
- 1.16 'the Plan ' means the plan attached to this Agreement
- 1.17 'the Planning Permission' means the grant of Planning Permission pursuant to the Application in the form of the draft annexed hereto
- 1.18 'the Proposed Development' means the erection of 201 Dwellings, construction of roads, provision of public open space, footpaths, landscaping, balancing pond and associated works as more particularly described in the Application
- 1.19 'Registered Social Landlord' means a registered social landlord within the meaning of the Housing Act 1996
- 1.20 'Transport Contribution' means a payment to be made pursuant to paragraph 1 of the First Schedule of this Agreement to be dealt with in accordance with the provisions of that Schedule and the Second Schedule

2. **Recitals**

- 2.1 The Owner is the freehold owner of the Application Site under Registered Title number NT295129
- 2.2 The Owner has been given due notice of the Application and is willing to enter into this Agreement
- 2.3 Persimmon and Wilson Connolly propose to acquire the Owner's interest in the Application Site for the purpose of carrying out the Proposed Development
- 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 has policy requirements affecting the Proposed Development and in particular policies HG4, HG6 and TR6 of the Council's Local Plan Review adopted in November 2002
- 2.6 The Proposed Development will create Education Need within Hucknall estimated at 22 new primary places and 16 new secondary places per 100 Dwellings built on the Application Site
- 2.7 The Council resolved on 12th June 2003 and 15th July 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 Development would not have been granted
- 2.8 The Owner, Persimmon and Wilson Connolly have 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 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**

THE Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Obligations and that the Owner will at his own expense duly carry out and perform the Obligations

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 shall (in the case of the Owner) include his 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 clause 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 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 7.6 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
- 7.7 Upon the first transfer of a legal estate in each completed Dwelling comprised within the Proposed Development that completed Dwelling shall by operation of this clause be released from the Obligations
- 7.8 If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be quashed or revoked, this Agreement shall forthwith determine and cease to have effect save that the Council shall be entitled to receive a pro rata proportion of any commuted sum payments in respect of those Dwellings erected on the Application Site prior to the Planning Permission being quashed or revoked where such Dwellings are not required to be demolished

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 one relating to the Proposed Development as specified in the Application) granted after the date of this Agreement

7.10 The Agreement is a Local Land Charge and shall be registered as such

9. Costs

Persimmon and Wilson Connolly 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 £6915.00

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 as a commuted sum to the Council 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 a sum of ONE HUNDRED AND FIFTY THOUSAND POUNDS (£150,000.00) (adjusted for inflation in accordance with paragraph 4.1).
2. There shall be paid as a commuted sum to the Council an Education Contribution of FIVE HUNDRED AND SIX THOUSAND FIVE HUNDRED AND TWENTY POUNDS (£506,520) (adjusted for inflation in accordance with paragraph 4.2)
3. The Due Date for payment of the above sums shall be

3.1 Under Paragraph 1 :-

- 3.1.1 as to half on the day prior to the occupation of the 50th Dwelling erected on the Blue Land or the 50th Dwelling erected on the Orange Land (whichever shall first occur) and
- 3.1.2 as to half on the day prior to the occupation of the 75th Dwelling erected on the Blue Land or the 75th Dwelling erected on the Orange Land (whichever shall first occur)

3.2 Under Paragraph 2

- 3.2.1 as to half on the day prior to the occupation of the 25th Dwelling erected on the Blue Land or the 25th Dwelling erected on the Orange Land (whichever shall first occur) and

3.2.2 as to half on the day prior to the occupation of the 50th Dwelling erected on the Blue Land or the 50th Dwelling erected on the Orange Land (whichever shall first occur)

4. Payments made pursuant to paragraphs 1 and 2 above shall be adjusted for inflation as follows

4.1 Where any amount payable pursuant to paragraph 1 has a Due Date pursuant to paragraph 3 which is later than 31st August 2003 the amount 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 or 2 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 August 2003.

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

But so that if at any time this calculation falls to be made B is less than A the amount payable pursuant to paragraph 1 shall nevertheless be paid in full without deduction

4.2 Where any amount payable pursuant to paragraph 2 has a Due Date pursuant to paragraph 3 which is later than 31st August 2003 the amount 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

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 August 2003.

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

But so that if at any time this calculation falls to be made B is less than A the amount payable pursuant to paragraph 2 shall nevertheless be paid in full without deduction

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
 - (i) no more than 49 Dwellings to be built upon the Blue Land nor more than 49 Dwellings to be built upon the Orange Land shall be occupied whilst any monies payable pursuant to paragraph 3.1.1 (including interest as aforesaid) remains unpaid.
 - (ii) no more than 74 Dwellings to be built upon the Blue Land nor more than 74 Dwellings to be built upon the Orange Land shall be occupied whilst any remaining sum or part thereof due pursuant to paragraph 3.1.2 (including interest as aforesaid) remains unpaid.
 - (iii) no more than 24 Dwellings to be built upon the Blue Land nor more than 24 Dwellings to be built upon the Orange Land shall be occupied whilst any monies payable pursuant to paragraph 3.2.1 (including interest as aforesaid) remains unpaid.

- (iv) no more than 49 Dwellings to be built upon the Blue Land nor more than 49 Dwellings to be built upon the Orange Land shall be occupied whilst any remaining sum or part thereof due pursuant to paragraph 3.2.2 (including interest as aforesaid) remains unpaid.

- (b) 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

TREATMENT OF TRANSPORT AND EDUCATION CONTRIBUTIONS

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

1. Any Transport Contribution or Education 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
2. The Transport Contribution shall only be spent for the purposes mentioned in Paragraph 1 of the First Schedule 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) Other schemes within the Hucknall-Nottingham Transport Corridor
3. 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. 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
4. The Council will work in conjunction with the Education Authority to procure that capital expenditure is undertaken by the Education Authority to make

provision for the Education Need. The Council at its sole discretion will agree with the Education Authority a programme of works to alleviate the Education Need but will, if at any time requested by the Owner in writing, advise the Owner of any works agreed pursuant to this paragraph.

5. As soon as the Council is satisfied that the Education Authority has let a contract for work to meet the Education Need or has otherwise entered into a binding commitment to meet it the Council may in its absolute discretion release to the Education Authority a sum from the amount(s) ring fenced by the Council to meet the Education Need up to an amount which the Council in its absolute discretion is satisfied that the Education Authority has committed to meet the Education Need.
6. 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.
7. If any Education Contribution has not been paid by the Council to the Education Authority by the fifth anniversary of the date on which the Education Contribution 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 (together with interest that has accrued thereon) to the Owner. For the avoidance of doubt, any sum paid out of an Education Contribution by the Council to the Education Authority 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.
8. At any time prior to the fifth anniversary of the making of a Transport or Education Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any expenditure on Transport or Education Contributions made by the Council 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 Transport or Education Contribution as the case may be has been expended.

9. For the purposes of this Schedule 'Owner' shall mean the Owner by whom the payment is actually made and where such payment is made by 2 or more persons the written notice requiring repayment shall specify the proportions in which the repayment is to be made to each of them.

THIRD SCHEDULE

AFFORDABLE HOUSING OBLIGATIONS

1. Subject to the provisions of this Schedule the Owner shall construct on the Application Site a total of 37 Affordable Housing Units as part of the Proposed Development such units to be constructed in accordance with the plans submitted with the Application and approved pursuant to the Planning Permission and which are shown as plots 84-102 on the Orange Land and plots 22-25, 58-66, and 89-93 on the Blue Land (all numbers inclusive) on the Plan and the Owner may not dispose of such units save in accordance with the following terms of this Schedule

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 to highways and sewers maintainable at the public expense.

3.
 - 3.1. The Owner shall not permit the first occupation of more than 40 of the non-Affordable Housing Units to be built on the Blue Land pursuant to the Application until the Affordable Housing Units comprising plots 58-66 to be erected on the Blue Land have been transferred in accordance with paragraph 5 to a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council

 - 3.2. The Owner shall not permit the first occupation of more than 75 of the non-Affordable Housing Units to be built on the Blue Land pursuant to the Application until the Affordable Housing Units comprising plots 22-25 and 89-93 to be erected on the Blue Land have been transferred in accordance with paragraph 5 to a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council

4. The Owner shall not permit the first occupation of more than 50 of the non-Affordable Housing Units to be built on the Orange Land pursuant to the Application until the Affordable Housing Units to be erected on the Orange Land have been transferred in accordance with paragraph 5 to a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council
5. The transfers to the Registered Social Landlord shall be in a form approved by the Council's Solicitor and on terms that will ensure that 12 Affordable Housing Units erected on the Blue Land and 13 Affordable Housing Units erected on the Orange Land are made available on a rental basis with the remaining Affordable Housing Units being provided by way of shared ownership leases
6. Beginning not later than the date of Commencement of Development on the Blue Land or the Orange Land the Owner shall enter into negotiations with a Registered Social Landlord or Landlords drawn from the Council's approved list 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 the Blue Land or the Orange Land respectively. The negotiations shall be pursued by the Owner in good faith and details shall be supplied to the Council upon written request.
7. Provided always that the Owner shall have complied with paragraph 6 in respect of the Blue Land 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 on the Blue Land by the date when either 40 or 75 as the case may be of the non-Affordable Housing Units have been occupied or within 12 months of the Commencement of Development on the Blue Land if sooner the restrictions on transfer of the Affordable Housing Units (but not the restrictions on occupation of the non-Affordable Housing Units) contained in paragraph 3 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 9 following shall apply instead of the said paragraph 3

8. Provided always that the Owner shall have complied with paragraph 6 in respect of the Orange Land but no Registered Social Landlord has been approved by the Council or no Registered Social Land is willing to take a transfer of the Affordable Housing Units on the Orange Land by the date when 50 of the non-Affordable Housing Units have been occupied or within 12 months of the Commencement of Development on the Orange Land if sooner 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 10 following shall apply instead of the said paragraph 4

9. From the date of a notice given pursuant to paragraph 7 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 on the Blue Land shall cease

10. From the date of a notice given pursuant to paragraph 8 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 on the Orange Land shall cease

11. If not less than six months have elapsed from the giving of a notice pursuant to paragraph 7 or paragraph 8 as the case may be and the Owner shall have been unable to transfer any of the Affordable Housing Units pursuant to paragraph 9 or paragraph 10 as the case may be the Owner shall then be free to make first disposal of such units to
 - 11.1. a Registered Social Landlord on such terms as may be agreed between the Owner and the Registered Social Landlord; or
 - 11.2. the Council; or

11.3. 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

11.4. 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 11.4 is of the freehold interest and on the following terms:

11.4.1. 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

11.4.2. The transfer to a person specified in this sub-paragraph 11.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that

11.4.2.1. no subsequent transfer shall take place within the said period of thirty 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 market value of the said Unit at the date of disposal as certified by a Valuer or Surveyor in the manner described in 11.4.1, and

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

11.4.3. The transfer to a person specified in this sub-paragraph 11.4 shall contain a covenant binding on the transferee and all subsequent transferees for a

period of thirty 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 11.4 and all of its sub-sub-paragraphs and sub-sub-sub-paragraphs

11.4.4. The transfer to a person specified in this sub-paragraph 11.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty 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 Thomas Oswald Brown (1) Persimmon Homes North Midlands Limited (2) Wilson Connolly Limited (3) and Ashfield District Council (4)”

11.4.5 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 11.4 before any further disposal for value of the legal estate takes place

- 11.5 If all the Affordable Housing Units on the Blue Land or the Orange Land as the case may be shall have been transferred pursuant to the provisions of this paragraph 11 the restrictions on occupation of the non-Affordable Housing Units on the Blue Land or the Orange Land as the case may be shall cease
- 12 If not less than twelve months have elapsed from the giving of a notice pursuant to paragraph 7 or paragraph 8 as the case may be the Owner may dispose of the freehold interest in any of the Affordable Housing Units on the Blue Land or the Orange Land as the case may be to any person (whether or not that person qualifies with the requirements of sub-paragraph 11.4) provided that the transfer to him complies in all respects with the requirements of the said sub-paragraph 11.4, its sub-sub-paragraphs and sub-sub-sub-paragraphs
- 13 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 value 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
- 13.1 Any sums paid to the Council pursuant to ^{this} paragraph ~~11~~¹³ 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 Hucknall
- 13.2 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

- 14 If all the Affordable Housing Units on the Blue Land or the Orange Land as the case may be shall have been transferred pursuant to the provisions of paragraph 12 or payment made in lieu of all the remaining Affordable Housing Units pursuant to paragraph 13 as the case may be the restrictions on occupation of the non-Affordable Housing Units on the Blue Land or the Orange Land as the case may be shall cease

- 15 The covenants within this Schedule shall not be binding on a mortgagee in possession exercising a power of sale under their mortgage 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

OPEN SPACE PROVISION

1. The Owner shall at his own cost provide prepare lay out and complete the Green Land as open space in accordance with Conditions 5,8,16,17,18 & 20 of the Planning Permission to the satisfaction of the Council's Head of Development Services and thereafter maintain the same until the transfer of the same pursuant to paragraph 2

2. Not later than 6 calendar months after the Council's Head of Development Services has certified that the provisions of paragraph 1 have been satisfied the Owner shall transfer the freehold interest in the Green Land to the Council with Title Absolute such transfer to contain covenants to the following effect:-
 - (i) The Green Land shall be used solely for this purpose of providing recreation and amenity space for use by the general public.

 - (ii) The Council shall take reasonable steps to ensure that use of the Green Land shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

 - (iii) No development shall take place on the Green Land other than for the purpose of facilitating its use for recreation and amenity purposes

and if at the date of transfer the Green 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 to the Green Land from the nearest public highway.

3. On the date of transfer the Owner shall pay to the Council the Sum of **FIFTY THOUSAND POUNDS (£50,000)** (index linked in accordance with paragraph 4 below) for the sole purpose of maintaining the Green Land as public open space
4. The amount payable under paragraph 3 above shall be adjusted for inflation in accordance with the following formula :-

$$£(50,000 \div A) \times B$$

Where:-

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 June 2004

B = the RPI figure for the month in which the payment is made

But so that if at any time this calculation falls to be made B is less than A the amount payable shall nevertheless be £50,000

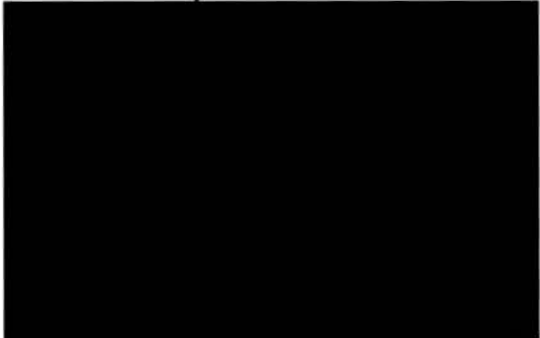
5. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Green Land

SIGNED AS A DEED by the said
THOMAS OSWALD BROWN acting by his attorney ROGER ERNEST WRIGHT

In the presence of:

G.A. Wintfield
SOLICITOR
80 MOUNT ST
NOTTINGHAM.

EXECUTED AS A DEED by
PERSIMMON HOMES NORTH
MIDLANDS LIMITED
Acting by its Attorneys



THE COMMON SEAL OF
WILSON CONNOLLY LIMITED

Was affixed to this Deed
In the presence of:

AUTHORISED
SIGNATORY

~~Director~~

AUTHORISED
SIGNATORY

~~Director/Secretary~~

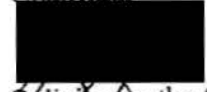


THE COMMON SEAL OF
ASHFIELD DISTRICT COUNCIL

Was affixed to this Deed
In the presence of:



Chairman



Solicitor to the Council





<p>1165-207</p>	<p>LAND PARCELS</p>	<p>Project: PERSIMMON HOMES NOTTINGHAM ROAD HUCKNALL</p>	<p>Client: PERSIMMON HOMES</p>	<p>Scale: <input type="checkbox"/> 1:1000 <input type="checkbox"/> 1:2000 <input type="checkbox"/> 1:5000</p>	<p>Revision: <input type="checkbox"/> 1:1000 <input type="checkbox"/> 1:2000 <input type="checkbox"/> 1:5000</p>	<p>Drawn: <i>AC 12/14</i></p>	<p>Checked: <i>AC 12/14</i></p>	<p>DATE: 12/14</p>		<p>1165-207</p>