

THIS AGREEMENT is made the 16 day of June 2017

BETWEEN:

(1) ASHFIELD DISTRICT COUNCIL of Civic Centre Urban Road Kirkby  
In Ashfield Notts NG17 8DA ("the Council")

(2) THE NOTTINGHAMSHIRE COUNTY COUNCIL of County Hall,  
West Bridgford Nottingham, NG2 7QP ("the County")

(3) W & J S TEMPORAL LIMITED (Co Regn No 00772263) of Park Farm,  
Palterton Lane Sutton Scarsdale Chesterfield Derbyshire S44 5UT "the  
Owner")

#### BACKGROUND

- 1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is located
- 2) The County is the education authority for the area within which the Site is located and the enforcing authority for those obligations in this Deed relating to education matters
- 3) The Owner is the freehold owner of the Site registered with Title Absolute under Title Number NT120855 free from encumbrances
- 4) The Owner has submitted the Application to the Council and the Council has agreed to grant the Planning Permission subject to the completion of this Agreement
- 5) The Council requires and it is the purpose of this Agreement to secure a contribution towards the provision of Off-Site Open Space and a contribution towards education provisions without which the Planning Permission will not be granted
- 6) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County respectively against the Owner and (subject to the provisions of this Agreement) and (subject as mentioned) their successors in title and assigns and with the intention that this Agreement shall bind the owners and occupiers of the Site other than the owners or

occupiers of any Individual Residential Unit and any service authority and/or utility company

8) In this Agreement the following terms shall have the following meanings:

**"the Act"** means the Town and Country Planning Act 1990 (as amended)

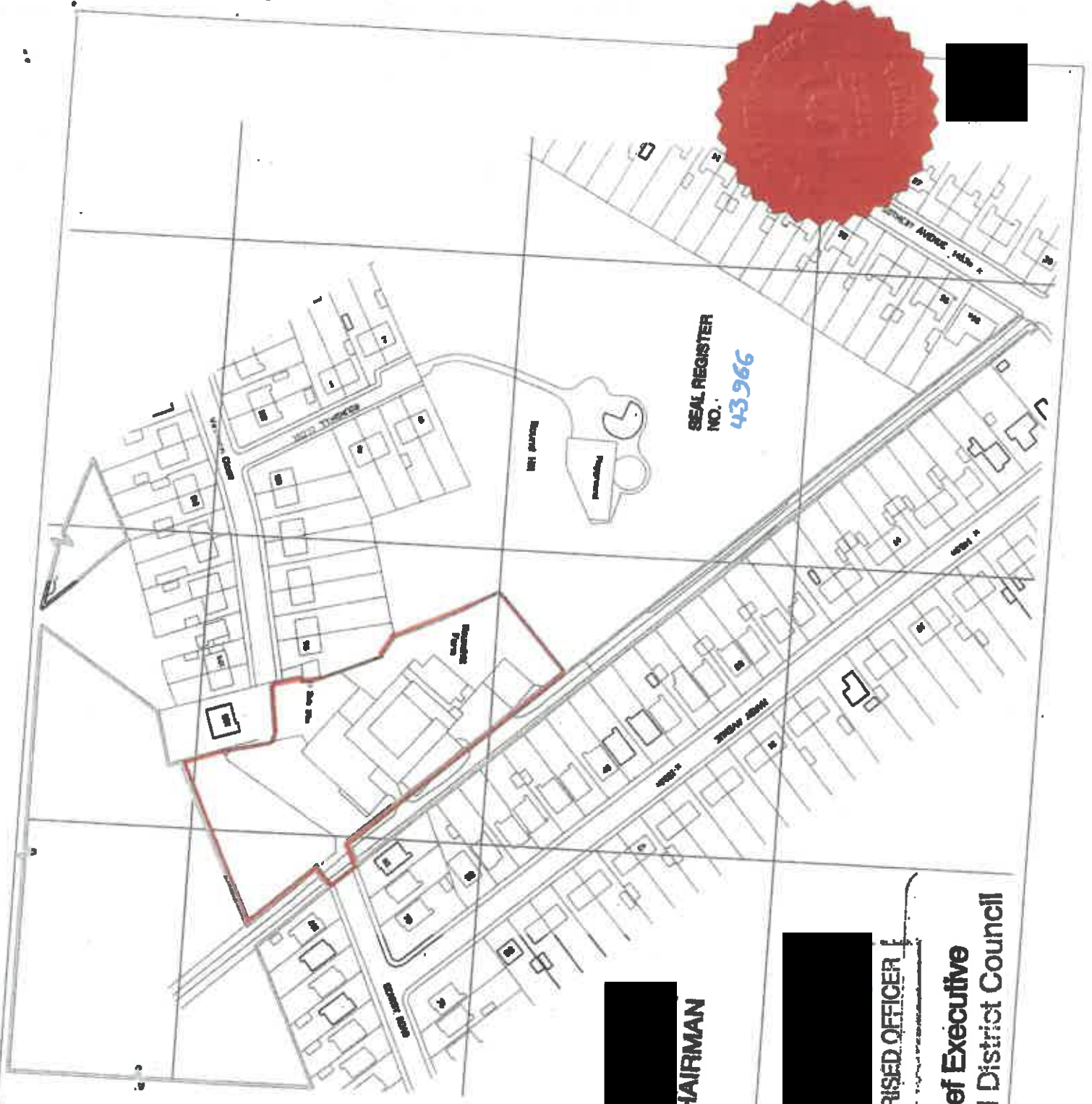
**"the Application"** means the Application for planning permission made under the Council's reference V/2015/0537T

**"Cease/Ceases "** means where no notice has been received by the Council for a period of 3 months since the receipt of the previous notice that any Residential Units have been completed in accordance with paragraph 1.1 of the First Schedule

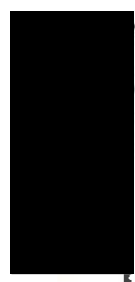
**"the Commencement Date"** means the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56 of the Act excluding any operations relating to the demolition of any existing buildings or clearance of the Site, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and temporary means of enclosure, the temporary display of site notices or advertisements.

**"Completed Complete"**

1. Name of the person or body making the application	
2. Name of the person or body to whom the application is made	
3. Name of the person or body to whom the application is made	
4. Name of the person or body to whom the application is made	
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10. Name of the person or body to whom the application is made	



**CHAIRMAN**



**AUTHORISED OFFICER**

**Chief Executive  
Ashfield District Council**



**and Completion"**

means any dwelling which has been plastered out and is capable of being occupied with the minimum amount of finishing required including the final fix of bathroom and kitchens

**"Development"**

means the development of the Site for housing as set out in the Planning Permission

**"Education Contribution"**

means the sum of £22,910.00 (TWENTY TWO THOUSAND NINE HUNDRED AND TEN POUNDS) Index Linked towards the provision of new or enhanced primary educational facilities (other than revenue items) to be used by the County at Croft Primary School or such other school in the vicinity of the site which is able to accommodate the increase in pupil numbers arising as a result of the Development.

**"Index"**

means the All Items Retail Prices Index published by the Office for National Statistics contained in the monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other Index as may from time to time be published in substitution therefor or in the case of the Education Contribution means the BCIS Tender Price Index produced by the Building Cost Information Service on behalf of

the Department for Business, Energy and Industrial Strategy or in the event of discontinuance any replacement thereof or such alternative index as may be agreed in writing between the Owner and the County.

**"Index Linked"**

means such increase to sums payable to the District Council and the County Council under this Deed on an annual basis or pro rata per diem from the date of grant of the Planning Permission until such time that payment of any sums in this Deed is made such index linking to be equivalent to any inflationary increase on such sums in proportion to the increase taking as the measure of inflation the index last published before the date of the Deed or any publication substituted for it

**"the Open Space Contribution"**

means instead of any open space or play equipment or the like being required as part of the Development on the Site the sum of £5000.00 payable pursuant to paragraph 5.2 of the First Schedule Unit

**"Occupation"**

means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and

	reference to "Occupied" shall be construed accordingly;
"the Plan"	means the Plan annexed hereto
"the Planning Permission"	means the outline planning permission which may be granted pursuant to the Application
"Residential Unit"	means a dwelling (including a house flat or maisonette) to be constructed on the Site pursuant to the Planning Permission
"the Site"	means ALL THAT freehold property situate and know as Roundhills Farm Kirkby in Ashfield as shown edged red on the Plan
"Interest " means	the LIBOR rate for the time being in force

- 9) Where the context so admits:-
- (a) the masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa;
  - (b) save as expressly provided in this Agreement or where to construe otherwise would be inconsistent with the requirements or provisions of the same covenants, restrictions, liabilities, obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally;
  - (c) reference to "the Owner" in this Agreement shall include its respective successors in title and assigns and all persons deriving title under them except as stated in paragraph (6) and in operative clause 6 and where otherwise expressly provided;
  - (d) a covenant, restriction, liability or obligation by any party to this Agreement not to do something shall be construed as including a covenant, restriction or obligation not to permit or knowingly suffer it to be done by a third party;

- (e) reference to any statutory or other body or to the Head of Planning and Regulatory Services or Group Manager Planning shall include reference to its successors in function;**
- (f) reference to a clause or schedule is a reference to a clause or schedule contained in this Agreement;**
- (g) reference to Statutes Acts Orders Directions Regulations and Instruments includes (where appropriate) reference to their amendments and replacements**

### **OPERATIVE CLAUSES**

- 1. This Agreement is made pursuant to Section 106 of the Act and this Agreement and the covenants restrictions liabilities and obligations contained in this Agreement or agreed or completed pursuant to it are planning obligations for the purposes of that section.**
- 2. In so far as any of the covenants, restrictions, liabilities and obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Sections 111 and 120 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 1 of the Localism Act 2011 and all other powers enabling the parties hereto to enter into the Agreement and in consideration of the covenants, restrictions, liabilities and obligations hereinafter contained**
- 3. The covenants, restrictions, liabilities and obligations in this Agreement shall only come into effect on the Commencement Date unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of any such covenants**
- 4. The Owner covenants with the Council and the County so as to bind the Site and each and every part thereof to carry out and comply with the covenants restrictions liabilities and obligations contained mentioned or referred to in the First Schedule**
- 5. The Council and the County covenant with the Owner to comply with their respective obligations set out in the Second Schedule**
- 6. No person shall be liable for any breach of the covenants, restrictions, liabilities or obligations contained in this Agreement occurring after they**

- have parted with all of their interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to their liability for any subsisting breach prior to parting with such interest
7. For the avoidance of doubt it is agreed and declared that if the Planning Permission shall expire before the Commencement Date or be quashed as a result of legal proceedings, then this Agreement shall forthwith determine and cease to have effect
  8. All notices, approvals, consents or other documents to be served on or by the Council or the County under the provisions of this Agreement shall as appropriate be issued by or served on the Head of Planning or Group Manager Planning of the Council and the County as appropriate.
  9. Any approval required pursuant to this Agreement must not be unreasonably withheld or delayed
  10. Anything in this Agreement which has to be done to the Council's or the County's satisfaction must be done to the Council's or the County's reasonable satisfaction and in the case of any provision of this Agreement which requires confirmation (by whatever name) of such satisfaction (or reasonable satisfaction) by the Council or the County the parties agree that the same shall not be unreasonably delayed or refused
  11. Nothing in this Agreement shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligations of the Council or the County under all Statutes Byelaws Statutory Instruments Orders or Regulations or in the exercise of their statutory functions
  12. This Agreement shall be registered as a Local Land Charge
  13. Unless expressly stated otherwise, nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999
  14. Unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of this Agreement, nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
  15. No waiver (whether expressed or implied) by the Council, the County or the Owner of any breach or default in performing or observing any of the



covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council, County or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

16. Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if both parties shall agree on one or in default of agreement to a single arbitrator to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996
17. If any payment due under this Agreement is paid late interest will be payable from the due date of payment
18. All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable
19. It is hereby agreed that none of the terms obligations and covenants in this Agreement shall to any degree be binding upon or enforceable against:-
  - a) any individual owner of an interest in an Individual Residential Unit and their mortgagee; and or
  - b) any statutory undertaker to the extent that their interest in the Site relates to the discharge of their statutory functionsand such persons are not to be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the Act
20. Variations of the terms of this Agreement (other than minor amendments or variations of a transitory nature not affecting the nature or extent of liability hereunder) may be evidenced only by a supplemental deed executed as a deed of variation by the parties unless the Council and the County otherwise agrees in writing and a copy of any supplemental agreement shall be sent to the Council and the County for the purpose of amending the Local Land Charges Register
21. This Agreement is governed by and interpreted in accordance with the law of England and Wales
22. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated

23. Where the Development Ceases before completion following the expiry of six months of the date of the Development Ceasing any outstanding contributions proportional to the number of Residential Units constructed shall be paid within 28 days to the Council or the County Council as appropriate.

## **THE FIRST SCHEDULE**

### **The Owners Obligations**

1. For the purposes of monitoring compliance with this Agreement the Owner shall:
  - 1.1 notify the Council in writing of the total number of the Completed Residential Units comprised in the Development in respect of any part of the Site in its ownership each and every month from the first Completed Residential Unit on the Site
  - 1.2 give the Council and the County notice in writing within 14 days of the Commencement Date that Development has commenced on the Site
  - 1.3 notify the Council and the County in writing prior to Completion of the first Residential Unit on the Site
2. The Owner shall pay to the Council on completion of this Agreement the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and completion of this Agreement amounting to £495.00
3. The Owner shall pay to the County on completion of this Agreement the County's reasonable legal costs and disbursements in connection with the negotiation, preparation and completion of this Agreement
4. The Owner shall :
  - 4.1 not Complete or cause or permit to be Completed (disregarding any show houses or sales offices) more than 50% of the Residential Units to be built in accordance with the Planning Permission unless payment has first been made to the Council of the Open Space Contribution in accordance with paragraph 5.2
  - 4.2 pay the Open Space Contribution to the Council prior to the Completion of no more than 50% of the Residential Units on the Site in accordance with the Planning Permission

- 4.3 not Complete or cause or permit to be Completed (disregarding any show houses or sales offices) the first Residential Unit until the Education Contribution has been paid to the County in full in accordance with paragraph 5.4**
- 4.4 pay f the Education Contribution to the County in full prior to the Completion of the first Residential Unit on the Site in accordance with the Planning Permission**

## **THE SECOND SCHEDULE**

### **The Council's Obligations:**

- 1.1.1 To use the Open Space Contribution towards improvements to land adjacent to Roundhills Ground Kirkby in Ashfield Notts**
- 1.1.2 To provide to the Owner on request evidence as to how much of and how the Open Space Contribution has been spent expended or allocated**
- 1.1.3 To refund the Owner (or otherwise the real or corporate person who has paid the Open Space Contribution to the Council) such part of the Open Space Contribution as has not been allocated committed or expended in accordance with paragraph 1.1.1 above within 5 years from the date of receipt by the Council of the final instalment of such contribution together with interest for the period from the date of payment to the date of refund**
- 1.2 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations on the part of the Owner contained in this Agreement subject to such obligations having been duly discharged.**

### **The County's Obligations**

- 2.1 To apply the Education Contribution received pursuant to the First Schedule only in accordance with the provisions set out in the definition of "Education Contribution" provided that if the whole or any part of the relevant Education Contribution has not been committed within the period of five years or spent within the period of seven years of the date of payment, the County will on receipt of a written request at any time after the expiration of the said period of seven 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 at the date of the request to such person within three months of such request together with interest for the period from the date of request to the date of repayment**
- 2.2 Upon receipt of a written request referred to in paragraph 2.1 of this Second Schedule to provide to the Payer a certificate from the Financial Officer of the County's Children Families and Cultural Services Department showing all payments made or committed during the previous seven years from the account into which the Education**

**Contribution has been paid when received and the purposes to which they may have been applied or committed.**

- 2.3 To acknowledge receipt of the Education Contribution in writing within 14 days of receipt of the same and that such written acknowledgement will be sufficient evidence that the provisions of the First Schedule relating to payment of the Education Contribution have been satisfied**

**IN WITNESS WHEREOF these presents have been duly executed as a Deed by the Parties hereto the day and year first before written**

THE COMMON SEAL of Ashfield  
DISTRICT COUNCIL was hereunto affixed  
in the presence of:-



CHAIRMAN

)  
)  
)



Authorized Signatory

Chief Executive

Ashfield District Council



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



)  
)  
)

Authorized Signatory



SEAL REGISTER  
NO -

43966

Executed as a Deed on  
behalf of W & J S TEMPORAL LIMITED  
in the presence of: )



Director

Director/Secretary

**DATED**

**2016**

**ASHFIELD DISTRICT COUNCIL**

**and**

**THE NOTTINGHAMSHIRE COUNTY COUNCIL**

**and**

**W & J S TEMPORAL LIMITED**

**AGREEMENT**

**(under S106 of the Town and Country Planning Act 1990)**

**re Residential Development at Roundhill Farm Kirkby in Ashfield  
Nottingham**