

## **CABINET – 16TH SEPTEMBER 2021**

### **Report of the Strategic Asset Manager Lead Member: Councillor T. Barkley**

#### **Part A**

#### **ITEM 12     S106 PROJECT, ROTHLEY CENTRE REFURBISHMENT**

##### Purpose of Report

This report sets out the detail relating to a project for the delivery of a refurbishment to a community asset within the Rothley Parish. The project is to be delivered using a Section 106 contribution received by a developer specifically allocated to this area. It is a requirement of the S106 agreement that if the funds are not spent by the deadlines within the agreement they must be returned to the benefactor.

##### Recommendations

1. That Cabinet approves the spend of the S106 fund included in the 2021-22 Capital Plan to the Rothley Centre Project amounting to £367,600.00
2. That Cabinet approve the inclusion of the Rothley Centre Project into the Charnwood Borough Council Annual Procurement Plan 2021-22
3. That authority is delegated to the Strategic Asset Manager, in consultation with the Strategic Director, Commercial Development, Assets and Leisure and the Section 151 Officer to carry out the procurement and management of works.

##### Reasons

1. To ensure the timely spend of a S106 contribution intended to benefit the residents and users of the facility.
2. To ensure the scope of works procured meets the requirements of tenant (Rothley Parish Council) and delivers a sustainable community asset for the long-term benefit of the residents and visitors to the area.
3. To ensure the project is delivered in a timely and efficient manner.

##### Policy Justification and Previous Decisions

This project links to the Council's strategic aim to deliver excellent services from well managed and maintained assets with the added benefit of utilising a S106 contribution specifically targeted to the Rothley Parish and its residents.

The project is currently included in the 2021/22 Capital Plan with the benefit of S106 funding already being in place to fund the project.

The approval and authority to spend these funds in the current fiscal period will ensure the allocated funds are spent in a timely manner to deliver a project that would otherwise not proceed, and if not completed in this period, would likely result in the return of monies to origin.

### Implementation Timetable including Future Decisions and Scrutiny

Contracts will be let in accordance with Council Procurement Procedures and subject to Council Terms & Conditions.

There are a number of pre-commencement actions that have been completed (see Part B section 2. below) with the remaining actions outstanding.

1. Issuance of Purchase Orders and supporting contract documentation immediately upon Cabinet approval, and subject to any call-in. September 2021
2. Agree contractors actual commencement date, estimated to be on site six to eight weeks lead in from Cabinet Decision date.
3. Agree expected completion date, estimated to be 12 weeks from commencement.

### Report Implications

The following implications have been identified for this report.

#### *Financial Implications*

There are no identified financial implications other than to note the budget allocated to this project is from a S106 contribution and therefore does not present a direct strain on Council Budgets. The project will be delivered within these budget constraints or if not approved the S106 monies returned to the benefactor.

#### *Risk Management*

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Cabinet do not approve the scheme funding via S106	Remote (1)	Major (4)	Low (4)	Project does not proceed. S106 monies returned to benefactor.
Project Not approved for inclusion in the Procurement Plan	Remote (1)	Major (4)	Low (4)	Assess effect of Project timeline for delivery and impact of compensation events claim from

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
2021-22				contractors. Return of S106 contribution to benefactor.
Project does not proceed as an internal project	Remote (1)	Major (4)	Low (4)	Project delivered outside of authority control as an external project. Assess impact and cost of delivery without appropriate skillset or CBC controls in place on CBC owned asset.
Project incurs costs above the budget threshold.	Remote (1)	Significant (2)	Very Low (2)	Project Scope includes a contingency sum in the event unforeseen costs arise. Project Scope has been subjected to a value engineering exercise to ensure only required works and suitable quality materials are used. If additional costs exceed the budget agreements will be in place with building occupier to make up the shortfall or reduce the scope of works to within budget parameters.

Key Decision: Yes

Background Papers: None

Officer to contact: Name Ian Browne  
Job Strategic Asset Manager  
Tel. 07749 435456  
email ian.browne@charnwood.gov.uk

## **Part B**

### 1. Background

Charnwood Borough Council completed a Deed of agreement with Rothley Temple Estates Ltd. (The Developer) on 23 December 2014 for the purposes of securing a Community Facility Contribution in the order of £1,117,413.00 under Section 106 of the Town & Country Planning Act 1990 (S106) in relation to a housing development scheme.

Under the terms of the contract with the developer the S106 Contribution was split across 3 community projects, one of which being The Rothley Centre Project. The s106 monies were allocated based on the planning report to committee; the Rothley Centre has been allotted a total of £367,617.56.

Under the terms of the S106 agreement the allocated funds must be spent within a specified timeframe, i.e. four years from receipt of the funds.

The council received the above sum in the following manner:

- £25,000.00 by way of a supplementary planning application P/16/1183/2 relating to the same development with 50% (£12,500.00) being specified for use on the Rothley Centre that must be spent by 29 June 2022, and
- a further £355,100.00 under the Deed of agreement with Rothley Temple Estates being required to be spent by 4 February 2023.

On 28 August 2020, a delegated decision (DD) was taken approving the allocation of the S106 fund to the Rothley Parish Council to be spent on the delivery of the Rothley Centre Project.

Following this DD, there were a number of issues that prevented the project from moving forward. As a result, it has become apparent that in order to deliver the project in a timely and cost-effective manner, it would be best to manage and delivery the project using Council officers. Given the level of spend, it is a key decision, and Cabinet approval is required.

### 2. Project Status

The following actions have been completed to date to ensure that the S106 contribution can be used to deliver the Rothley Centre Project in a timely and cost-effective manner that represents best value to the Charnwood Borough Council and the residents of Rothley.

1. Specialist Project Management Services Appointed under SCAPE framework May 2021
2. Contractor's interpretation of the client's requirements and budget estimate submitted through the SCAPE Framework agreement and evaluated/approved June 2021
3. Contractors final price submission received for client sign off July 2021

Charnwood officers have engaged with Rothley Parish Council to understand and to scope the project in order to deliver an excellent facility that delivers a community facility appropriate for use by the residents and visitors.

The agreed scope of works and specialist consultant services has been budget costed and subsequently submitted to a contractor for finalising under an existing procurement framework. The Contractor and Consultants are now in a position to proceed with the delivery of the project subject to cabinet approval.

### Proposal

Cabinet are asked to approve the £367,600.00 S106 spend on the Rothley Centre as an internal project to be delivered by Borough Council officers through the existing framework contract using Charnwood appointed suppliers. This decision will supersede the DD previously issued on 28 Aug 2020 recognising the material changes that have occurred since project inception. This decision will ensure the required governance standards are met, best value achieved and as Charnwood Borough Council is the property owner, ensure project decisions relating to the Rothley Centre are made by a team with the relevant skillset to manage this complex project.

### Consultation

Throughout the lifecycle of the project Charnwood officers have taken the initiative to ensure stakeholders have been consulted at every stage. It has become clear that the complexities of the project are such that to ensure all stakeholders remain engaged and adequately protected this project is best suited to being delivered as a Charnwood Borough Council internal scheme.

This has been discussed and agreed with Rothley Parish Council and does not impact on the deliverables as all stakeholders have previously been fully engaged in the scoping of the project works. The transition to a Charnwood managed project merely allocates the required skillset and financial management responsibilities to those who are best suited to the nature of this scheme. The project will therefore remain the same, but final decisions will be the responsibility of Charnwood officers to ensure the project remains on target and within budget. All parties were present at a virtual project meeting held on 30 July 2021 to which there were no objections raised to this proposal.

### Appendices

#### Appendix A

Deed of Agreement dated 23 December 2014 between

- (1) Rothley Temple Estates Ltd.
- (2) The Council of the Borough of Charnwood
- (3) Leicestershire County Council

#### Appendix B

Delegated Decision Notice issued on 28 August 2020

#### Appendix C

Minutes of project meeting 30 July 2021

Date **23<sup>rd</sup>** DECEMBER 2014

- (1) ROTHLEY TEMPLE ESTATES LIMITED  
and  
(2) THE COUNCIL OF THE BOROUGH OF CHARNWOOD  
and  
(3) LEICESTERSHIRE COUNTY COUNCIL

**DEED OF AGREEMENT**

Section 106 of the Town and Country Planning Act 1990  
relating to the development of land at West Cross Lane  
Mountsorrel, Leicestershire

**Marrons Shakespeares**

1 Meridian South  
Meridian Business Park  
Leicester  
LE19 1WY  
Tel: 0116 289 2200  
Fax: 0116 289 3733  
Ref: A/PDH/VP/851198.230

THIS DEED OF AGREEMENT is made this 23<sup>rd</sup> day of December 2014

BETWEEN

- (1) **ROTHLEY TEMPLE ESTATES LIMITED** (Company Registration Number 00202945) whose registered office is situate at 137 Scalby Road Scarborough North Yorkshire YO12 6TB ("the Owner") and
- (2) **THE COUNCIL OF THE BOROUGH OF CHARNWOOD** of Southfields Loughborough Leicestershire LE11 2TX ("the Council") and
- (3) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall Glenfield Leicester LE3 8RA ("the County Council")

**RECITALS:**

- 1 The Owner is the freehold owner of land situated at West Cross Lane Mountsorrel Leicestershire and which is shown edged red on the Plan ("the Site")
- 2 Charles Church North Midlands (a trading division of Charles Church Developments Limited) submitted a planning application as hereinafter defined to the Council for the development of the Site and are proposing to acquire the Site with the benefit of planning permission
- 3 The Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area in which the Site is situated
- 4 The County Council is responsible for the provision of education Libraries and civic amenity facilities and is the Highway Authority and a Local Planning Authority for the area in which the Site is situated
- 5 The Council is minded to grant Planning Permission for the development of the Site in accordance with the Planning Application but requires the Owner to enter into this Deed to secure measures aimed at mitigating the impact of the development before granting such Planning Permission

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 Definitions**

In this Deed the following words and expressions shall unless the context otherwise requires have the precise meaning set out below:

- |                            |   |
|----------------------------|---|
| "Act"                      | the Town and Country Planning Act 1990 (as amended)   |
| "Affordable Housing Units" | 15% of the total number of Dwellings to be constructed on the Site as part of the Development that will be accessible to households who are unable to purchase a Dwelling in the private sector market on the basis of their income |
| "Application"              | an application for outline planning permission submitted to the Council for the Development and which has been allocated reference number 2014/0058/02 including any amendment thereto  |

"Balancing Pond"	the pond or ponds or basins and any other water attenuation facilities to be constructed on the Balancing Pond Land in conjunction with and to facilitate surface water drainage of the Development
"Balancing Pond Land"	the land which is shown indicatively coloured blue on the Plan
"Balancing Pond Maintenance Contribution"	a payment up to a maximum sum of <b>THIRTY SIX THOUSAND TWO HUNDRED AND TWENTY THREE POUNDS (£36,223.00)</b> of which £23,000.00 is to be paid towards maintenance of infrastructure constructed within the Balancing Pond Land to facilitate surface water drainage of the Development and to be paid to the Council for the purposes set out in Schedule 2
"Bus Service"	the provision of a bus service by the Owner which will serve a new bus stop at West Cross Lane routing to Loughborough
"Bus Service Scheme"	a scheme for the Bus Service to be approved by the County Council for the purposes set out in Schedule 3
"Civic Amenity Contribution"	the payment of the sum of <b>FIFTY ONE POUNDS SIXTY SEVEN PENCE (£51.67)</b> per Dwelling to be erected on the Site to be paid to the County Council for the purposes set out in Schedule 3
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Community Facility Contribution"	the payment of the sum of <b>ONE MILLION ONE HUNDRED AND SEVENTEEN THOUSAND FOUR HUNDRED AND THIRTEEN POUNDS (£1,117,413.00)</b> to be paid to the Council for the purposes specified in Part 1 of Schedule 2
Development"	the development of the Site for the purposes of erecting thereon up to 130 Dwellings together with all associated works to be carried out pursuant to the Planning Permission

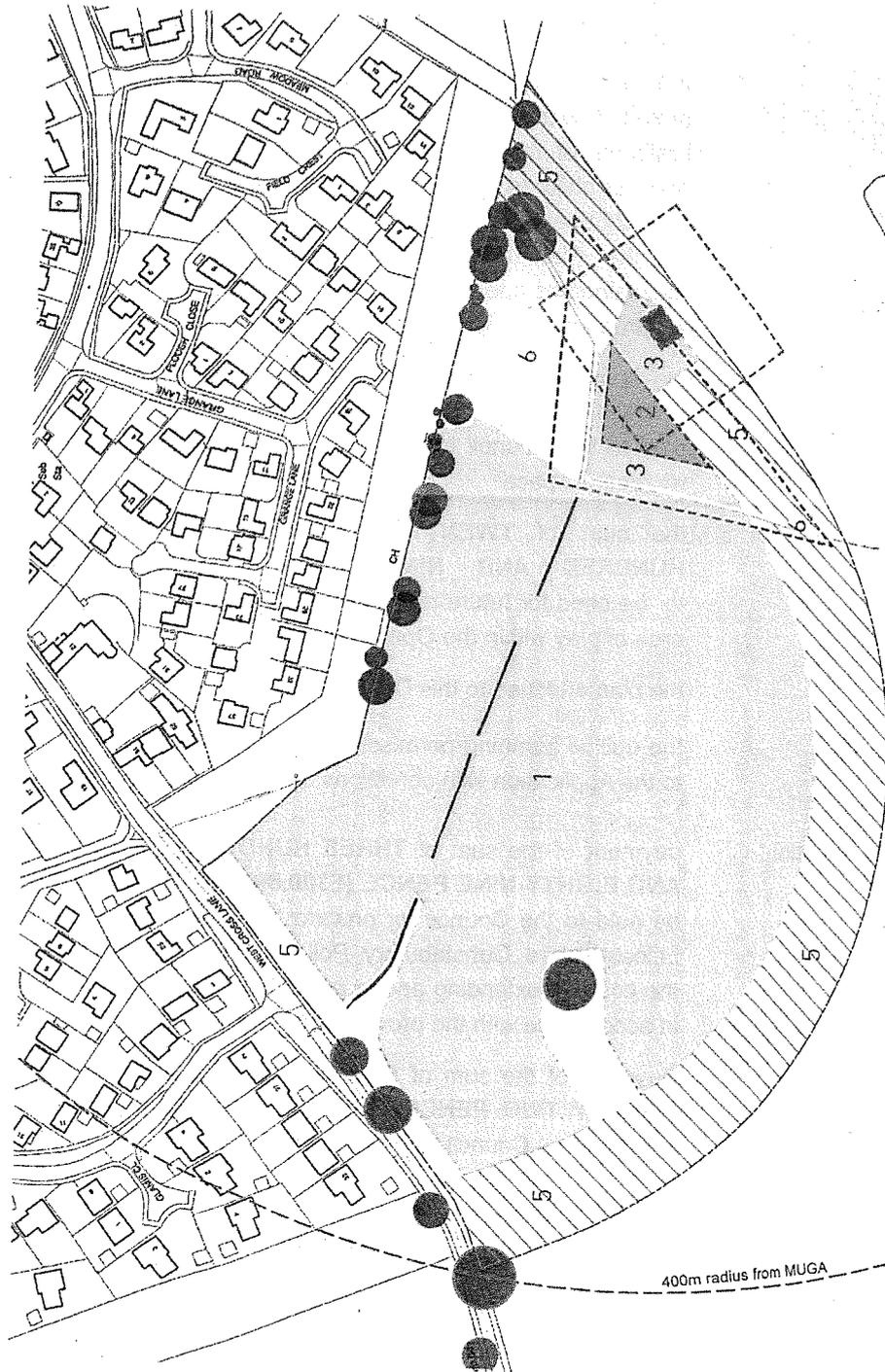
"Dwelling"	means any apartment or house erected on the Site as part of the Development
"Education Contribution"	the payment of the aggregate sum calculated by using the formulae specified in Part 1 of Schedule 3 to be paid to the County Council for the purposes set out in the said Part 1 of Schedule 3
"Health Facilities Contribution"	the payment of the sum of <b>FOUR HUNDRED AND FORTY FOUR POUNDS AND TWENTY PENCE (£444.20) PER DWELLING</b> to be erected on the Site to be paid to the Council for the purposes set out in Schedule 2
"Highways Contribution"	the payment of the sum of <b>FORTY SIX THOUSAND EIGHT HUNDRED POUNDS (£46,800.00)</b> to be paid to the County Council for the purposes set out in Schedule 3
"Index"	the All Items Index of Retail Prices issued by the Office for National Statistics the All in Tender Price Index of Building Cost Information Service ("BCIS") Index produced by the Royal Institute of Chartered Surveyors ("RICS") the Resource Cost Index of Road Construction (ROCOS) published by the Department for Business Enterprise Regulatory Reform (BERR) or any indices substituted therefore
"Landscape Buffer"	the landscape buffer to be provided within the Development for the purpose of providing appropriate landscaping shown indicatively on the Plan and to be permanently maintained as a landscape buffer pursuant to the Development in accordance with Schedule 2
"Landscape Buffer Maintenance Contribution"	the sum of <b>ONE HUNDRED AND EIGHTY THREE THOUSAND FIVE HUNDRED AND SIXTEEN POUNDS (£183,516.00)</b> to be use for the future maintenance of the Landscape Buffer subject to the provisions of Schedule 2
"Library Contribution"	the payment of the sum of <b>TWENTY SEVEN POUNDS EIGHTEEN PENCE (£27.18)</b> per 1 bedroom Dwelling to be erected on the Site, <b>FIFTY FOUR POUNDS THIRTY FIVE PENCE (£54.35)</b> per 2 bedroom Dwelling to be erected on the Site and <b>SIXTY THREE POUNDS FORTY ONE PENCE (£63.41)</b> per Dwelling with 3 or more bedrooms to be erected on the Site to be paid to the County Council for the purposes set out in Schedule 3
"Multi Use Games Area"	a multi use games area to be provided within the Development for the benefit of the residents of the

Development subject to the provisions of and in accordance with Schedule 2

"Multi Use Games Area Maintenance Contribution"	the sum of <b>FOUR THOUSAND AND TWENTY SIX POUNDS AND EIGHTY TWO PENCE (£4,026.82)</b> to be use for the future maintenance of the Multi Use Games Area subject to the provisions of Schedule 2
"Open Market Dwelling"	a Dwelling to be erected on the Site other than an Affordable Housing Unit constructed pursuant to the Planning Permission and which is to be sold at arms length in the open market
"Open Spaces"	the area of recreation and amenity space to be provided within the Development for the benefit of residents of the Development including an equipped area for children's play other children's play space and amenity open space all of which are shown indicatively on the Plan and which are to be permanently maintained as open space to serve the Development in accordance with Schedule 2
"Open Space Contribution"	the sum of <b>SEVEN HUNDRED AND SIX POUNDS (£706.00)</b> per Dwelling to be erected on the Site to be paid to the Council in lieu of on site youth and adult recreation space
"Open Space Maintenance Contribution"	the sum of <b>TWENTY SIX THOUSAND THREE HUNDRED AND NINE POUNDS (£26,309.00)</b> to be used for future maintenance of a local equipped area of play within the Open Space
"Plan"	the plan attached to this Deed
"Planning Permission"	the outline planning permission to be granted pursuant to the Application with conditions attached thereto
"Police Premises Contribution"	payment of the sum of <b>THREE HUNDRED POUNDS AND EIGHTY NINE PENCE (£300.89)</b> per Dwelling to be paid to the Council for onward transmission to the Leicestershire Constabulary Police Authority towards the costs of extending and/or adapting police premises in accordance with the provisions of Schedule 2
"Police Premises Start Up Contribution"	Payment of the sum of <b>FORTY FIVE POUNDS AND TWENTY TWO PENCE (£45.22)</b> per Dwelling to be paid to the Council for onward transmission to the Leicestershire Constabulary Police Authority towards the start up costs arising from the works to extend and/or adapt police premises to be carried out utilising the Police Premises Contribution in accordance with the provisions of Schedule 2

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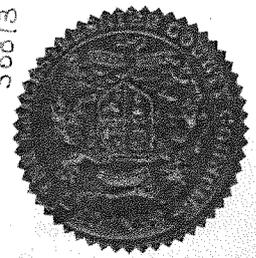


- Site Boundary
- Development Area
- Childrens Equipped Play  
3m buffer
- Other Childrens Play
- Youth/Adult Space  
30m buffer and 400m walk radius
- Amenity Open Space
- SuDS
- 30m Landscape Buffer
- Existing Tree
- Existing Tree with TPO
- Existing Hedgerow

- 7.54ha
- 4.497ha
- 0.098ha
- 0.163ha
- 0.015ha (10m x 15m)
- 2.499ha
- 0.247ha

2014/15  
102  
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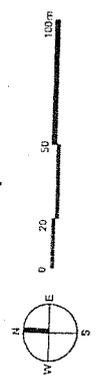
W. Webster

Pegasus  
Urban Design

West Cross Lane, Mountsorrel, Leicestershire - Use & Amount

11th December 2013 | Scale: 1:1000

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"Registered Provider"	a registered provider of social housing approved by the Council (consent not to be unreasonably withheld or delayed) and registered with the Homes and Communities Agency under the Housing and Regeneration Act 2008
"Site"	the Site against which this Deed may be enforced as shown edged red on the Plan
"Transport Contribution"	payment of the sum of <b>SIXTEEN THOUSAND FIVE HUNDRED AND EIGHTY TWO POUNDS (£16,582.00)</b> for the provision of bus stops/shelters including raised and dropped kerbs and information display cases
"Transport Measures"	those initiatives set out in Schedule 3 to this Deed to be provided by the Owner to reduce reliance on private vehicles and to encourage the use of public transport services

**2 Interpretation**

- 2.1 The expressions "the Owner" "the Council" and "the County Council" shall include their respective successors in title and/or any successor body and where appropriate their assignees
- 2.2 Where appropriate the singular includes the plural and vice versa. Words importing one gender include all other genders
- 2.3 Unless otherwise stated all references to clause numbers schedules and paragraph numbers of schedules are references to the clauses schedules and paragraphs of schedules contained within this Deed
- 2.4 References to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted
- 2.5 The obligations herein relate to the Site and each and every part thereof

**3 Liability of the Owner for the Covenants herein**

The covenants and obligations on the part of the Owner herein

- 3.1 shall only bind the Owner in respect of such part or parts of the Site vested in it and it shall not be liable for the breach of any covenant or obligation by any other party; and
- 3.2 shall not be such as to render the Owner liable for any breach which may occur in relation to the Site after it shall have parted with all its respective interest therein or the part in respect of which such breach occurs save and unless such breach occurred during its ownership of the Site or such part

**4 Enabling Powers**

- 4.1 This Deed is made pursuant to the provisions of Section 106 of the Act and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act and in the event of a breach it shall be enforceable by the

Council and County Council as local planning authorities pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and shall bind the then Owner's respective interest in the Site

- 4.2 Without prejudice to the generality to clause 4.1 this Deed is further made pursuant to Sections 111 120 and 139 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and any other enactment insofar as the same may be relevant to the enforcement of the obligations contained herein

## 5 Conditions Precedent

- 5.1 This Deed is conditional and the provisions of this clause and clauses 9 and 10 and Schedules 1 - 5 shall only have effect upon:

5.1.1 the grant of Planning Permission; and

5.1.2 the Commencement of the Development

otherwise the provisions of this Deed shall come into effect immediately upon completion of this Deed

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

## 6 Payment of Monies and Land Transfers

- 6.1 The obligations herein contained to pay monies to the Council or County Council shall be enforceable against the party having a freehold interest in the Site or that part of the Site to which the payment relates at the date on which the obligation arises but any obligation to repay monies shall be construed as referring to a repayment to the Owner at the date hereof (and not any successors in title) or any other person that the Owner shall nominate in writing to the Council to receive any repayment of monies

- 6.2 Save where otherwise provided, all contributions payable to the Council or County Council shall be adjusted in accordance with changes if any in the Index from the date hereof to the date the payments are made

- 6.3 Where land is to be transferred to any party (other than in respect of Affordable Housing Units) such transfers will be at a nominal consideration of £1 and each party to such transfer shall bear their own legal costs in connection therewith

## 7 Liability of Individual Householders and Utility Companies

Save for the provisions of Schedule 1 which shall apply to all Affordable Housing Units the covenants contained in this Deed shall not be enforceable against individual purchasers or lessees of Dwellings on the Site constructed pursuant to the Planning Permission nor their mortgagees or chargees nor shall any obligation be enforceable against utility companies or the like in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies

or against anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant

## **8 Monitoring**

- 8.1** The Owner hereby agrees to notify the Council and the County Council of the Commencement of Development within 7 days of the occurrence of the same PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed
- 8.2** The Owner hereby agrees to notify the Council and where appropriate the County Council of the reaching of any of the occupation or completion thresholds relating to Dwellings contained in this Deed such notification to be given within 7 days of the reaching of such threshold
- 8.3** The Owner will pay to the Council the sum of TWO HUNDRED AND FIFTY POUNDS (£250.00) per financial contribution obligation to the Council or 0.5% of the total value of the contribution payable to the Council whichever is the greater (index linked) towards monitoring compliance with the provisions of Parts 1, 2, 3, 4 and 5 of Schedule 2 of this Deed prior to the Commencement of Development
- 8.4** The Owner will pay to the County Council the sum of **TWO HUNDRED AND FIFTY POUNDS (£250.00)** per financial contribution obligation to the County Council or 0.5% of the total value of the contribution payable to the County Council whichever is the greater (Index Linked) towards monitoring compliance with the provisions of Parts 1 and 2 of Schedule 3 of this Deed prior to the Commencement of Development

## **9 Owner Covenants to the Council and County Council**

- 9.1** Subject to the provisions of this Deed the Owner **COVENANTS** with the Council to fully perform and observe the covenants set out in Schedules 1 and 2
- 9.2** Subject to the provisions of this Deed the Owner **COVENANTS** with the County Council to fully perform and observe the covenants set out in Schedule 3

## **10 Council's and County Council's Covenants to the Owner**

- 10.1** The Council covenants with the Owner to fully perform and observe the covenants set out in Schedule 4
- 10.2** The County Council covenants with the owner to perform and observe the covenants set out in Schedule 5

## **11 Resolution of Disputes**

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

decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares

- 11.2** In the absence of agreement between the parties to the dispute or difference as to the suitability of the person to be appointed pursuant to clause 12.1 or as to the appropriateness of the professional body then such question may be referred by any party to a Solicitor appointed by or on behalf of the President for the time being of the Law Society of England Wales and such Solicitor shall act as an expert and his decision as to the professional qualifications of such person or appropriateness of the professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares

## **12 Notices**

- 12.1** Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post Recorded Delivery post or facsimile transmission and any such notice addressed to the County Council shall be marked for the attention of the County Solicitor and any notice addressed to the Council shall be marked for the attention of the Legal Services Manager
- 12.2** The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the parties to all the other parties to this Deed save that payments of any monies to the Council shall be addressed specifically for the attention of the Director of Development and detailing the obligations to which the payment relates AND payment of any monies to the County Council shall be addressed specifically for the attention of the County Solicitor and detailing the obligations to which the payment relates
- 12.3** A notice consent or approval under this Deed shall be deemed to have been served as follows:
- 12.3.1** if personally delivered at the time of delivery
  - 12.3.2** at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
  - 12.3.3** if sent by facsimile transmission at the time of successful transmission
- 12.4** 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 facsimile was successfully transmitted on a tested line as the case may be

**13 Registration of the Deed**

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

**14 Waiver**

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

**15 Indexation**

Save unless otherwise provided in this Deed any sum which is payable to the Council or the County Council shall be adjusted by an amount (if any) equivalent to the change in the Index from the date hereof until the date on which such sum is payable

**16 Interest**

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

**17 VAT**

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

**18 Jurisdiction**

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

**9 Variation of Deed**

No variation or amendment to this Deed shall be valid unless in writing and signed by or on behalf of all the parties referred to in this Deed save where such party no longer has any interest in the Site which is the subject of the variation in which case the variation shall be signed by the Owner for the time being of the Site but not any purchaser of an individual Dwelling nor by any utility company who acquires an interest in the Site for operational purposes nor anyone whose interest in the Site is of a type specified in clause 7

**rtificate of Satisfaction**

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

**21 Application of Deed**

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

**22 Contracts (Rights of Third Parties) Act 1999**

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

**23 No Fetter of Discretion**

Save as permitted by law nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council and the County Council in their respective rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the Council and/or the County Council were not a party specified in this Deed

**24 Costs of this Agreement**

Upon execution of this Deed the Owner shall pay to the Council and the County Council their respective reasonable legal costs not exceeding £800 (Eight Hundred Pounds) to the Council and £950 (Nine Hundred and Fifty Pounds) to the County Council in connection with the negotiation and preparation of this Deed

**IN WITNESS** whereof this Deed has been duly executed as a Deed the day and year first above written

**SCHEDULE 1**

**AFFORDABLE HOUSING**

- 1** Prior to the Commencement of Development the Owner will submit to the Council for approval details of which of the Dwellings (being 15% of the total number of Dwellings erected on the Site) will be Affordable Housing Units such approval not to be unreasonably withheld or delayed and which shall be based on up to date evidence of housing need in Mountsorrel and parishes adjoining Mountsorrel
- 2** Save unless otherwise approved by the Council 75% of the Affordable Housing Units will be provided for Social Rent and 25% as Intermediate Housing Units as defined or referred to in Annex 2 of the National Planning Policy Framework (March 2012) published by the Department for Communities and Local Government the mix to be agreed between the Owner and the Council prior to the Commencement of Development. The sizes and types of Affordable Housing Units shall reflect the sizes and types of Dwellings on the Development as a whole

3 No more than 70% of the Open Market Dwellings shall be occupied prior to the completion of the Affordable Housing Units

4 Subject to the provisions below no more than 85% of the Open Market Dwellings shall be occupied prior to the transfer of the Affordable Housing Units to a Registered Provider and the Owner shall use all reasonable endeavours from the date of commencement of construction of the Affordable Housing Units to secure arrangements with a Registered Provider for the transfer thereof

5 In the event that no Registered Provider is willing to take a transfer of all or any of the Affordable Housing Units the Owner shall for a period of 6 months following occupation of 85% of the Open Market Dwellings use all reasonable endeavours to transfer the Affordable Housing Units to a Registered Provider or other social housing provider (if any) who is nominated in writing by the Council and in the event that no such transfer can be secured or no nomination is made and on demonstrating to the Council compliance with the provisions hereof and paragraph 4 of this Schedule the Owner may dispose of the said units at 60% of open market value as certified by a chartered surveyor approved by the Council or in the absence of approval a chartered surveyor appointed by the President of the Royal Institute of Chartered Surveyors and the Owner shall use all reasonable endeavours to ensure that all subsequent disposals of the Affordable Housing Units will be at the same discount including the imposition of suitably worded covenants contained within the transfer of such units and the registration of restrictions on the transfer of such units in accordance with the provisions of this paragraph

6 For so long as the Owner is actively seeking to dispose of the Affordable Housing Units pursuant to the provisions of paragraph 5 the restriction on occupations of Open Market Dwellings contained in paragraph 4 shall not apply

7 When the Affordable Housing Units are transferred to a Registered Provider they shall at all times be managed by the Registered Provider in accordance with its objects rules and Articles of Association and for the purposes herein specified

8 Any transfer of an Affordable Housing Unit shall contain the following provisions:

8.1 The grant of all rights (so far as they are within the control of and can be granted by the Owner) of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Units as constructed on the Site;

8.2 A reservation of all rights (so far as they are within the control of and can be granted by the Owner) of access and passage of services and rights of entry and other such rights as are reasonably necessary for the benefit of the remainder of the Dwellings on the Site;

8.3 The imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Open Market Dwellings;

To provide that the Affordable Housing Units shall remain available for Social Rent or as Intermediate Housing provided that this provision shall not be binding in the circumstances specified in paragraph 9 below

Covenants contained in this Schedule shall not be binding on

mortgagee or chargee in possession of any or all of the Affordable Housing Units or bona fide purchaser for value thereof from such a mortgagee or chargee in possession

- 9.2 any person who exercises a statutory or contractual right to acquire an interest in an Affordable Housing Unit under the provisions of the Housing Act 1996 or any similar or substitute right
- 9.3 any person who has acquired an equity share in any Shared Ownership Unit (which for the avoidance of doubt shall include but not be limited to a 100% equity share)
- 9.4 any successor in title to a person specified in 9.1 to 9.3 above

## SCHEDULE 2

### Part 1

#### PAYMENTS OF MONIES BY THE OWNER TO THE COUNCIL

##### HEALTH FACILITIES CONTRIBUTION

- 1 The Owner will pay to the Council the Health Facilities Contribution within 28 days of the first occupation of the 50<sup>th</sup> Dwelling to be constructed on the Site
- 2 The Council shall be entitled to pay the Health Facilities Contribution to NHS England (Leicestershire and Lincolnshire Area) (NHS) (or any successor thereto) responsible for the provision of medical facilities in Mountsorrel as described below that would serve the Development subject to being satisfied that the NHS has identified the purposes for which the Health Facilities Contribution will be spent that those purposes fall within paragraph 9 below and that the monies are committed for expenditure and will be spent within 12 months or by the date for repayment specified in paragraph 2 of Schedule 4 whichever is the sooner
- 3 The Health Facilities Contribution is to be paid to the Council for the purpose of providing extra consulting rooms and associated space at the GP surgery known as Alpine House surgery at Rothley Road, Mountsorrel and for no other purpose

##### OPEN SPACE MAINTENANCE CONTRIBUTION

- 4 Subject to the provisions of Part 2 of this Schedule 2 the Owner will pay to the Council the Open Space Maintenance Contribution on completion of the transfer of the Open Spaces to the Council
- 5 The Open Space Maintenance Contribution is to be paid to the Council solely for the maintenance of the Open Spaces which are to be provided in conjunction with the Development

##### BALANCING POND MAINTENANCE CONTRIBUTION

- 6 Subject to the provisions of Part 3 of this Schedule 2 the Owner will pay to the Council or any other body who assumes liability for maintenance of the Balancing Pond but not a body who is legally required to maintain the Balancing Pond without payment in respect of such maintenance the Balancing Pond Maintenance Contribution on completion of the transfer of the Balancing Pond Land to the Council

- 7 The Balancing Pond Maintenance Contribution is to be paid to the Council or such other body solely for the maintenance and improvement of the Balancing Pond and any associated drainage and the Balancing Pond Land

#### OPEN SPACE CONTRIBUTION

- 8 The Owner will pay to the Council the Open Space Contribution within 28 days of the first occupation of the 30<sup>th</sup> Dwelling to be erected on the Site
- 9 The Open Space Contribution is to be paid for the purpose of providing or improving youth and adult recreation space off the Site and for no other purpose

#### POLICE PREMISES CONTRIBUTION AND POLICE PREMISES START UP CONTRIBUTION

- 10 The Owner will pay to the Council the Police Premises Contribution and the Police Premises Start Up Contribution within 28 days of the first occupation of the 50<sup>th</sup> Dwelling erected on the Site
- 11 The Police Premises Contribution is to be paid to the Council for the purpose of extending and/or adapting police premises at Enderby and/or Syston and/or Loughborough
- 12 The Police Premises Start Up Contribution is to be paid to the Council for the purpose of the start up costs arising from the works to extend and/or adapt police premises at Enderby and/or Syston and/or Loughborough to be carried out utilising the Police Premises Contribution

#### MULTI USE GAMES AREA MAINTENANCE CONTRIBUTION

- 13 Subject to the provisions of Part 4 of this Schedule 2 the Owner will pay to the Council the Multi Use Games Area Maintenance Contribution on completion of the transfer of the Multi Use Games Area
- 14 The Multi Use Games Area Maintenance Contribution is to be paid to the Council solely for the maintenance of the Multi Use Games Area provided in conjunction with the Development

#### COMMUNITY FACILITIES CONTRIBUTION

- 15 The Owner will pay to the Council the Community Facilities Contribution in the following instalments:
- FOUR HUNDRED AND THIRTEEN THOUSAND FOUR HUNDRED AND FORTY TWO POUNDS AND EIGHTY ONE PENCE (£413,442.81)** not later than the Commencement of Development
- FOUR HUNDRED THOUSAND POUNDS (£400,000.00)** not later than the first Occupation of the 100<sup>th</sup> Dwelling

**THREE HUNDRED AND THREE THOUSAND NINE HUNDRED AND SEVENTY POUNDS AND NINETEEN PENCE (£303,970.19)** not later than the first Occupation of the 125<sup>th</sup> Dwelling or last Dwelling if less than 125 Dwellings are erected on the Site

- 16** The Community Facilities Contribution is to be paid to the Council solely for the funding in whole or part of community projects in Mountsorrel or Rothley including but not limited to:
- 16.1** Expansion and/or improvement to the Memorial Hall 105 Leicester Road Mountsorrel
  - 16.2** The provisions of facilities at and/or enhancement to the Halstead Road/Cufflins Pit Lane Park in Mountsorrel
  - 16.3** The Rothley Centre Project within Rothley
- 17** Notwithstanding the provisions of paragraph 15 not more than £500,000.00 (index linked) shall be paid by the Council from the Community Facilities Contribution towards any individual project funded with such monies
- 18** The Council may pay all or any part of the Community Facilities Contribution to the Mountsorrel and/or Rothley Parish Councils subject to first having received from the relevant Parish Council to whom such contribution is paid an undertaking in writing that they will comply with the provisions of this Part and that they will repay to the Council any part of the Community Facilities Contribution not spent by them on the specified purposes within the period of 4 years from the date of receipt of that contribution by the Council and for the avoidance of doubt the aforementioned period of 4 years will relate to each instalment of the Community Facilities Contribution and will run from the date of receipt of each instalment of the Community Facilities Contribution and such instalment must be held in a separate interest bearing account for the purpose of determining whether any part of the Community Facilities Contribution has been spent within the requisite period of time
- 19** Where any part of the Community Facilities Contribution has not been spent by the relevant Parish Council within the requisite period of time the Council may use any outstanding balance as a financial contribution towards the provision of Affordable Housing within Rothley or Mountsorrel.

## Part 2

### TRANSFER OF OPEN SPACES

- 1** Prior to the Commencement of Development the Owner shall submit to the Council for its approval a phasing programme for the laying out and completion of the Open Spaces together with their future maintenance
- 2** Following completion of each area of Open Space the same shall be maintained by the Owner for a period of 12 calendar months (or a lesser period if agreed with the Council) whereupon at the Owner's discretion the same shall be offered to be transferred to either a management company or to the Council for future maintenance save that the Owner and the Council may agree to the transfer of all the Open Spaces to the Mountsorrel Parish Council or Rothley Parish Council and on either Parish Council taking a transfer of the Open Spaces the Owner

shall pay the Open Space Maintenance Contribution to the relevant Parish Council otherwise the same shall be paid to the Council on transfer

- 3 The Open Spaces shall be transferred subject to covenants that the same shall only be used as open space and recreation/amenity space and for no other purpose and that the use of the Open Spaces shall not give rise to any nuisance or undue disturbance to residents of the Development or to existing residents of Mountsorrel together with such other covenants as the Owner acting reasonably shall request
- 4 The Owner shall only be obliged to transfer the Open Spaces to the Mountsorrel Parish Council or Rothley Parish Council on condition that the relevant Parish Council provides an undertaking in writing to comply with the provision of paragraph 1 (insofar as it relates to the Open Space Maintenance Contribution of Schedule 4
- 5 In the event that the Open Spaces are not transferred to either the Council or the Mountsorrel or Rothley Parish Councils the Owner will retain liability for future maintenance thereof in accordance with the phasing programme approved in accordance with paragraph 1 above

### Part 3

#### TRANSFER OF BALANCING POND LAND

- 1 Prior to the Commencement of Development the Owner shall submit to the Council for its approval a programme for the completion of the Balancing Pond and any associated drainage
- 2 Following completion of the Balancing Pond and associated drainage the same shall be maintained by the Owner for a period of 12 calendar months whereupon the Balancing Pond Land shall be offered to be transferred to the Council or such other body as the Owner and the Council may agree for future maintenance and improvement of the Balancing Pond and associated drainage
- 3 The Balancing Pond Land shall be transferred subject to covenants that the same shall only be used as a drainage facility for the Development together with any other uses that the Owner may approve so long as the same shall not in any way compromise the drainage of the Development and subject to the rights of the Owner in paragraph 6 below regarding future development the Balancing Pond
- 4 The Owner shall only be obliged to transfer the Balancing Pond Land to another body approved by the Council on condition that other body provides an undertaking in writing to comply with the provision of paragraph 1 (insofar as it relates to the Balancing Pond Maintenance Contribution) of Schedule 4 where the Balancing Pond Maintenance Contribution is to be paid to that other body
- 5 Subject to the provisions of Paragraph 6 of Part 1 of this Schedule 2 on the transfer of the Balancing Pond Land to either the Council or such other body the Owner will pay to whosoever the Balancing Pond Land has been transferred the Balancing Pond Maintenance Contribution
- 6 The transfer of the Balancing Pond Land shall contain such rights and reservations as the Owner considers necessary including but not limited to the right for the Owner and its successors in title to enter onto the Balancing Pond Land with or without workmen plant equipment and machinery to alter extend or improve the Balancing Pond and associated

drainage and thereafter to use the same in order to facilitate the development of any other land in the general vicinity of the Site and to ensure that no obstructions are caused within the Balancing Pond Land which may prevent or hinder access to any adjoining land including any proposed access and visibility from such proposed access

- 7 In the event that the Balancing Pond Land is not transferred to either the Council or such other body the Owner will retain liability for future maintenance thereof in accordance with the phasing programme approved in accordance with paragraph 1 above

#### Part 4

#### MULTI USE GAMES AREA

- 1 The Owner shall within 28 days of the Commencement of Development submit to the Council for its approval a scheme for the laying out and completion of the Multi Use Games Area together with its future maintenance
- 2 Following completion of the Multi Use Games Area the same shall be maintained by the Owner for a period of 12 calendar months (or a lesser period if agreed with the Council) whereupon at the Owner's discretion the same shall be offered to be transferred to either a nominated management company or the Council for future maintenance save that the Owner and the Council may agree to the transfer of the Multi Use Games Area to either the Mountsorrel Parish Council or Rothley Parish Council and on either Parish Council taking a transfer of the Multi Use Games Area the Owner shall pay the Multi Use Games Area Maintenance Contribution to the relevant Parish Council otherwise the same shall be paid to the Council on transfer
- 3 The Multi Use Games Area shall be transferred subject to covenants that the same shall only be used as a multi use games area and for no other purpose and that the use of the Multi Use Games Area shall not give rise to any nuisance or undue disturbance to residents of the Development or to existing residents of Mountsorrel together with such other covenants as the Owner acting reasonably shall request
- 4 The Owner shall only be obliged to transfer the Multi Use Games Area to the Mountsorrel Parish Council or Rothley Parish Council on condition that the relevant Parish Council provides an undertaking in writing to comply with the provision of paragraph 1 of Schedule 4 insofar as it relates to the Multi Use Games Area Contribution
- 5 In the event that the Multi Use Games Area is not transferred to either the Council or the Mountsorrel or Rothley Parish Councils the Owner will retain liability for future maintenance thereof in accordance with the scheme approved in accordance with paragraph 2 (a) above save that the Multi Use Games Area may be transferred to a management company pursuant to paragraph 26

Part 5

TRANSFER OF LANDSCAPE BUFFER

- 1 Prior to the Commencement of Development the Owner shall submit to the Council for its approval a phasing programme for the laying out and completion of the Landscape Buffer together with its future maintenance
- 2 Following completion of the Landscape Buffer the same shall be maintained by the Owner for a period of 12 calendar months (or a lesser period if agreed with the Council) whereupon at the Owner's discretion the same shall be retained by the Owner or offered to be transferred to either a nominated management company or to the Council for future maintenance save that the Owner and the Council may agree to the transfer of the Landscape Buffer to either the Mountsorrel Parish Council or Rothley Parish Council and on either Parish Council taking a transfer of the Landscape Buffer the Owner shall pay the Landscape Buffer Maintenance Contribution to the relevant Parish Council otherwise the same shall be paid to the Council on transfer to the Council
- 3 The Landscape Buffer shall be transferred subject to covenants that the same shall only be used as a landscaped area to integrate the Development into the landscape and provide screening for the Development together with such other covenants as the Owner acting reasonably shall request and the reservation of rights in favour of any of the Owner's retained land to construct pedestrian and vehicular accesses together with rights to lay and thereafter use services across the Landscape Buffer and to access such land via the constructed accesses for all purposes with or without vehicles and require the owner thereof to dedicate such accesses as public highways maintainable at the public expense together with all such other rights as are reasonably required to facilitate future development of any of the said retained land
- 4 The Owner shall only be obliged to transfer the Landscape Buffer to the Mountsorrel Parish Council or Rothley Parish Council on condition that the relevant Parish Council provides an undertaking in writing to comply with the provision of paragraph 1 of Schedule 4 insofar as it relates to the Landscape Buffer Maintenance Contribution
- 5 In the event that the Landscape Buffer is not transferred to either the Council or the Mountsorrel or Rothley Parish Councils the Owner will retain liability for future maintenance thereof in accordance with the phasing programme approved in accordance with paragraph 1 above or will transfer the Landscape Buffer to a management company in accordance with paragraph 2 above

## SCHEDULE 3

### Part 1

#### PAYMENTS OF MONIES BY THE OWNER TO THE COUNTY COUNCIL

##### LIBRARY CONTRIBUTION

- 1 The Owner will pay to the County Council the Library Contribution within 28 days of the Commencement of Development PROVIDED THAT Mountsorrel Library at Church House The Green Mountsorrel remains open to the public as a public library at the date of payment of the Library Contribution
- 2 The Library Contribution is to be paid to the County Council for the purpose of providing extending altering or improving library and information facilities including the provision of books and other media at Mountsorrel Library at Church House The Green Mountsorrel

##### EDUCATION CONTRIBUTION

- 3 The Owner will pay to the County Council the Education Contribution as follows:
  - (i) 10% of the Education Contribution within 28 days of the first occupation of the 1<sup>st</sup> Dwelling to be constructed on the Site
  - (ii) 45% of the Education Contribution within 28 days of the first occupation of the 40<sup>th</sup> Dwelling to be constructed on the Site
  - (iii) 45% of the Education Contribution within 28 days of the first occupation of the 80<sup>th</sup> Dwelling to be constructed on the Site
- 4 The Education Contribution is to be paid to the County Council for the purpose of providing extending improving or altering facilities or services at the proposed new primary school at Brookfield Farm Rothley (including any successor establishment) or such other primary schools or academies as will provide additional accommodation that will provide capacity directly or indirectly to accommodate pupil growth from the Development (primary provision) and at Longslade Community College and/or Rawlins Community College (post 16 provision) or such educational facility as will provide additional capacity to accommodate pupil growth from the Development
- 5 The total amount of the Education Contribution for primary provision will be calculated as follows:
  - (i) The total number of houses to be erected on the Site with two or more bedrooms shall be multiplied by 0.24 and the total multiplied by £12,099.01
  - (ii) The total number of apartments to be erected on the Site with two or more bedrooms will be multiplied by 0.043 and the total multiplied by £12,099.01The Education Contribution (for primary provision) will be the aggregate sum of the two figures in paragraph 5(i) and (ii)
- 6 The total amount of the Education Contribution for post 16 provision will be calculated as follows:

- (i) The total number of houses to be erected on the Site with two or more bedrooms shall be multiplied by 0.033 and the total multiplied by £19,328.00
- (ii) The total number of apartments with two or more bedrooms will be multiplied by 0.0053 and the total multiplied by £19,328.00

The Education Contribution (for post 16 provision) will be the aggregate sum of the two figures in paragraphs 6 (i) and (ii)

#### HIGHWAYS CONTRIBUTION

- 7 The Owner will pay to the County Council the Highways Contribution prior to the Commencement of Development
- 8 The Owner will pay to the County Council the Highways Contribution for the purpose of funding the making and implementation of traffic regulation orders including all alterations to highways and signage at Walton Way, Mountsorrel

#### Part 2

#### TRANSPORT CONTRIBUTION AND MEASURES

- 9 The Owner will pay to the County Council the Transport Contribution prior to the Commencement of Development
- 10 The Transport Contribution shall be paid to the County Council for the purpose of providing 2 x new bus shelters/stops at locations to be agreed with the County Council to include raised and dropped kerbs and Information displays and for no other purpose
- 11 The Owner shall further make available to the first purchaser of each Dwelling on the Site a travel pack approved by the County Council containing information about public transport options together with up to 2 no. free 6 month travel passes on the local bus services which will serve the Development on completion of the first sale of each such Dwelling the cost of such bus passes and travel packs to be paid by the Owner subject in all cases to the Owner of a Dwelling submitting an application for a bus pass or passes within 6 months of the date of purchase of the Dwelling and the cost of such bus pass not exceeding £325.00 each

#### CIVIC AMENITY CONTRIBUTION

- 12 The Owner will pay to the County Council the Civic Amenity Contribution within 28 days of its first occupation of the first Dwelling erected on the Site
- 13 The Civic Amenity Contribution is to be paid to the County Council for the purposes of extending or improving the Mountsorrel Civic Amenity Site and for no other purpose

#### BUS SERVICE

- 14 Not to Commence the Development until the Bus Service Scheme has been submitted to and approved in writing by the County Council.

- 15 The Bus Service shall be provided on Mondays to Saturdays including Bank Holidays other than Christmas Day at a daytime frequency of every 60 minutes
- 16 To provide the Bus Service for a minimum of five years in accordance with the approved Bus Service Scheme (or such other details as shall be agreed between the Owners and the County Council) save that the total cost of the Bus Service shall not exceed THREE HUNDRED AND EIGHTY TWO THOUSAND TWO HUNDRED POUNDS (£382,200.00) (Index Linked)

#### SCHEDULE 4

#### COUNCIL'S COVENANTS WITH THE OWNER

- 1 The Council hereby covenants with the Owner to use the Health Facilities Contribution the Police Premises Contribution the Police Premises Start Up Contribution the Open Space Maintenance Contribution Open Space Contribution Multi Use Games Area Maintenance Contribution Landscape Buffer Maintenance Contribution the Balancing Pond Maintenance Contribution and the Community Facilities Contribution only for the purposes specified in this Deed and for no other purpose
- 2 With regards to the Police Premises Contribution and Police Premises Start Up Contribution, the Council covenants with the Owner as follows:
  - 2.1 To notify the Leicestershire Constabulary Police Authority within ten (10) Working Days of receipt of the Police Premises Contribution and the Police Premises Start Up Contribution that the Council is in receipt of these monies;
  - 2.2 Provided that the Council is satisfied that the Police Premises Contribution and the Police Premises Start Up Contribution meet all the tests set out in Regulation 122 of the CIL Regulations to pay the Police Premises Contribution and the Police Premises Start Up Contribution to the Leicestershire Constabulary Police Authority upon receipt of a document from the Leicestershire Constabulary Police Authority confirming that they will:
    - 2.2.1 apply the Police Premises Contribution and the Police Premises Start Up Contribution solely for the purposes of extending existing premises at Enderby and/or Syston and/or Loughborough;
    - 2.2.2 provide full details of the expenditure of the Police Premises Contribution and the Police Premises Start Up Contribution on demand to the Council or to the Owner;
    - 2.2.3 return any unspent part of the Police Premises Contribution and the Police Premises Start Up Contribution to the Borough Council after the expiry of five (5) years from the date of receipt of these monies by the Borough Council;
  - 2.3 to repay the Owner any unspent monies received pursuant to clause 2.2.3 within twenty (20) Working Days of receipt from the Leicestershire Constabulary Police Authority

- 2.4 in the event that the Council determines that the Police Premises Contribution and the Police Premises Start Up Contribution do not meet all the tests set out in Regulation 122 of the CIL Regulations or in the event that the document in the form required by clause 2.2 above is not received within the period of five (5) years from the date of receipt of the Police Premises Contribution and the Police Premises Start Up Contribution by the Council then the Council's obligation to pay these monies to the Leicestershire Constabulary Police Authority shall cease absolutely and the Council shall refund to the Owner the unexpended contribution with twenty (20) Working Days of receipt of a written request from the Owner to do so
- 3 The Council covenants with the Owner that upon the receipt of a written request from the Owner it will repay to the Owner such amount of any payment made to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment or each payment where such payment is phased together with any interest that has accrued thereon in the period from the date of receipt to the date of repayment save that this paragraph shall not apply to the Open Space Maintenance Contribution the Balancing Pond Maintenance Contribution Landscape Buffer Maintenance Contribution or Multi Use Games Area Maintenance Contribution
- 4 The Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this deed for the purposes herein specified
- 5 The Council covenants to cooperate fully with the Owner to agree all matters relating to the Affordable Housing Open Spaces and the Balancing Pond and associated draining and to take a transfer of the Open Spaces and Balancing Pond Land following completion of the maintenance periods specified in paragraph 2 of Part 2 and paragraph 2 of Part 3 of Schedule 2 and to retain and maintain those areas thereafter for the purposes herein specified
- 6 For the purposes of paragraphs 2 and 3 above Owner shall mean the Owner at the date hereof (and not any successors in title) or any other person that the Owner shall nominate in writing to the Council to receive any repayment of monies

#### **SCHEDULE 5**

#### **COUNTY COUNCIL'S COVENANTS WITH THE OWNER**

The County Council hereby covenants with the Owner that the Library Contribution the Education Contribution Transport Contribution the Highways Contribution and the Civic Amenity Contribution shall be used only for the purposes specified in this Deed and for no other purposes

The County Council covenants with the Owner that upon the receipt of a written request from the Owner it will repay to the owner such amount of any payment made to the County Council under this Deed which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the County Council of such payment or each

payment where such payment is phased together with any interest that has accrued thereon in the period from the date of receipt to the date of repayment

- 3 The County Council covenants with the Owner that in the event that Mountsorrel Library ceases to operate as a public library and upon the receipt of a written request from the Owner it will repay to the Owner such amount of the Library Contribution paid to the County Council under this Deed which has not been expended in accordance with the provisions of this Deed prior to the closure of Mountsorrel Library by the County Council together with any interest that has accrued thereon in the period from the date of receipt to the date of repayment
- 4 The County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed for the purpose herein specified
- 5 For the purposes of paragraph 2 and 3 above Owner shall mean the Owner at the date hereof (and not any successors in title) or any other person that the Owners shall nominate in writing to the County Council to receive any repayment of monies

## SCHEDULE 6

### INDEXATION

1 In this Schedule:

1.1 "Relevant Index" means:

1.1.1 In respect of the Open Space Maintenance Contribution Balancing Pond Maintenance Contribution Landscape Buffer Maintenance Contribution and Multi Use Games Area Contribution the All Terms Retail Prices Index published by the Office of National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substitution therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the Index shall be abolished there shall be substituted for the purposes of this Schedule such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of her Majesty's Government and if no such index is published the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

1.1.2 In the case of the Health Facilities Contribution Police Premise Contribution Police Premises Start Up Contribution Library Contribution Education Contribution Community Facilities Contribution and the Civic Amenity Contribution the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by the Arbitrator appointed by the President of the RICS of the purposes of this Agreement in all cases to ensure as nearly as possible that

the sum of money involved shall fluctuate in accordance with the general level of the building industry costs

1.1.3 In the case of the Highways Contribution and the Transport Contribution the Resource Cost Index of Road Construction (ROCOS) published by the Department for Business, Enterprise & Regulatory Reform (BERR) as part of the Quarterly Building and Cost Indices for Public Sector Construction Works or such other index as may from time to time be published in substitution thereof

1.2 "Base Index Date" means the date of the grant of planning permission

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

1.4 "Final Index Date" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the Contributions herein specified are paid

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

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

B

Where "A" equals the Contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3 If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Relevant Index are calculated, the figure taken to be shown in the Relevant Index after such change shall be the figure which would have been shown in the Relevant Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

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

EXECUTED as a DEED by ROTHLEY  
TEMPLE ESTATES LIMITED acting by :

Director



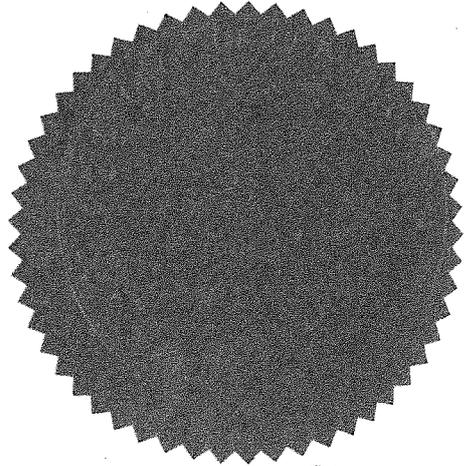
Director/Secretary



THE COMMON SEAL of THE COUNCIL OF  
THE BOROUGH OF CHARNWOOD was  
hereunto affixed to this Deed in the presence of:



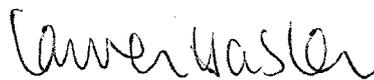
Authorised Signatory



2014/15-102

THE COMMON SEAL of LEICESTERSHIRE  
COUNTY COUNCIL was hereunto affixed to  
this Deed in the presence of:

Authorised Signatory



30013(Gd)

## Decision under Delegated Powers

### Officer Making the Decision

Head of Neighbourhood Services

### Recommendation

That the sum of £367,617.56 of section 106 monies that has been received as a contribution towards the provision of community facilities in Rothley is paid to Rothley Parish Council to provide funding towards the upgrade of the Rothley Centre.

### Reason

To enable section 106 monies that has been received for the provision of community facilities in Rothley to be spent.

### Authority for Decision

Authority to pay over Section 106 monies in respect of non-housing items received by the Borough Council as the responsible authority, but which will not result in expenditure by the Council and where the Head of Service has been determined to be the relevant Head of Service by the Head of Finance and Property Services. (item 8 of the delegations to Heads of Service in section 8.3 of the Constitution)

(For the Head of Service to approve the release of funds they must be satisfied that the works to be carried out fulfil the requirements set out in the S 106 agreement and have written confirmation from the relevant body that the monies will be used for their intended purpose).

### Decision and Date

*Julie Robinson*  
*28/8/20*

### Background

Under the provisions of the Corporate Plan to 2020 - 24, there is a commitment to ensure that a growth in homes and infrastructure benefits residents through improved services and facilities.

Planning agreements negotiated with developers and land owners under Section 106 of the Town and Country Planning Act 1990 (as amended) provide a vehicle for the delivery of contributions towards infrastructure, facilities and amenities which should be:

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonable related in scale and kind to the development

## **Detail**

Within Rothley there are a number of section 106 agreements that have been negotiated, with contributions for Children's Play and Youth and Adult Recreation and Community Facilities Contributions.

Rothley Parish Council have been working on a scheme to upgrade the Rothley Centre, recognising that the existing facility is in need of upgrade and redevelopment to meet the future needs of the village. The Rothley Centre is owned by the Borough Council who lease it to Rothley Parish Council who manage the building.

The Rothley Centres main use has been for many years, and is presently, to further the social wellbeing and interests of the local community. The building provides office space for the Parish Council and a small office for use by local Police. There are three rooms of various sizes available for hire by local groups and individuals. Regular users include: the bridge club, whist group, sewing group, adult and children's dance classes, art group, history society. In addition, there are many ad hoc users such as craft fairs, birthday and anniversary celebrations, public consultation events etc.

The Neighbourhood Plan Survey results of June 2017 identified the need to refurbish and upgrade the facility. In addition, it is anticipated that a refurbished / upgraded facility would be more attractive to local users and lead to the generation of more income.

Rothley Parish Council have been in dialogue with the Borough Council (as Landlord) about the upgrade of the Rothley Centre and the renewal of the lease going forward. The proposal is that the Parish Council will employ Project Management support, along with the relevant specialist technical support, to oversee the development of a wholistic plan for the building, identifying the works that are required and opportunities to create additional space for community use and identify all associated costs and oversee the construction works. The split of these costs will then be agreed between Rothley Parish Council and the Borough Council.

Running in parallel to the redevelopment of the building will be the lease renewal process. The current lease runs until 2027.

Officers are satisfied that the scheme meets the criteria for the use of the section 106 monies. The money will not be released to Rothley Parish Council until invoices have been received to ensure verification that the money has been spent. It is anticipated that phased payments will be made which will also cover project management and technical costs and construction costs.

Rothley Parish Council have provided information in relation to this project including draft business plan, various technical reports, evidence of security of tenure, confirmation of the management arrangements for the facility.

### Section 106 Monies

The following section 106 monies will be utilised towards the schemes :

PA No	Location	Contribution
P/14/0058/2	Land at West Cross Lane	£367,617.56 – community facilities contribution
		Total - £367,617.56

### Financial Implications

There are no financial implications for the Borough Council, the monies will be paid directly to Rothley Parish Council.

It is anticipated that the payments will be made in instalments. Payment will be made on receipt of invoices and confirmation that the scheme is progressing.

The additional monies towards the scheme will need to be added to the Capital Plan and will be included in the next Capital Amendment Plan.

### Risk Management

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
All funding not in place	Low	High	Monies will not be released until all funding in place and scheme is affordable
Scheme is over budget	Low	Medium	Tenders to be received, Value engineering to be undertaken

Key Decision: Yes  
 Background Papers Section 106 proforma and business plan, designs and copies of information provided  
 Evidence re Security of Tenure

## MINUTES OF THE ROTHLEY CENTRE PROJECT MEETING

12.30pm on 30<sup>th</sup> July 2021

via Microsoft Teams

<b>Present</b>
Ian Browne (IB) Charnwood Borough Council
Julie Robinson (JR) Charnwood Borough Council
Sean Denton (SD) Charnwood Borough Council
Gail Newcombe (GN) Rothley Parish Council
Percy Hartshorn (PH) Rothley Parish Council
Roger Gross (RG) Rothley Parish Council
Sue Wyles (SW) Rothley Parish Council

	ITEM	ACTION
1	<p><b>Project Price Confirmation.</b>            IB advised the panel that having received a copy of the project price report he had identified the cumulative value of the works and fees currently exceeded the budget by approximately £13,000.00. He advised that as a result CBC will arrange a meeting with the contractor &amp; Project Manager to perform a value engineering exercise. IB explained that value engineering is a method of address that is designed to reduce costs but maintain the original scope of works without compromising quality. Scope reduction will only take place in the event that value engineering does not deliver the required savings to bring the project back within budget.            IB advised the RPC will be invited to review the results of the exercise and contribute with any comments.</p> <p><b>Action</b>            SD &amp; IB to complete value engineering exercise with contractor and arrange meeting with RPC to review.</p>	<b>SD/IB</b>
2	<p><b>The Project Procurement Structure</b>            IB advised the panel of his current understanding of the existing procurement structure is that Rothley Parish Council have been given authority by CBC to procure and pay for all services related to the Project Scheme of works through the S106 fund held by CBC. A subsequent discussion had taken place to determine if this was a cost-effective method of procurement. IB asked for confirmation that GN had explored this option and what the result of this investigation was. GN confirmed that the advice received by RPC was that the Tax efficiency of the Parish delivering the project was limited to a maximum of £7,500.00. The group discussed this issue and agreed that in order to achieve the best value of the project it was preferable that the procurement of services and supplies should revert back to CBC. IB agreed that as a result, CBC will raise all required purchase orders to deliver the works subject to CBC Cabinet approval to retract the previous approvals to RPC.            RG enquired as to the resultant level of RPC officers project management involvement as a result of this change. IB advised that as a result of this project being delivered internally by CBC this will effectively transfer the project scheme to CBC officers who will assume all project management responsibilities. RPC will still have a</p>	<b>GN / IB/ SD</b>

	ITEM	ACTION
	<p>much-valued contribution to make and will be furnished with project related documentation as a stakeholder. RG enquired if this meant RPC officers could raise any issues they may discover as works progress. IB confirmed that this approach would be welcomed as RPC have an on-site presence and therefore any matters which were felt to be requiring attention or discussion should be notified to CBC officers.</p> <p><b>Action</b> It was agreed that RPC will cancel the current purchase order in place with Perfect Circle (GN) and CBC will raise a new Purchase Order and arrange for payment of the existing amount of claim for services provided to date and appointment of all other services as appropriate. (IB / SD)</p>	
3	<p><b>Project delivery Timeline</b> IB advised the panel that in order to progress the project to the next phase the outcome of the Cabinet decision is key. Assuming the approval is forthcoming the current lead in period by the contractor is between 6 and 8 weeks with a contract period of 12 weeks on site. GN advised that as the Rothley Centre is currently closed this is having an impact on income for the Parish Council. IB advised that this is recognised by CBC and there are no objections should the Parish Council as operator of the site, consider the recent relaxation of Covid restrictions allow for the re-opening of the centre until such times as the works commence. The potential to have the centre part open with a phased approach to the works was discussed but dismissed as a previous conversation had taken place to this effect with RPC CBC and the Project Manger Consultant and been discounted. JR advised that the Cabinet Decision by CBC will not take place before 16<sup>th</sup> September which may assist RPC in their decision to re-open.</p> <p><b>Action</b> RPC to consider the option to reopen the Rothley centre pending a confirmed date for commencement of the refurbishment works on site.</p>	RPC
4	<p><b>Lease Agreement Between CBC &amp; RPC</b> IB enquired as to the progress of the new lease agreement being drawn up by the parties. GN advised that RPC have opted for the F.R.I. option and agreed Heads of Terms. GN has provided Sheetal Shah of CBC with the RPC Solicitors details.</p>	
5.	<p><b>A.O.B</b>  None</p>	