

DATED

2005

AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to

site of Storer Hall, Ashby Road, Loughborough, Leicestershire

- (1) **Charnwood Borough Council**
- (2) **Leicestershire County Council**
- (3) **Loughborough University**
- (4) **LDC (Loughborough) Limited**
- (5) **Unite Integrated Solutions PLC**
- (6) **Bank of Scotland**

freethcartwright solicitors
Express Buildings
29 Upper Parliament Street
Nottingham
NG1 2AQ
DX 10017 Nottingham
Tel: 44 + 0 (115) 936 9369
Fax: 44 + 0 (115) 9350351
KM/705/D2928/527

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BETWEEN:

- (1) **the Council** **CHARNWOOD BOROUGH COUNCIL**
Southfields,
Loughborough,
Leics LE11 2XT
- (2) **the County Council** **LEICESTERSHIRE COUNTY COUNCIL**
County Hall,
Glenfield,
Leicester LE3 8RA
- (3) **the First Owner** **LOUGHBOROUGH UNIVERSITY**
Loughborough University
Leicestershire LE11 3TU
- (4) **the Second Owner** **LDC (LOUGHBOROUGH) LIMITED**
company registration number 4207522
Lawrence House,
Lower Bristol Road
Bath BA2 9ET.
- (5) **the Third Owner** **UNITE INTEGRATED SOLUTIONS PLC**
company registration number 2402714
Lawrence House,
Lower Bristol Road
Bath BA2 9ET.
- (6) **the Chargee** **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND**
Specialist Property Finance
Telford House
3 Mid New Cultins
Edinburgh EH11 4DH

BACKGROUND

- (A) The Council and the County Council are local planning authorities for the purposes of the 1990 Act (as amended) for the Site and by whom the obligations entered into in this Deed pursuant to Section 106 of the 1990 Act are enforceable
- (B) The County Council is the local education authority and the highway authority for the area in which the Site is situated

- (C) The First Owner owns the freehold of the Site and is registered at The Land Registry with title absolute free from encumbrances (other than the interest of the Second Owner) partly (together with other land) under title number LT 341210 and partly (together with other land) under title number LT 165675
- (D) The Second Owner owns a leasehold of the Site (together with other land) under The Land Registry title number LT 346373
- (E) The Third Owner owns an under-lease of the Site (together with other land) under The Land Registry title number LT 346382
- (F) The Chargee has a charge dated 14 April 2003 on the leasehold of the Second Owner and the under-lease of the Third Owner (together with other titles)
- (G) Having regard to the provisions of its Development Plan and to all other material considerations, the Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to conditions and to the making of this agreement (without which Planning Permission for the Development would not be granted) to ensure, and it is the purpose of this agreement,
 - i. payment is made to the County Council as highway authority towards the cost of improving pedestrian crossing facilities considered necessary for the better safety of occupiers of the Development
 - ii. payment is made to the Council in accordance with policy RT/4 of the adopted local plan towards the cost of providing youth / adult recreation facilities elsewhere instead of provision of such facilities on the Site
 - iii. payment is made to the Council towards the cost of additional healthcare provision necessitated by the Development
 - iv. provision is made for new public art on the Site or a contribution made to new public art elsewhere as sought by policy EV/43 of the adopted local plan
 - v. renovation of gate piers at the entrance to the Site, listed as buildings of special architectural or historic interest
 - vi. provision is made for affordable housing in accordance with the requirements of the adopted local plan and
 - vii. reduction of the risk of occupation of the dwellings resulting in unacceptable noise and disturbance to existing residential occupiers by limiting the opportunity for the occupation of the dwellings by students

1. DEFINITIONS

- 1.1. In this agreement unless the context requires otherwise the following words and expressions have the respective meanings as set out opposite to them:

“the 1990 Act”

the Town and Country Planning Act 1990 and

“Affordable Housing”	any statutory amendments or modification the 1 by one bedroom and 7 by two bedroom apartments (or lesser aggregate number equivalent to 15% of the dwellings authorised by the Planning Permission rounded to the nearest whole number but inclusive of 1 by one bedroom apartment) in the locations shown on drawing number 6076/001 annexed or other dwellings authorised by the Planning Permission and agreed in writing by the Council in substitution
“Commence the Development”	the carrying out of material operation as defined in section 56(4) of the Act save that for the purposes of this Agreement the term is not to include operations in connection with site clearance, demolition, for the purposes of assessing contamination, remedial action in respect of any contamination, or of assessing the need for any diversion and laying of services and the erection of means of enclosure for the purposes of site security and / or the display of advertisements and “Commencement of Development” is to be interpreted accordingly.
“the Development”	the development authorised by the Planning Permission
“Family”	an occupier of a dwelling together with one or more of that person’s <ol style="list-style-type: none"> 1. parents and / or step-parents; and/or 2. parents of those at point 1 above; and/or 3. children and / or step-children; and/or 4. older brothers or sisters; and/or 5. spouse or other person with whom he resides as if husband and wife (including a same sex relationship); and/or 6. other relatives by blood or marriage and in each case including relationships arising from adoption. .
“Healthcare Contribution”	£161 for each dwelling authorised by the Planning Permission

“Listed Gates Piers”	the two gate piers in the approximate position identified on the Plan described as 2 gates (of group value with The Grove) on the 46 th list of buildings of special architectural or historic interest
Open Market Dwellings	the dwellings authorised by the Planning Permission other than the Affordable Housing
“Owner”	the First Owner, the Second Owner & the Third Owner jointly
“the Plan”	the plan attached to this Agreement
“the Planning Application”	the written application dated 9 th June 2004 submitted to the Council for planning permission for development of the Site by the erection of 52 dwellings (houses & apartments) with associated garage and cycle store and given the Council’s reference number P/04/2030/2
“the Planning Permission”	planning permission under Part III of the 1990 Act for the Development pursuant to the Planning Application a draft of which is annexed to this agreement
Public Art Contribution	£161 for each dwelling authorised by the Planning Permission
“RSL”	a registered social landlord within the meaning of the Housing Act 1996,
“Shared Ownership”	a lease of an Affordable Housing unit sold by a RSL at a sum equal to a percentage of the open market value but subject to a rent payable in respect of the unpurchased percentage in a form approved for the time being by the Housing Corporation and whether or not the lessee has the right to pay a further premium in respect of a further percentage of the market value and / or acquire the leasehold or freehold reversion to the lease
“the Site”	the land comprised in the Planning Application outlined red on the Plan for the purposes of identification only
“TCI”	the total cost indicators published by the Housing

	Corporation as the basis for a cost evaluation of social housing grant funding for the Affordable Housing units for the year in which the Affordable Housing is to be constructed in accordance with paragraph 6 of the Schedule
“Toucan Crossing Contribution”	£166.66 for each dwelling authorised by the Planning Permission
Youth / Adult Recreation Contribution”	£300 for each dwelling authorised by the Planning Permission

- 1.2. Clause headings in this Deed are for convenience only and do not affect its interpretation
- 1.3. The masculine, feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa
- 1.4. A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement
- 1.5. A reference to a clause or schedule is a reference to a clause or schedule contained in this Agreement
- 1.6. Except as provided for in clause 3.8 reference to any party in this Agreement shall include the successors in title of that party
- 1.7. In the event that the Council as local planning authority approves (by way of a further planning permission or amendment of the plans and drawings approved by the grant of the Planning Permission) a different number of dwellings as the Development,
 - 1.7.1. the amount of the Healthcare Contribution, the Toucan Crossing Contribution and the Youth/Adult Recreation Contribution is to be calculated by reference to the number of dwellings comprised in the Development authorised by the Planning Permission as approved or further granted and
 - 1.7.2. references in the Schedule to the “last dwelling” is to be interpreted as the last of the different number of dwellings

2. FORMAL REQUIREMENTS

- 2.1. The covenants on the part of the Owner contained in clause 7 are made in pursuance of Section 106 of the 1990 Act and are planning obligations for the purposes of that section
- 2.2. The parties to this Agreement have agreed to enter into this Agreement with the intention that the obligations on the part of the Owner contained in clause 7.1 may be enforced by the County Council and those contained in clause 7.2 may be

enforced by the Council against the Site, the Owner and any person or persons deriving title from the First Owner or the Second Owner except as provided for in clauses 3.3 and 3.4.

3. **AGREEMENTS AND DECLARATIONS**

The parties agree and declare

- 3.1. save for clause 7.1.2 and 7.2.2, this Agreement is conditional and shall only have effect upon the later of
 - 3.1.1. the date upon which the Planning Permission has been issued subject only to the conditions in the form of the draft annexed or such other conditions notified by the Owner to the Council as being accepted for the purposes of this Agreement; and
 - 3.1.2. the date of Commencement of Development ;
- 3.2. if the Planning Permission is revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires before the Commencement of Development then the obligations of the Owner under this agreement shall henceforth cease to have effect and the Council and the County Council will, if so requested by the Owner, forthwith repay the monies respectively paid to them (other than the Council's and the County Council's legal costs as provided for in clause 7.1.2 and 7.2.2) insofar as they have not been expended in accordance with this Agreement at the date of the Owner's request;
- 3.3. no person shall be liable for any breach of the covenants restrictions or obligations contained in this agreement after he has parted with his interest in the Site or the part of it which is the subject of this Agreement but without prejudice to his liability for any subsisting breach of covenants prior to parting with such interest;
- 3.4. no owner of an electricity sub-station and / or gas governor site and / or pumping station or other service supply installation and, except for the purposes of paragraphs 4 and 5 of the Schedule, no owner of an interest in any part of the Site who occupies that part as their dwelling, is to be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the Act;
- 3.5. nothing contained or implied in this Agreement shall prejudice or affect the Council's rights, powers duties and obligations in the exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes bylaws, orders and regulations may be as fully and effectually exercised in relation to the Site or land adjoining or adjacent thereto as if the Council were not a party to this Agreement;
- 3.6. this deed is a local land charge and shall be registered as such;

- 3.7. the parties declare that except as provided for in clauses 3.3 and 3.4 it is not the intention of any of them that the terms of this Agreement can be enforced by a third party as defined in the Contracts (Rights of Third Parties) Act 1999;
- 3.8. for the purposes of
- 3.8.1. clauses 5.2 and 6 below, reference to “repay to the Owner” is to be interpreted as to repay to the person who made payment of the relevant contribution and
- 3.8.2. paragraph 1 of the Schedule, reference to approval of the Owner is to be interpreted as reference to the approval of the person who made payment of the Toucan Crossing Contribution
- or in each case the nominee of that person, notified in writing to the relevant council, and is not otherwise to include that person’s successors in title to the Site nor successors in title to the Owner;
- 3.9. the Council, the County Council and the persons against whom for the time being the covenants on the part of the Owner are enforceable may agree, by exchange of correspondence referring to this clause, that a planning permission (other than the Planning Permission) for the development of the Site in substantially the same manner as authorised by the Planning Permission will be substituted for the Planning Permission in the interpretation of this Agreement or the terms of the Agreement applied to that planning permission as well as to the Planning Permission.

4. CHARGEES’ CONSENT

The Chargee consents to the giving of the obligations on the part of the Second Owner and the Third Owner, acknowledges that the Site is bound by the restrictions and obligations contained in this Deed, that the terms of this Deed will be binding on its successors in title and agrees to be bound by them in the event that it becomes a mortgagee in possession but that its liability will cease once it has parted with its interest in the Site (without prejudice to its liability for any subsisting breach of covenant prior to parting with such interest).

5. COUNCIL’S COVENANTS

The Council covenants that

- 5.1. upon the written request of the Owner from time to time it will give written confirmation that (if that be the case) the Owner has complied with the terms of this Agreement as far as is required to the date of confirmation;
- 5.2. if so requested by the Owner at anytime after the fifth anniversary of the receipt by the Council of the Youth/Adult Recreation Contribution and separately the

Healthcare Contribution paid pursuant to paragraphs 2 and 3 respectively of Schedule 1 the Council will forthwith repay to the Owner (subject to the provisions of clause 3.8) whatever part of those sums for which written evidence has not been provided by the Council to the Owner within three months of the Owner's request as having been expended by the date of the request for the purposes described in those paragraphs 2 and 3.

6. COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner that if so requested by the Owner at anytime after the fifth anniversary of the receipt by the County Council of the Toucan Crossing Contribution paid pursuant to paragraph 1 of the Schedule, the County Council will forthwith repay to the Owner (subject to the provisions of clause 3.8) whatever part of that sum for which written evidence has not been provided by the County Council to the Owner within three months of the Owner's request as having been expended by the date of the request for the purposes described in that paragraph 1.

7. OWNER'S COVENANTS

7.1. The Owner covenants with the County Council

7.1.1. to perform the covenants at paragraphs 1 of the Schedule

7.1.2. to pay to the County Council on the completion of this deed the County Council's reasonable legal costs in connection with the preparation and execution of this Agreement but not exceeding £.....

7.2. The Owner covenants with the Council

7.2.1. to perform the covenants at paragraphs 2 to 8 of the Schedule and

7.2.2. to pay to the Council on the completion of this deed the Council's reasonable legal costs in connection with the preparation and execution of this Agreement but not exceeding £.....

EXECUTED as a deed by the parties and delivered on the date appearing at the beginning of this deed.

SCHEDULE
Owner's Covenants

1. Toucan Crossing Contribution

Not to permit occupation (other than as a show house or similar or as a sales office) of the last dwelling on the Site constructed pursuant to the Planning Permission unless payment has been made to the County Council of the Toucan Crossing Contribution, and to make the payment prior to that occupation, as a contribution towards the provision of a toucan crossing on Ashby Road, Loughborough and / or other pedestrian safety measure previously approved by the Owner.

2. Youth / Adult Recreation Contribution

Not to permit occupation (other than as a show house or similar or as a sales office) of the last dwelling on the Site constructed pursuant to the Planning Permission unless payment has been made to the Council of the Youth / Adult Recreation, and to make the payment prior to that occupation as a contribution towards the cost of the Council providing or improving facilities for youth and adult recreation on the Cumberland Road park/playing fields adjacent to the Site.

3. Healthcare Contribution

Not to permit occupation (other than as a show house or similar or as a sales office) of the last dwelling on the Site constructed pursuant to the Planning Permission unless payment has been made to the Council of the Healthcare Contribution, and to make the payment prior to that occupation, for it to expend itself, or by payment to the North West Leicestershire Primary Care Trust for that body to expend, on provision or extension of premises atso as to increase the primary health care facilities likely to be available to occupiers of the Development.

4. Restriction on student occupation

Except with the written consent of the Council

4.1. not to cause or permit the use of any dwelling comprised in the Development as a dwelling if that property is occupied by a person occupying pursuant to a tenancy

4.1.1. who is pursuing or intending to pursue a course of study provided by an educational institution AND

4.1.2. the tenancy is granted by that institution or by another institution or body of persons in either case specified for the purposes of paragraph 8 of Schedule 1 Housing Act 1988;

4.2. not to cause or permit the use of any dwelling comprised in the Development as a dwelling if the property is occupied by a person who is enrolled on and pursuing a course of study at Loughborough University or Loughborough College, unless either

- 4.2.1. the person occupying is both registered at The Land Registry as the proprietor of the freehold or a leasehold interest of not less than 21 years and is occupying the dwelling alone ; or
- 4.2.2. the person is less than 18 years old; or
- 4.2.3. the person is not less than 27 years old; or
- 4.2.4. the person occupies the dwelling as part of a Family.

5. Control and Monitoring of Occupation

- 5.1. Not to cause or permit the occupation of a dwelling by any person unless the proposed occupier has provided information to the Owner of the dwelling sufficient to satisfy the Owner of that dwelling that the occupation of the dwelling by that proposed occupier will be in compliance with paragraph 4 of this Schedule and (except where the Owner of the dwelling is a member of the Family of the proposed occupier) to keep a record of that information so long as the person concerned occupies the dwelling.
- 5.2. Upon receiving a written request from the Council to provide a copy of any record required to be maintained pursuant to clause 5.1 above and/or supply the information referred to in paragraph 5.3.1 -5.3.5 below within 21days of receipt of such request.
- 5.3. If either the Owner and/or each occupier of a dwelling comprised in the Development receives from the Council a written request for information to enable it to investigate an alleged breach of the covenants contained in paragraph 4 with an explanation of the likely consequences of his failing to respond to the request and, in particular, that injunction proceedings may be taken to enforce compliance with the obligations at paragraphs 4 and 5 of this Schedule, then to respond in writing to the Council within 21 days of receipt of the written request with such of the following information as is specified in the request:-
 - 5.3.1. the full names and ages of each of the occupiers of the dwelling;
 - 5.3.2. the relationship of each occupier named in the response to each other;
 - 5.3.3. whether each of the occupiers named in the response is enrolled at and pursuing a course of study at Loughborough University or Loughborough College and if so then in each case the name of the course and produce evidence in writing of that fact from the University or College ;
 - 5.3.4. whether in employment or self employed and if so state the nature and provide the name and address of employer and the address where the employment or self-employment is conducted;

- 5.3.5. why (if appropriate) the person responding considers the occupation of the dwelling by that person falls within one of the exceptions set out at paragraphs 4.2.1, to 4.2.4 above; and
- 5.3.6. in the event of the information provided appearing to show a breach of the covenants at paragraph 4 of this Schedule, what offer (if any) the person responding to the notice wishes to make to bring about compliance with the requirements of the covenants or other representations (if any) he wishes to make about the matter .

6. Affordable Housing

- 6.1. Not less than 4 weeks prior to the Commencement of Development the Owner will submit to the Council for its approval the details of those RSLs from which the Owner proposes to invite bids to acquire the freehold or a long lease of not less than 125 years of the Affordable Housing constructed pursuant to the Planning Permission and ready for occupation at an aggregate price equal to 50% of the TCI for 5 by two bedroom and 1 by one bedroom apartments to be let at a rent without payment of a premium and 100% of the TCI for 1 by one bedroom and 1 by 2 bedrooms to be sold on a Shared Ownership basis.
- 6.2. Unless already invited, forthwith upon the Commencement of Development the Owner will invite bids from those RSLs submitted pursuant to paragraph 6.1 that are approved in writing by the Council by the expiry of 3 weeks from the date of receipt of the submission.
- 6.3. Subject to the Council having given approval as referred to in paragraph 6.2, then, except with the written consent of the Council, not to permit the occupation of more than 50% of the Open Market Dwellings not already occupied by the first anniversary of the Commencement of Development until
 - 6.3.1. evidence has been supplied to the Council of a contract for the disposal of the freehold or long lease of the Affordable Housing to the RSL from which a bid has been invited pursuant to paragraphs 6.1 and 6.2 and which is the bid that, in addition to offering the aggregate value referred to in paragraph 6.1, provides for the greatest number of the Affordable Housing units to be let at a rent without payment of a premium (and if more than one RSL so bids then as the Owner chooses between them)
 - 6.3.2. in the event that no RSL from which a bid has been invited pursuant to paragraphs 6.1 and 6.2 has bid for the provision of one or more dwellings to be let at a rent without payment of a premium, evidence is supplied to the Council of a contract for the disposal of the freehold or long lease of the Affordable Housing to one of the RSLs from which bids

were invited and providing for all the Affordable Housing to be sold by the RSL on a Shared Ownership basis.

7. Public Art

Prior to the first occupation (other than as a show house or similar or sales office or occupation of a unit of Affordable Housing) of any dwelling authorised by the Planning Permission, the Owner will at its choice either

- 7.1. agree with the Council and undertake by the occupation (other than as a show house or similar or sales office or occupation of a unit of Affordable Housing) of the 30th dwelling authorised by the Planning Permission, a scheme for the commissioning by the Owner of a new work of art by artists and craftsmen and its erection on the Site and as sought by policy EV/43 of the adopted local plan but not so as to require the Owner to expend more than the Public Art Contribution in design and commission fees (inclusive of any VAT payable); or
- 7.2. pay to the Council the Public Art Contribution for the Council to use in the commissioning and erection of works of public art elsewhere in the Council's administrative area.

8. Renovation of listed gates

- 8.1. Not to permit occupation (other than as a show house or similar or as a sales office) of more than 50% of the Open Market Dwellings unless a scheme has been submitted to and approved by the Council for the renovation of the Listed Gates
- 8.2. Not to permit the occupation (other than as a show house or similar or as a sales office) of the last Open Market Dwellings on the Site constructed pursuant to the Planning Permission unless the Listed Gates have been renovated in accordance with the scheme approved pursuant to paragraph 8.1 above.

THE COMMON SEAL of
The Council of the Borough of Charnwood
was affixed to this deed in the presence of:

.....
Authorised signatory

THE COMMON SEAL of
Leicestershire County Council
was affixed to this deed in the presence of:

.....
Authorised signatory

THE COMMON SEAL of
Loughborough University
was affixed to this deed in the presence of:

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**THE COMMON SEAL of
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