BROADLAND DISTRICT COUNCIL

- AND - '

J S BLOOR (SUDBURY) LIMITED

-AND-

NORFOLK COUNTY COUNCIL

AGREEMENT

Made pursuant to Section 106 of the Town and Country Planning Act (as amended) 1990 and any other enabling power relating to the development of land at Horsbeck Way Horsford Norfolk

> Steele & Co 2 The Norwich Business Park Whiting Road Norwich NR4 6DJ

2000

Ref:RAM.4349.600.6

THIS AGREEMENT is made the 18th day of October Two thousand BETWEEN BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter called "the District Council") of the first part JS BLOOR (SUDBURY) LIMITED of Ashby Road Measham Swadlincote Derbyshire Company Registration Number 2147387 (hereinafter called "the Owner") of the second part and <u>NORFOLK COUNTY</u> <u>COUNCIL</u> of County Hall Martineau Lane Norwich of the third part (hereinafter called "the County Council")

RECITALS

(A)(1)In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"Application"

means the application for planning permission to develop the Land and dated 13th May 1999 submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference number 99.0522

"Bond"

means a bond which has been approved in advance by the Director with a surety who has been approved of in advance by the Director the exact requirements of which are set out in the Schedule "Development"

"Director"

"Education Contribution"

"The Inflation Provision"

"Permission"

"Private Houses"

means the development permitted by the Permission

means the District Council's Director of Planning and Community Services or other officers of the Council acting under his hand means the sum of £61,872 as varied in line with the Royal Institution of Chartered Surveyors Building Cost Information Service All In Tender Index from the date of this Agreement

until the time such sum is paid to the County Council in accordance with Clause 6.30

means the increase (if any) in the Retail Price Index between the date of this Agreement and the date upon which a payment of money is made and play equipment is provided or a bond is entered into in accordance with any of the requirements of this Agreement

means the full planning permission granted pursuant to the Application numbered 990522 together with any renewal or modification thereof

means houses which are not affordable houses as defined in this Agreement "the Site"

means the land within the development plan allocated for development as shown edged orange on the attached plan

"the 1990 Act"

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

- (2) In this Agreement unless the context otherwise requires:
- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) "party" or "parties" means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in this Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed

- (viii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (B) The District Council and the County Council are Local Planning Authorities within the meaning of the 1990 Act and the County Council is the Local Education Authority within the meaning of the Education Acts for the area within which the Site is situated
- (C) The Owner is registered as Proprietor with absolute title of the Site as the same is registered with Title Number NK229982 subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances
- (D) The County Council wishes to secure the payment of a sum to cover the cost of educational facilities to serve the development and is joining in the terms of this Agreement to achieve this aim
- (E) Having regard to the Development Plan and other material considerations the County Council and the District Council consider it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the Development of the Site in the manner hereinafter appearing and the District Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power
- **1.2** The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council
- **1.3** This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the District Council as such
- 1.5 No waiver (whether express or implied) by the District Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof
- **1.6** Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.7 This Agreement shall be governed by the laws of England

- **1.8** No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any party's interest in the Site or any part thereof in respect of which any such breach has taken place
- 1.9 This Agreement shall cease to have effect if either:-
- 1.9.1 the Permission is quashed revoked or otherwise withdrawn; or
- 1.9.2 planning permission on the Site is granted subsequently and implemented for proposals incompatible with the Development

1.10 NOTICES

- **1.10.1** Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in sub-clause
- **1.10.2** The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The District Council: The Director of Planning and Community Services

Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich

The County Council:	The Director of Education County Hall Martineau Lane	
	Norwich	

The Owner: J.S. Bloor (Sudbury) Limited Ashby Road Measham Swadlincote Derbyshire

1.10.3 Any notice or other written communication to be given by the District Council shall be deemed to be valid and effective if on its face it is signed on behalf of the District Council by a duly authorised officer

2. GENERAL

- 2.1 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Agreement are hereby waived
- **2.2** All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council
- 2.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

3. ARBITRATION

- **3.1** Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration of a single arbitrator to be agreed upon between the parties or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being
- **3.2** Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-
 - (a) the seat of the arbitration shall be at the District Council's offices in Norwich
 - (b) where appropriate the Arbitrator may consolidate arbitral proceedings
 - (c) with the parties agreement the Arbitrator may appoint experts or legal advisers
- **3.3** Any of the parties mentioned in clause 3.1concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay
- **3.4** The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert
- 3.5 to be bound by the decision of the Arbitrator

4. **RIGHTS OF THIRD PARTIES**

The Contracts (Rights of Third Parties) Act shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act.

5. COVENANTS

The Owner

5.1 The Owner hereby covenants and undertakes with the District Council and the County Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

The County Council

5.2 The County Council hereby covenants and undertakes with the District Council and the Owner to carry out its obligations set out in this Agreement

6. The Obligations

AFFORDABLE HOUSING

- 6.1 Not to use the land edged green on the Plan or such other area as may subsequently be agreed by the Parties for any purpose other than affordable housing which shall be taken to mean housing of a type which (having regard to its rent or other consideration) is suitable for occupation by people who are in need of such housing because of their limited means
- **6.2** Not to construct any more than ten houses on the Land without first having submitted to the Director of Planning and Community Services of the Council

for approval a scheme or schemes for the construction and long term management of the affordable housing units and upon approval such scheme shall be deemed to be incorporated in the provisions of this agreement

6.3 Not to permit the occupation of more than twenty five houses on the Land until such time as the scheme for affordable housing units has been approved by the Council

RECREATIONAL OPEN SPACE AND PLAY EQUIPMENT

- 6.4 Prior to commencement of any development on the Land the Owner shall submit to the District Council for approval a plan and specification for the laying out of the Recreational Open Space shown edged red on the Plan together with a detailed programme for the implementation of such works ("the Works") and upon approval the plan specification and programme shall be deemed to be incorporated in the terms of this Agreement as if the same had been fully set out herein
- 6.5 The Owner shall commence and thereafter complete in accordance with the plan specification and programme the Works for the completion of the Recreational Open Space by the occupation of 25 dwellinghouses on the Site
- 6.6 By the completion of the Works to provide the Recreational Open Space the Owner shall erect thereon play equipment ("Play Equipment") to the value of Five thousand pounds (£5,000) as increased by the Inflation Provision

- 6.7 The Owner will complete the Works to provide the Recreational Open Space and after completion may apply to the Director for a certificate ("the Certificate")
- **6.8** Within twenty eight days of receipt of written application from the Owner for the issue of the Certificate pursuant to this Agreement the Director shall inspect the works and where necessary provide the Owner with a definitive list in writing of any remedial works required to be carried out before the issue of the Certificate Any such remedial works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Director who within twenty eight days thereafter shall issue the Certificate
- 6.9 Forthwith upon the issue of the Certificate the District Council shall assume responsibility for the Recreational Open Space save that the Owner shall remain responsible to make good any defects identified by the Director within twelve months of the issue of the Certificate.
- **6.10** Upon completion of the twelve month period referred to in Clause 6.9 or upon completion of any works to remedy any defects notified to the Owner the Owner may apply to the District Council for an Adoption Certificate.
- **6.11** Within twenty eight days of receipt of written application from the Owner for the issue of the Adoption Certificate pursuant to this Agreement the Director shall inspect the works and where necessary provide the Owner with a definitive list in writing of any remedial works required to be carried out before the issue of the Adoption Certificate Any such remedial works shall be subject to the same inspection procedure detailed herein until such time as they shall be

completed to the reasonable satisfaction of the Director who within twenty eight days thereafter shall issue the Certificate

- 6.12 Forthwith upon the issue of the Adoption Certificate the Owner will convey to the District Council the freehold of all the Recreational Open Space with full title guarantee together with all necessary rights and easements for the consideration of the Covenants given by the District Council to the Owner and the Owner shall pay to the Council all legal costs involved in the transfer
- 6.13 The Owner shall pay to the District Council upon a transfer of the Recreational Open Space to it in accordance with Clause 6.12 of this Agreement the sum of three thousand nine hundred and ten pounds and ten pence (£3910.10) as increased by the Inflation Provision by way of a commuted sum in respect of the Recreational Open Space which sum is to be applied by the District Council towards the expenses it will incur in respect of the subsequent maintenance of the Recreational Open Space and construction of the Play Equipment thereon
- 6.14 The Owner shall pay to the District Council within 21 days of a written demand therefor the sum of nine hundred pounds (£900) as increased by the Inflation Provision in respect of the expenses to be incurred by the Council in inspecting and supervising the works to be undertaken by the Owner in providing the Recreational Open Space
- 6.15 The Owner shall pay to the District Council within 21days of a written demand therefor the sum of five hundred pounds (£500) towards the costs and expenses of the Council in inspecting and supervising the Works for the construction of the play equipment in the Recreational Open Space

- **6.16** Prior to requesting the Certificate referred to in Clause 6.7 the Owner shall submit to the Council
 - a plan at a scale of 1:50 showing the land on which the Open Space
 has been laid out together with full details of all works carried out to
 provide the Open Space
 - a complete set of as built drawings of the Play Equipment at a scale of
 1:50 together with a complete and correctly maintained Health and Safety
 File conforming in all respects with the Construction (Design and
 Management) Regulations 1994

BOND

6.17 On the execution hereof the Owner shall enter into a bond in the form set out in the Schedule hereto with a Surety approved by the District Council the Surety to be bound to the District Council in the sum of thirty thousand pounds (£30 000) as increased by the Inflation Provision to the effect that should the Owner default in any way in the execution of its obligations to provide the play equipment or any of the Recreational Open Space Landscaped Areas or Amenity Areas the Council may on giving 21 days written notice undertake the works itself and call upon the Surety to reimburse the Council for all costs incurred by it in undertaking such works PROVIDED THAT upon completion of each of the Recreational Open Space Areas the Owner may apply to the District Council for a reduction of the bond and the District Council shall reduce the bond by such amount as it considers expedient taking account of the works undertaken by the Owner at the time of the relevant request

LANDSCAPED AREA

- 6.18 Prior to commencement of any development on the Land the Owner shall submit to the District Council for approval a plan for the planting ("the Planting") of the Landscaped Area ("the Landscaped Area") shown coloured green on the Plan together with details of the proposed times of planting ("the Programme") and upon approval the Plan and Programme shall be deemed to be incorporated in the terms of this Agreement as if the same had been fully set out herein
- 6.19 The Owner shall commence and thereafter complete within the first planting season following completion of this Agreement the planting of the Landscaped Area
- 6.20 The Owner shall pay to the District Council the sum of one thousand three hundred and eighty pounds (£1380) as increased by the Inflation Provision by way of a commuted sum in respect of the Landscaped Area which sum is to be applied by the District Council towards the expenses it will incur in respect of the subsequent maintenance of the Landscaped Area
- 6.21 The Owner shall pay to the District Council within 21 days of a written demand therefor the sum of one hundred pounds (£100) as increased by the Inflation Provision in respect of the expenses to be incurred by the Council in inspecting and supervising the works to be undertaken by the Owner in providing the Landscape Area

AMENITY AREA

6.22 The Land the Owner shall submit to the District Council for approval a plan and specification for the laying out of the Amenity Area shown edged blue

on the Plan together with a detailed programme for the implementation of such works ("the Works") and upon approval the plan specification and programme shall be deemed to be incorporated in the terms of this Agreement as if the same had been fully set out herein

- **6.23** The Owner shall commence and thereafter complete in accordance with the plan specification and programme the Works for the completion of the Amenity Area by the occupation of 40 dwellinghouses on the Site
- **6.24** Upon completion of the Works to provide the Amenity Area the Owner may apply to the Director for a Certificate ("the Certificate")
- **6.25** Within twenty eight days of receipt of written application from the Owner for the issue of the Certificate pursuant to this Agreement the Director shall inspect the works and where necessary provide the Owner with a definitive list in writing of any remedial works required to be carried out before the issue of the Certificate Any such remedial works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Director who within twenty eight days thereafter shall issue the Certificate
- 6.26 Forthwith upon the issue of the Certificate the Owner will convey to the District Council the freehold of all the Amenity Area with full title guarantee together with all necessary rights and easements for the consideration of the Covenants given by the District Council to the Owner and the Owner shall pay to the Council all legal costs involved in the transfer
- 6.27 The Owner shall pay to the District Council upon a transfer of the Amenity Area to it in accordance with Clause 6.21 of this Agreement the sum of seventeen

thousand and twenty six pounds (£17 026) as increased by the Inflation Provision by way of a commuted sum in respect of the Amenity Area which sum is to be applied by the District Council towards the expenses it will incur in respect of the subsequent maintenance of the Amenity Areas

6.28 The Owner shall pay to the District Council within 21 days of a written demand therefor the sum of four hundred pounds (£400) as increased by the Inflation Provision in respect of the expenses to be incurred by the Council in inspecting and supervising the works to be undertaken by the Owner in providing the Amenity Areas

EDUCATION FACILITIES

- **6.29** The Owner shall notify the County Council as soon as reasonably practicable upon the occupation of the ninth dwelling comprised in the Development.
- **6.30** The Owner shall pay the Education Contribution to the County Council prior to the occupation of the tenth dwelling comprised in the Development.
- 6.31 The County Council undertakes with the Owner to apply the Education Contribution only towards the provision of educational facilities at one or more of Horsford First School Horsford Middle School and Taverham High School.
- **6.32** The County Council hereby covenants with the Owner that in the event that the Education Contribution or any part of it has not been committed (by way of a contract to provide educational facilities or by expenditure of the monies) to the provision of the educational facilities referred to in Clause 6.31 above within ten years of the date of receipt of such sum then the County Council will repay to the Owner so much of the Education Contribution as shall remain uncommitted

together with interest thereon at the rate of the base lending rate from time to time of Barclays Bank PLC.

6.33 The Education Contribution shall be reduced in accordance with the following formula in the event that any child who is permanently occupying any of the affordable housing units at the date when the Education Contribution becomes payable under Clause 6.30 was a pupil at one of the schools referred to in Clause 6.31 immediately before the date on which the unit in question was first occupied:-

In respect of any child who is a pupil at £1095 (as varied in line with the Horsford First School Index referred to in the

In respect of any child who is a pupil at Horsford Middle School Index referred to in the
definition of the EducationContribution) to a
maximum of five children£1230(as varied in line with the

Index referred to in the definition of the Education Contribution) to a maximum of four children

In respect of any child who is a pupil at Taverham High School

£1450 (as varied in line with the Index referred to in the definition of the Education Contribution) to a maximum of three children

PROVISION OF FIRE HYDRANT

6.34 Prior to the occupation of any houses on the Land the Owner shall provide a fire hydrant in accordance with the requirements of the County Council.

PAYMENT OF COSTS

6.35 The Owner agrees to pay to the County Council their reasonable legal costs incurred in connection with the preparation of this Agreement.

PREVIOUS SECTION 52 AGREEMENT

- 6.36 The Parties further agree that the Agreement dated twenty seventh of July one thousand nine hundred and eighty nine made under the provisions of Section 52 of the Town and Country Planning Act 1971 between the Council and Vanson Developments Limited shall be of no further effect in relation to the Land save for Clauses A7 A8 and B1 of the Schedule thereto which shall remain in full force and effect .
- 6.37 The parties further agree that the Supplemental Section 52 Agreement dated twenty eighth of March one thousand nine hundred and ninety made between the Council and Vanson Developments Limited shall be of no further effect of in relation to the Land

THE SCHEDULE

BY THIS BOND "A" LIMITED whose registered office is situate at "B" (hereinafter called "the Owner") and "C" whose registered office is situate at "D" (hereinafter called "the Surety") are held and firmly bound unto BROADLAND DISTRICT COUNCIL (hereinafter called "the District Council") in the sum of THIRTY THOUSAND POUNDS (£30 000) (" the Bond Sum") for the payment of which the Owner and the Surety bind themselves their successors and assigns jointly and severally by these presents SEALED with our respective seals and dated this day of Two thousand ("G")

WHEREAS the Owner by an Agreement under seal dated the day of Two thousand (G") made pursuant (inter alia) to Section 106 of the Town and Country Planning Act (as amended) 1990 has entered into covenants (hereinafter called "the said covenants") for the provision and laying out of landscaped areas in certain land situate at ("H") in the County of Norfolk details of which are more particularly set out or referred to in the said Agreement in conformity with the provisions of the said Agreement

NOW IT IS AGREED as follows

- If the Owner shall duly perform all the said covenants then this Bond and the obligation of the Surety as set out therein shall be of no effect
- 2. If the Owner defaults on performing all or any of the said covenants then the Surety shall satisfy and discharge the damages sustained by the District Council as a result of the said default up to the amount of the Bond Sum ("the Settlement Figure") in the manner hereinafter provided PROVIDED THAT no alteration in the terms of the Agreement made by agreement between the District Council and the Owner or in the extent or nature of the works to be constructed

completed and maintained thereunder and no allowance of time by the District Council or the Director under the said Agreement nor any forbearance of forgiveness in respect of any matter or thing concerning the said covenants on the part of the District Council or the Director shall in any way release the Surety from any liability under the above-written Bond

- 3. The Surety shall comply with the requirements of paragraph 2 hereof by forthwith paying the Settlement Figure upon receipt by it of the first demand in writing from the District Council such demand to be accompanied by a declaration from the District Council that the Settlement Figure is due by reason of the Owner having failed to fulfil its obligations in whole or in part imposed on it by the said covenants
- 4. For the avoidance of doubt it is hereby FURTHER AGREED between the parties that the liability of the Surety under the terms of this Bond is limited to an amount not exceeding the Bond Sum

<u>IN WITNESS</u> whereof this Agreement has been executed and delivered as a Deed on the date first written above

THE COMMON SEAL of BROADLAND DISTRICT COUNCIL was hereunto affixed in the presence of

DIRECTOR OF PLANNING & COMMUNITY SERVICES

<u>THE COMMON SEAL of J S BLOOR</u> (SUDBURY) LIMITED was hereunto affixed in the presence of

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Director

AUTHORISED SIGNATORY

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AUTHORISED SIGNATORY

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Secretary

THE COMMON SEAL OF

NORFOLK COUNTY COUNCIL)

was hereunto affixed in the presence) of)

5 Theil authorised to on behalf of: SOURCES DIRECTOR OF



