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Dated: 19<sup>th</sup> May 2016

- (1) MOHSIN ALI RAVJANI AND ARIF HUSSAIN
- (2) ARIF HUSSAIN
- (3) NATIONAL WESTMINSTER BANK PLC
- (4) ASHFIELD DISTRICT COUNCIL

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**Planning Agreement**

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Section 106 of the Town and Country Planning Act 1990 relating to proposed residential development on land at 8a Annesley Road, Hucknall, Nottinghamshire

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**THIS AGREEMENT** is made as a Deed the 19<sup>th</sup> day of May  
Two Thousand and Sixteen

**BETWEEN:**

- (1) **MOHSIN ALI RAVJANI and ARIF HUSSAIN** of 6 Langland Drive, Pinner, Greater London HA5 4SA ("the First Owners");
- (2) **ARIF HUSSAIN** of Little Farm, London Road, Loudwater, High Wycombe HP10 9RF ("the Second Owner");
- (3) **NATIONAL WESTMINSTER BANK PLC** (Company Registration Number 929027) whose registered office is situate at 135 Bishopsgate, London EC2M 3UR ("the Chargee"); and
- (4) **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA ("the District Council")

**RECITALS:**

- A. By means of the Planning Application planning permission is sought by the Second Owner from the District Council to carry out the Development.
- B. The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- C. The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- D. The First Owners are the freehold owners of the Blue Land registered at HM Land Registry with title absolute under title number NT378668
- E. The Second Owner is the freehold owner of the Pink Land registered at HM Land Registry with title absolute under title numbers NT402590 and NT325410
- F. The Chargee has the benefit of a charge over the Blue Land registered under title number NT378668 dated 24 April 2008 and has agreed to be party to this Agreement to acknowledge the obligations contained herein
- G. The District Council has resolved to grant the Planning Permission for the Development subject to certain conditions and the completion of this Agreement.
- H. The Owners have agreed to enter into this Agreement with the intent that their interest in the Land shall be subject to the covenants and obligations contained herein and with the intention that those covenants and obligations should create planning obligations pursuant to Section 106 of the Act.

- I. The District Council is satisfied that the provisions of this Agreement and the planning obligations contained herein comply with their respective policies in relation to Section 106 of the Act and are sufficient in respect thereof.

**OPERATIVE PROVISIONS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions shall have the following meanings:

|                                      |   |
|--------------------------------------|---|
| <b>"Act"</b>                         | the Town & Country Planning Act 1990 as amended   |
| <b>"Blue Land"</b>                   | means the land shown tinted blue on the Plan being land registered at HM Land Registry under title number NT378668  |
| <b>"Commencement of Development"</b> | <p>means the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of Section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development</p> <ul style="list-style-type: none"><li>(i) trial holes investigations or other operations to establish the ground conditions of the Land, site survey work, or works of remediation</li><li>(ii) archaeological investigations on the Land</li><li>(iii) any works of demolition or site clearance</li><li>(iv) any structural planting or landscaping works</li><li>(v) ecological or nature conservation works associated with the Development</li><li>(vi) construction of site compounds boundary fencing or hoardings</li><li>(vii) construction of access or highway works or provision of services (including drainage and media)</li></ul> |

(viii) any other preparatory works agreed in writing with the District Council

and "Commence" and "Commencement Date" shall be interpreted accordingly

**"Development"**

means the development described in the Planning Application and to be carried out pursuant to the Planning Permission

**"Dwelling/s"**

means a dwelling built pursuant to the Planning Permission

**"Index Linked"**

means the application to the sum concerned of the Indexation set out in the Schedule hereto

**"Land"**

means the land shown edged red on the Plan comprising the Blue Land and the Pink Land against which the obligations in this Agreement may be enforced

**"Occupation"**

means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include

I) daytime occupation by workmen involved in the erection fitting out or decoration occupation in relation to security operations of any part of the Development; or

II) the use of any Dwelling for the marketing of the Development; or

III) the storage of plant and materials

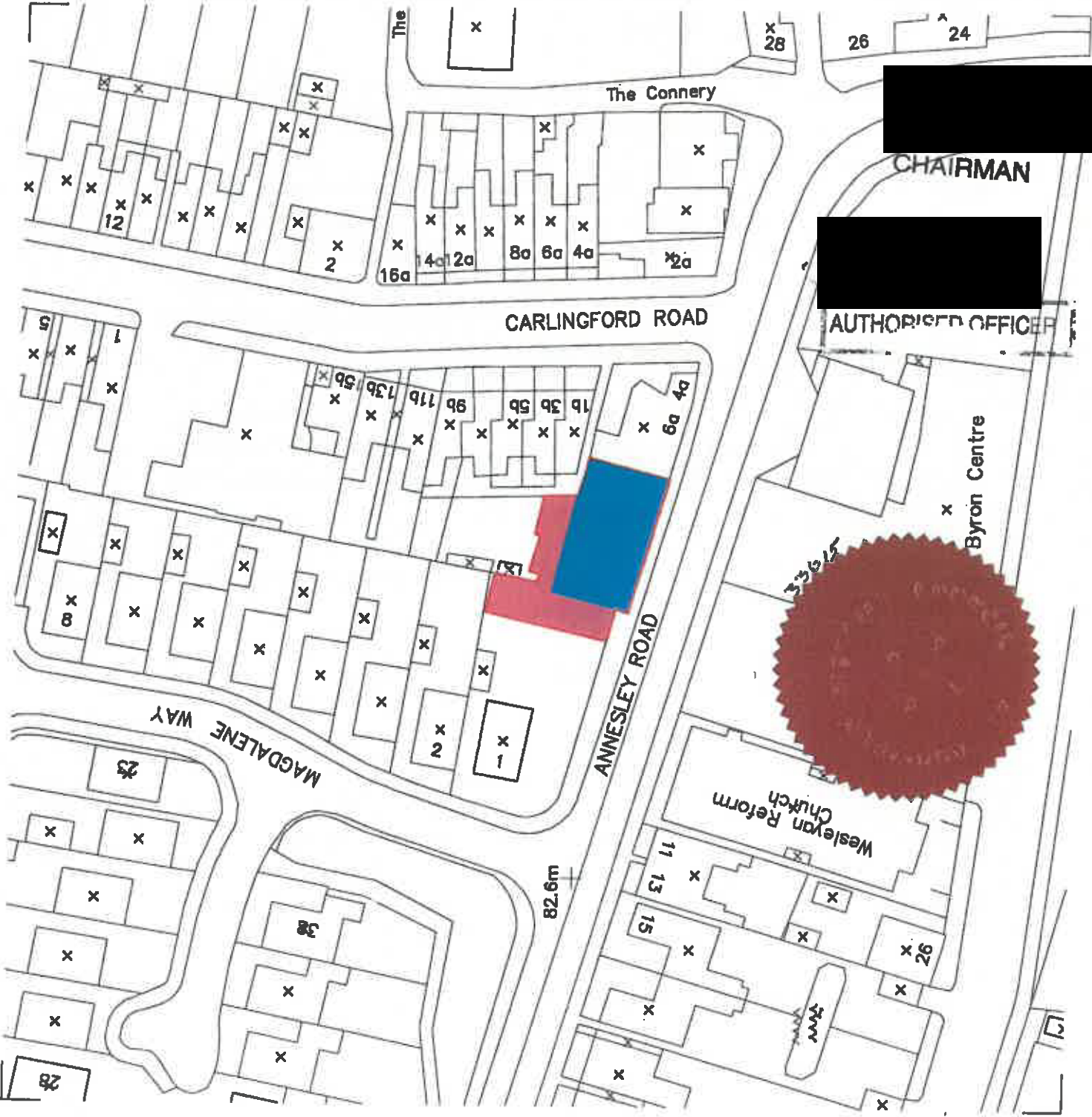
and "Occupy" and "Occupied" shall be construed accordingly

**"Owners"**

means the First Owners and the Second Owner

**"Pink Land"**

means the land shown tinted pink on the Plan registered at HM Land Registry under title numbers NT402590 and NT325410



NOTE

- 1. Refer to figure dimensions, do not scale
- 2. The contractor must report any discrepancies to the Architect
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Revisions

Revision A: 22.12.15; Black outline amended



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Client  
MR ADP KISSAM

Project Title  
ANNESLEY ROAD  
HUCKNALL  
NOTTINGHAM

Drawing Title  
Land Ownership Plan

|       |             |        |            |
|-------|-------------|--------|------------|
| Scale | 1:500 at A3 | Job No | 814.1050.2 |
| Date  | Dec 2015    | Dwg No | 19         |
| Drawn | LAF         | Rev    | B          |

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|                                    |  |
|------------------------------------|--|
| <b>"Planning Application"</b>      | means the planning application submitted to the District Council and allocated reference number V/2015/0593 applying for the conversion of the existing public house into nine residential apartments including the erection of a two storey side extension                  |
| <b>"Planning Permission"</b>       | means the planning permission granted pursuant to the Planning Application   |
| <b>"Public Realm Contribution"</b> | means the sum of Twenty Two Thousand and Five Hundred Pounds (£22,500) payable by the Owners to the District Council in accordance with clause 3.1 towards the provision of enhancements at Hucknall Market Place and the public area in front of the Half Moon Public House |

- 1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.
- 1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.
- 1.5 Where in this Agreement reference is made to a Clause Schedule or plan such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of or in the case of a plan attached to this Agreement.
- 1.6 Covenants made hereunder on the part of the District Council shall be enforceable against the District Council and any statutory successor to it as planning authority.
- 1.7 The expression "the Owners" shall where the context so admits include its respective successors and assigns.

## **2. GENERAL PROVISIONS**

### **Statutory Authority**

- 2.1 This Agreement and each of the covenants given by the Owners contained herein is a planning obligation and is made pursuant to Section 106 of the Act.



- 2.2 The covenants by the Owners contained herein shall be enforceable by the District Council.

### **Liability**

- 2.3 The covenants given by the Owners contained herein are made with the intent that the covenants will bind their respective interest in the Land and be binding on and enforceable against their respective successors in title or assigns and subject to clause 2.5 those deriving title under the Owner PROVIDED THAT without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach.
- 2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply PROVIDED THAT the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owner and the District Council as evidenced by a memorandum endorsed on this Agreement.
- 2.5 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of dwellings on the Land constructed pursuant to the Planning Permission or against statutory undertakers in relation to any parts of the Land acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of the benefit of an easement or covenant.
- 2.6 In the event that the Owners dispose of their interest in the Land or any part thereof (other than a disposal to a purchaser of a dwelling) they shall within twenty-eight days of such disposal give written notice of the name and address of its successors in title to the District Council together with sufficient details of the land included in the disposal to allow its identification.

### **Contingencies**

- 2.7 The obligations in this Agreement shall be conditional upon the issuing and grant of the Planning Permission and the commencement of Development and save for this clause and clauses 2.10, 2.13, 2.14, 2.19 and 3.3 which

shall come in to effect upon completion of this Agreement then until such time all other provisions not herein specified shall be of no effect.

- 2.8 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission the obligations under this Agreement shall cease absolutely and the District Council shall upon written request from the Owner procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon request of the Owners.
- 2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owner place a note against the entry made in the Register of Local Land Charges stating which obligations no longer have effect.
- 2.10 If the Owners make a request in writing for the District Council to place a note against the entry made in the Register of Local Land Charges stating which obligations under this Agreement have been discharged and complied with, the District Council will place such a note against the entry to the extent which such obligations are deemed by the District Council to have been discharged and complied with under the terms of this Agreement PROVIDED THAT following the performance and satisfaction of all the obligations contained in this Agreement the District Council shall forthwith effect the cancellation of all the entries made in register of the Local Land Charges in respect of this Agreement

#### **Commencement of Development**

- 2.11 The Owners shall give the District Council seven days' notice in advance of the Commencement of Development and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owners and the District Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring.

#### **Determination by Expert**

- 2.12 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owners the Chargee and the District Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by

the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:

- 2.12.1 The person to be appointed pursuant to Clause 2.12 shall if possible be a person having fifteen years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute.
- 2.12.2 The reference to the expert shall be on terms that:
  - 2.12.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
  - 2.12.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
  - 2.12.2.3 the expert shall be bound to have regard to the said submissions and representations;
  - 2.12.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
  - 2.12.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
  - 2.12.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owners the Chargee and the District Council save that the parties retain the right to refer to the Courts on a matter of law.

#### **Time Periods**

- 2.13 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owners and the District Council.

## **Approvals**

- 2.14 For the purposes of this Agreement where a party is required to make a request, give confirmation, approval or consent, express satisfaction with, agree to vary, or to give notice of any matter, such request, confirmation, approval, consent, expression of satisfaction, agreement to vary, or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed.

## **Notices**

- 2.15 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing.
- 2.16 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting.

## **Exclusion of the Contracts (Rights of Third Parties) Act 1999**

- 2.17 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained.

## **Void Provisions**

- 2.18 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties.

### **No Fetter of Discretion**

- 2.19 Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council in its 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 District Council were not a party to this Agreement.

### **Effect of any Waiver**

- 2.20 No waiver (whether express or implied) by the District Council of any breach or default by the Owners in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owners.

### **General Requirement to Co-operate**

- 2.21 Without prejudice to its statutory duties the District Council the Chargee and the Owners shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified.

### **Chargee's Consent**

- 2.22 The Chargee hereby acknowledges and declares that this Agreement has been entered into by the First Owners with its consent and that the Blue Land shall be bound by the obligations contained herein and that their respective interests in the Blue Land shall take effect subject to this Agreement.
- 2.23 The Chargee shall have no liability under this Agreement unless and until it takes possession of the Blue Land in which case it will be bound by the obligations as owner of the Blue Land.

### **Interest**

- 2.24 It is hereby agreed that if any payment due to the District Council under this Agreement is paid late interest will be payable from the date the payment is due to the date of payment at 8% above the Bank of England base lending rate prevailing at the time.

### **3. THE OWNERS' COVENANTS WITH THE DISTRICT COUNCIL**

#### **Public Realm Contribution**

- 3.1 The Owners covenant with the District Council to pay the Public Realm Contribution prior to the first Occupation of the first Dwelling to be Occupied.
- 3.2 The Owner covenants with the District Council not to permit or allow the Occupation of any Dwellings unless and until the Public Realm Contribution has been paid to the District Council.

#### **District Council's Legal Costs**

- 3.3 The Owners covenant with the District Council to pay the District Council's reasonable legal costs in respect of the preparation of this Agreement on its execution

### **4. DISTRICT COUNCIL'S COVENANTS TO THE OWNERS**

- 4.1 The District Council covenants with the Owners as follows:

#### **Public Realm Contribution**

- 4.1.1 To use the Public Realm Contribution solely towards the provision of general improvements and enhancements to Hucknall Market Place and the public area in front of the Half Moon Public House and for no other purpose whatsoever.
- 4.1.2 That in the event any or all of the Public Realm Contribution is not applied for the purpose specified within five years from the date of receipt to refund to the Owners such unexpended contribution accrued (if any) from the date of payment until the date of replacement following receipt of a written request from the Owners to do so.

#### **Monitoring**

- 4.1.3 Following receipt of a written request from the Owner to produce full details of the expenditure of all monies paid pursuant to clause 3 of this Agreement

## **VAT**

- 4.1.4** No value added tax shall be payable on Public Realm Contribution or any part of it or any consideration payable under the terms of this Agreement.

## **THE SCHEDULE**

### **INDEXATION PROVISIONS**

**1. In this Schedule:-**

**"Index"** means the Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or such other Index as shall be agreed between the Owner and the District Council

**"Base Index Date"** means the date of this Agreement

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

**"Final Index Figure"** means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid

**2. The relevant contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-**

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

**Where: "A"** equals the relevant 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 Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made**

**4. If any substitution for the said RPI or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the RPI or any index previously substituted therefore on the other hand**





THE COMMON SEAL OF  
**ASHFIELD DISTRICT COUNCIL**  
was hereunto affixed in the presence of

)  
)  
)



Chairman of the Council

Authorised Officer

