

DATED 19th December 2019

AMBER VALLEY BOROUGH COUNCIL

- and -

J MELROSE DEVELOPMENTS LIMITED

PLANNING OBLIGATION BY WAY OF AGREEMENT

**under Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to
former All Saints Church, Moseley Street, Ripley
AVA/2019/0744**

THIS DEED is made the 19th day of DECEMBER 2019

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF AMBER VALLEY** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT ("the Council"); and
- (2) **J MELROSE DEVELOPMENTS LIMITED** (Company registration no 05078173) whose registered office is situated at Brook House, Asher Lane Business Park, Asher Lane, Ripley DE5 3SW ("the Owner")

WHEREAS

- (1) The Council is the local planning authority for the purposes of Section 106 of the 1990 Act in respect of the area within which the Land is situated and is the authority by whom the planning obligations hereby created are enforceable.
- (2) The Owner is the freehold owner of the Land which is registered at HM Land Registry under title number DY151724.
- (3) The Application has been submitted to the Council for the Development.
- (4) The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.
- (5) The parties have agreed to enter into this Agreement so as to create planning obligations in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In this Agreement the following words and expressions shall where the context so requires or admits have the following meaning:

1.1 Definitions:

- | | |
|-------------------------------|---|
| "1990 Act" | means the Town and Country Planning Act 1990 (as amended) |
| "Application" | means the application for planning permission for the Development submitted by the Owner and registered by the Council on 26 July 2019 under reference AVA/2019/0744 |
| "Commencement of Development" | means the date on which any material operation (as defined in Section 56(4) of the 1990 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

"Development"

means the development of the Land pursuant to the Planning Permission comprising the demolition of the existing Church Hall and redevelopment of site with 10 dwellings and off-street parking

"Dwellings"

means all dwellings to be constructed on the Land as part of the Development pursuant to the Planning Permission and "Dwelling" shall be construed accordingly

"Interest"

means interest at 4 per cent above the lending rate of the Bank of England from time to time

"Land"

means the land at former All Saints Church, Moseley Street, Ripley and shown for identification purposes edged red on the Plan

"Occupation"

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

"Off-Site Open Space Contribution"

means the sum of £17,758.00 (seventeen thousand seven hundred and fifty eight pounds) such sum to be paid to the Council and used by the Council towards off-site open space enhancements at Sir Barnes Wallis Recreation Ground Project A - Equipped Play Area

"Plan"

means the plan annexed to this Deed

"Planning Permission"

means a planning permission to be granted by the Council pursuant to the Application

"Working Days"

means any day except a Saturday, Sunday or any public holiday in England and Wales



Ordnance Survey (c) Crown Copyright 2010. All rights reserved. Licence number 100022432

SITE LOCATION PLAN 1:1250



REVISION	DATE
<p>OWNER J MELROSE DEVELOPMENTS LIMITED</p> <p>ADDRESS ALL SAINTS CHURCH HALL HOSLEY STREET - RIPLEY</p> <p>PROJECT RESIDENTIAL DEVELOPMENT</p> <p>DELIVERED SITE LOCATION PLAN</p> <p>SCALE 1:1250</p> <p>DATE JULY 2019</p> <p>UNR No. PA19-006 EX 01 01</p>	
<p>PILKINGTON ARCHITECTURE</p> <p>29A STRETTEA LANE</p> <p>HIGHAM</p> <p>ALFRETON</p> <p>DERBYSHIRE</p> <p>DE56 6EJ</p> <p>Tel : 01773 843333</p> <p>jon@pilkington-architecture.co.uk</p> <p><small>We retain copyright Contractors must check all dimensions on site using only the gird & ignore dimensions. Discrepancies must be reported to the designer before work is done.</small></p>	

Handwritten signatures and initials.

1.2 Where the context so requires:

- 1.2.1** clause and paragraph headings and any contents list are for reference only and shall not affect the construction of this Agreement;
- 1.2.2** wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.3** any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.4** the masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa;
- 1.2.5** a reference to a clause, sub-clause, schedule, paragraph or recital (or any part of them) shall (unless the context otherwise requires) be references to a clause, sub-clause, schedule, paragraph or recital contained in this Agreement;
- 1.2.6** unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

2. STATUTORY PROVISIONS

2.1 This Agreement:

- 2.1.1** is made pursuant to the provisions of Section 106 of the 1990 Act and to the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling;
- 2.1.2** is a planning obligation for the purposes of Section 106 of the 1990 Act;
- 2.1.3** is given with intent to bind the Owner in respect of the Land and the Owner's freehold interest in the Land;
- 2.1.4** shall be enforceable by the Council as the local planning authority; and
- 2.1.5** is executed by the parties as a Deed.

2.2 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council any successor to its statutory functions.

3. COVENANTS

- 3.1 The Owner hereby covenants with the Council that it will comply with the obligations contained in Schedules 1 and 2 to this Agreement.
- 3.2 This Agreement takes effect from the date hereof SAVE THAT (except where otherwise specifically stated in this Agreement) the covenants contained in this Agreement on behalf of the Owner are conditional upon the issue by the Council of the Planning Permission and the Commencement of Development.
- 3.3 The Council covenants with the Owner to comply with the covenants contained in Schedule 3.

4. AGREEMENTS AND DECLARATIONS

- 4.1 No person shall be liable for any breach of the restrictions and obligations or other provisions contained in this Agreement after that person has parted with all interest in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting.
- 4.2 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) granted (whether or not on appeal) after the date of this Agreement.
- 4.3 This Agreement shall cease to have effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure other than a non-material amendment under section 96A of the 1990 Act or expires prior to Commencement of Development.
- 4.4 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament or as prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 4.5 Wherever this Agreement requires the approval, agreement, determination or consent of the Council or the Owner such approval, agreement, determination or consent must be in writing and shall not be unreasonably withheld or delayed.
- 4.6 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999.
- 4.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 4.8 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act (and the Council is satisfied that no revised planning obligations are required as a result of such

amendment) this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

- 4.9 This Agreement shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from such owner-occupiers or tenants.

5. CHANGE IN OWNERSHIP

- 5.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership in any of its interests in the Land occurring before all the obligations under the Agreement have been discharged with such notice giving details of the transferee's full name and address (and address of the registered office if applicable) together with the area of the Land by reference to a plan PROVIDED THAT the provisions of this Clause will not apply to individual disposals of Dwellings.

6. INDEXATION

- 6.1 The Off-Site Open Space Contribution shall be increased by the amount by which the Index for the month preceding the date on which each such contribution is paid exceeds the Base Figure where:

6.1.1 "*Index*" means the "all items" figures of the All Items Index of Retail Prices and;

6.1.2 "*Base Figure*" is the Index Figure at the date of this Agreement

PROVIDED THAT if the basis of computation of the Index is changed or if publication of the Index is permanently discontinued an alternative method of fixing the sum of the Off-Site Open Space Contribution shall be agreed between the Council and the Owner to ensure as nearly as possible that such shall fluctuate (but in an upwards direction only) in accordance with the general level of retail prices and any dispute as to such method shall be determined in accordance with the provisions of clause 10.

7. INTEREST

- 7.1 If any payment due to the Council under this Agreement is not paid by the date it is due Interest will be payable from the due date to the date of payment.

8. REGISTRATION

- 8.1 This Agreement shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

9. NOTICES

- 9.1 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid special or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the

purpose by notice served under this Agreement specifically referring to this clause and the intention of the notice to notify an address thereunder.

10. DISPUTE RESOLUTION

- 10.1 In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement which cannot be resolved by prior agreement between the parties such dispute or difference shall be referred to an independent and suitable person (the "Expert") holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 10.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error 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 in equal shares.
- 10.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.
- 10.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 (ten) Working Days.

11. WAIVER

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

12. JURISDICTION

- 12.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales.

13. DELIVERY

- 13.1 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

SCHEDULE 1
General Covenants

1. In addition to the specific covenants set out in the following Schedule the Owner covenants that it will:
 - 1.1 notify the Council in writing fourteen (14) days prior to the following:
 - (i) the date of the Commencement of Development
 - (ii) the date of first Occupation of the first Dwelling
 - (iii) the date of first Occupation of the 6th Dwelling
 - 1.2 pay to the Council upon the Commencement of Development an amount for the monitoring of this Agreement in the sum of £100.00 (one hundred pounds); and
 - 1.3 pay to the Council on completion of this Agreement an amount for its legal costs properly and reasonably incurred in the negotiation, preparation, execution and registration of this Agreement.

SCHEDULE 2
The Owner's Covenants

The Owner covenants with the Council in the following terms:

1. To pay the Off-Site Open Space Contribution to the Council prior to the Occupation of the 6th Dwelling
2. Not more than 5 Dwellings shall be Occupied unless and until the Off-Site Open Space Contribution has been paid to the Council.
3. The Off-Site Open Space Contribution shall be used by the Council towards the development of the Sir Barnes Wallis Recreation Ground, Project A: providing an equipped play area.

SCHEDULE 3
The Council's Covenants

The Council covenants with the Owner in the following terms:

1. To use all sums received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and not to expend the sums for any other purposes and the Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.
2. To pay to the Owner (or the payer if not the Owner) such amount of any payment made to the Council under this Agreement which has not been expended or allocated in accordance with the provisions of this Agreement within five years of the date of receipt by the Council of such payment together with interest accrued from time to time for the period from the date of payment to the date of refund.
3. That it will following receipt of the written request of the Owner at any time or times after any of the obligations in this Agreement have been discharged issue written confirmation thereof as soon as reasonably practicable or if the Planning Permission has expired or been quashed or revoked will cancel all relevant entries in the Register of Local Land Charges as soon as reasonably practicable.

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties the day and year first before written

The Common Seal of
AMBER VALLEY BOROUGH COUNCIL
was hereunto affixed in the presence of:



EXECUTED as a DEED by
J MELROSE DEVELOPMENTS LIMITED
acting by:

Director

Director / Secretary

