

Dated _____ **2025**

THE ROCHDALE BOROUGH COUNCIL

and

STEVEN WILLIAM LOMAX AND ELLEN MARY LOMAX

and

M.C.I. DEVELOPMENTS LIMITED

AGREEMENT

**Pursuant to Section 106 of the Town & Country
Planning Act 1990 in respect of Land lying to the
North West of Trub Farm, Manchester Road,
Castleton**

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AN AGREEMENT by way of Deed made the day of 2025

BETWEEN

- (1) **THE ROCHDALE BOROUGH COUNCIL** of Town Hall Rochdale Greater Manchester OL16 1AB ("**the Council**"); and
- (2) **STEVEN WILLIAM LOMAX AND ELLEN MARY LOMAX** of Trub Farm, Castleton, Rochdale OL11 2XG ("**the Owner**"); and
- (3) **M.C.I. DEVELOPMENTS LIMITED** (Company Number: 07542476) whose registered office is at The Waterfront, Lakeside Boulevard, Doncaster, England, DN4 5PL ("**the Developer**")

together the 'parties'.

WHEREAS:

- (1) The Council is the Local Planning Authority for the purpose of the Town and Country Planning Act 1990 ("**the 1990 Act**") for the area in which the land (hereinafter referred to as "**the Site**") described in the Schedule hereto is situate and by whom the planning obligations contained in this Deed are enforceable
- (2) The Owner is the owner of the freehold estate in the Site legal title to which is registered under Title Numbers GM578069 and GM738970.
- (3) The Developer has an interest in the Site pursuant to a sale contract and has submitted the Application to the Council with the intention of carrying out the Development in accordance with the Permission
- (4) The parties hereto agree that it is necessary to make the Development acceptable in planning terms that this Deed be entered into and that the use of the said land should be restricted as hereinafter appearing and that the securing of such provision by way of the payments to be made to the Council and other matters set out in this Deed as hereinafter appearing are directly related to and fairly and reasonably related in scale and kind to the Development

NOW THIS DEED WITNESSETH as follows:

1. **DEFINITIONS AND CONSTRUCTION OF THIS DEED**

- 1.1. In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them:

"the Act"	Means the Town and Country Planning Act 1990 as amended
"Application"	Means the application for Planning Permission for residential development on the Site and given reference number 24/01007/FUL by the Council
"Commencement of the Development"	Means the commencement of the Development by the carrying out on the Site in accordance with the Planning Permission of a material operation as specified in Section 56(4) of the Act (but not including any operations

relating to site investigations remediation works safety security or surveys or the demolition of any existing buildings or clearance of or removal of contamination from the Site) and the phrase "Commence the Development" shall be construed in like manner

"Contributions"	Means the Highways Contribution, the POS Contribution and the Sports Contribution
"Council"	Means the Council of the Metropolitan Borough of Rochdale
"Development"	Means development pursuant to the Permission
"Highways Contribution"	Means a financial contribution of £563,297 Index Linked to be paid by the Owner to the Council and to be applied toward the adoption, necessary works, and ongoing maintenance of the Trub Farm vehicular access canal bridge pursuant to the terms of this Agreement
"Index"	Means the All Items Index of Retail Prices published by the Office for National Statistics or any successor body
"Index Linked"	Means increased in accordance with the following formula: Amount payable = the figure specified in this Deed x (A/B) where: A = the figure for the Index that applied immediately preceding the date the payment is due or is paid if earlier; and B = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission (or prior to the date of calculation where this Deed provides for a figure to be calculated at a later point in time)
"Permission"	Means the written planning permission to be granted pursuant to the Application
"Plan 1"	Means the plan attached at Appendix 1
"Plan 2"	Means the plan attached at Appendix 2
"POS Contribution"	Means a financial contribution of £169,251.66 Index Linked <u>(plus an administration charge of £8,462.58)</u> to be paid by the Owner to the Council and to be applied towards off-site public open space provision at Chesham Park or within the reasonable vicinity of the Site pursuant to the terms of this Agreement

"Public Open Space"	Means the part of the Site to be laid out as public open space as shown on Plan 2 and "POS" shall be construed accordingly
"Public Open Space Scheme"	Means the scheme identifying the detailed arrangements for the design, management and maintenance of the Public Open Space
"Site"	Means some of the land in respect of which the Application has been made and which is described in Schedule 1 and shown edged red on Plan 1
"Sports Contribution"	Means a financial contribution of £186,177.24 Index Linked (plus an administration charge of £9,308.86) to be paid by the Owner to the Council and to be applied toward formal sports provision at Thornham Cricket Club or within the reasonable vicinity of the Site pursuant to the terms of this Agreement
"Working Day"	Means any day from Monday to Friday inclusive which is not a Bank or Public Holiday

- 1.2. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 1.3. The clause paragraph and schedule headings do not form part of this Deed and shall not be taken into account in its construction or interpretation
- 1.4. Words importing the singular meaning where the context so admits includes the plural meaning and vice versa
- 1.5. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 1.6. 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
- 1.7. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 1.8. Reference to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its respective statutory functions
- 1.9. An obligation to do something includes an obligation to procure it to be done and an obligation not to do something includes an obligation not to allow it to be done
- 1.10. Where any details, scheme, strategy or plan is required to be submitted for approval under this Deed and such approval is obtained, unless expressly stated otherwise

nothing in this Deed shall prevent such details, scheme, strategy or plan from being resubmitted or amended by agreement between the Owner and the Council.

2. **LEGAL BASIS**

- 2.1. This Agreement which contains planning obligations for the purposes of Section 106 of the Act and is made pursuant to the said Section 106 with the intent that the covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 aforesaid or otherwise against the Owner and all persons deriving title from the Owner
- 2.2. Insofar as any of the covenants contained in the Agreement are not planning obligations within the meaning of Section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and all other enabling powers

3. **THIRD PARTY RIGHTS**

The parties to this Agreement agree that this Agreement may be rescinded or varied without the consent of any third party whose consent would otherwise be required pursuant to the Contracts (Right of Third Parties) Act 1999 ("**the 1999 Act**") and that nothing in this Agreement will create any rights in favour of any person pursuant to the 1999 Act.

EXCEPT as otherwise mentioned this Agreement shall take effect on the date of completion hereof.

4. **OWNER COVENANTS**

The Owner hereby enters into this Deed and covenants with the Council as follows:

4.1. **FINANCIAL CONTRIBUTIONS**

- 4.1.1. Not to Commence the Development until the Sports Contribution has been paid to the Council.
- 4.1.2. Not to Commence the Development until the Highways Contribution has been paid to the Council.
- 4.1.3. Not to Commence the Development until the POS Contribution has been paid to the Council.

4.2. **COMMENCEMENT OF DEVELOPMENT**

To give to the Council not less than five Working Days' notice in writing of the intended date of Commencement of the Development.

4.3. **INTEREST ON PAYMENTS**

To pay to the Council interest at the rate of 4% above the base rate of the Bank of England on any sum due under this Agreement which remains unpaid for more than three Working Days after the same has become due such interest to be paid from the date the sum becomes due

4.4. **CHANGE IN OWNERSHIP**

To notify the Council in writing of any sale of the Site and such notice shall include the date of the sale and the name and address of the person to whom the Site is sold and shall be given within 14 days of the completion of any such sale

5. **INDEXATION**

5.1. All Contributions payable to the Council shall be Index Linked.

5.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

6. **PROVISION OF ON-SITE PUBLIC OPEN SPACE**

6.1. Prior to the Commencement of Development the Owner shall submit a Public Open Space Scheme to the Council for approval.

6.2. The Public Open Space Scheme shall include details of the following:

6.2.1. The detailed design of the Public Open Space to be provided as part of the Development;

6.2.2. Planting plans and specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants and proposed numbers / densities;

6.2.3. Children's play equipment proposed to be included with the Public Open Space.

6.2.4. The proposals for the future management and ownership of the Public Open Space which for the avoidance of doubt may provide for the Owner to transfer of the Public Open Space to a Management Company for the purposes of its future management and in the event that such a transfer to a Management Company is proposed the Public Open Space Scheme shall include:

6.2.4.1. Details of the Management Company (including contact details of the company) to whom the Public Open Space will be transferred upon its completion; and

6.2.4.2. Any arrangements for ensuring that individual householders have a say or influence over the activities of the Management Company and whether this is to be achieved via the householders being given membership of the Management Company or the Management Company being set up as a community interest company

6.2.4.3. Proposals for the future maintenance of the Public Open Space by the Management Company including the estimated costs to be levied by the Management Company upon the owners or occupiers of the Dwellings in respect of the maintenance of the said Public Open Space.

- 6.2.4.4. The arrangements for ensuring that individual householders are given detailed breakdowns of the costs properly incurred and showing how the total cost is translated into their individual liability; and
 - 6.2.4.5. Any restrictions on year on year increases in any service charge and whether such restriction is to be fixed to a relevant cost index
- 6.3. The Council shall within 35 Working Days of the date of receipt of a Public Open Space Scheme from the Owner notify the Owner in writing of its approval to the Public Open Space Scheme proposed by the Owner or provide in writing its proposed amendments to the Public Open Space Scheme pursuant to which the Owner acting reasonably shall submit a revised Public Open Space Scheme incorporating those amendments as are reasonable and accepted PROVIDED THAT if the Council does not notify the Owner of its approval or proposed amendments to the Public Open Space Scheme within the 35 Working Days referred to above it shall be deemed that the Council has approved the Public Open Space Scheme submitted by the Owner.
- 6.4. In the event that (after a period of not less than 35 Working Days following receipt from the Owner of a revised Public Open Space Scheme submitted pursuant to Paragraph 1.3 of this Schedule 3) the Council serves further written notice upon the Owner stating that the Council does not approve the revised Public Open Space Scheme:
- 6.4.1. The Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owners of a further revised public open space scheme; and/or
 - 6.4.2. Either the Owner or the Council may invoke the provisions of clause 1111 of this Deed in respect of the acceptability or otherwise of the relevant revised public open space scheme.
- 6.5. Upon receipt of the Council's approval or deemed approval or to a Public Open Space Scheme pursuant to Paragraph 1.4 of this Schedule 3 (or upon receipt of expert determination in relation to the Public Open Space Scheme if applicable) the Owner shall as part of the carrying out of the Development provide the Public Open Space in accordance with the approved Public Open Space Scheme (as may be varied from time to time).
- 6.6. The Owner covenants that it shall not permit the Occupation of the final 5 (five) Dwellings ~~in a Phase~~ until the Council have confirmed in writing that the Public Open Space has been completed and made fit for use ~~on that Phase~~ in accordance with the approved Public Open Space Scheme ~~relevant to that Phase~~.
7. **MANAGEMENT AND MAINTENANCE OF THE PUBLIC OPEN SPACE**
- 7.1. Upon the Public Open Space ~~on a Phase~~ being completed to the Council's reasonable satisfaction in accordance with the approved Public Open Space Scheme ~~relevant to that Phase~~ the Owner shall either:
- 7.1.1. Transfer title for the Public Open Space ~~on that Phase~~ to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the Council and all further maintenance shall be thereafter

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carried out by the Management Company PROVIDED THAT it shall be a term of the transfer that the Management Company shall:

- 7.1.1.1. Maintain and manage in perpetuity the Public Open Space ~~on that Phase~~ in accordance with the Public Open Space Scheme ~~relevant to that Phase~~ or any variations that may be agreed in writing from time to time; and
 - 7.1.1.2. Only allow the use of the Public Open Space for public access and recreation and for no other purpose; or
- 7.1.2. Maintain and manage in perpetuity the Public Open Space ~~on that Phase~~ in accordance with the approved Public Open Space Scheme ~~relevant to that Phase~~ (or any variations that may be agreed in writing between the Owner and the Council from time to time) IN DEFAULT OF WHICH the Council shall be entitled (upon giving reasonable prior written to the Owner) to carry out any maintenance works reasonably required to the Public Open Space and recover the proper and reasonable costs and expenses involved from the Owner.
- 7.2. The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Public Open Space has not been dedicated to the public nor is any use by the public of any part of the Public Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 7.3. The Owner shall allow public access to the Public Open Space SUBJECT ALWAYS to the following provisions:
 - 7.3.1. Access to the Public Open Space shall be subject to such requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management PROVIDED THAT such requirements and regulations shall not be imposed without the Council's prior approval; and
 - 7.3.2. The Owner may erect notices on the Public Open Space and access to the Public Open Space may be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;
 - 7.3.3. The Owner may close the Public Open Space or any part thereof for reasonable periods by reason of:
 - 7.3.3.1. Emergency;
 - 7.3.3.2. Cleansing, maintenance and repair;
 - 7.3.3.3. At the direction of the emergency services or other lawful authority; and
 - 7.3.3.4. Construction activities whilst the Development is being carried out.

8. **DEVELOPERS COVENANT**

8.1. **LEGAL COSTS**

To pay to the Council on completion of this Agreement the sum of thousand pounds no VAT (£3000) in respect of the cost of the preparation and execution of this Agreement and duplicates thereof

9. **COUNCIL COVENANTS**

IN consideration of the covenants by the Owner the Council hereby covenants with the Owner as follows:

- 9.1. That it will within seven days of the date of payment of its costs set out in clause 5.1 issue the Permission
- 9.2. That it will use the Contributions paid under the provisions of this Agreement for the purposes set out in this Agreement and for no other purpose
- 9.3. That in the event that the Contributions have not been spent or committed to the purposes set out in this Agreement within ten years from the date of payment then it will repay to the party who paid the same such part of the Contributions as has not been spent or committed but without being liable for interest on any sums so repaid

10. **RELEASE**

- 10.1. No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement:

- 10.1.1. which affect part of or all of the Site in which he has no interest or which occur after he has parted with part or all of his interest in the Site;
- 10.1.2. if it is a statutory undertaker which has an interest in any part of ~~10.1.3~~ 10.1.3 if that party is an owner or occupier of an individual Dwelling; or
- 10.1.3. if it is a chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

- 10.2. This Agreement shall cease to have effect if the Permission is quashed; revoked; withdrawn; expires prior to the Commencement of Development or otherwise becomes incapable of implementation in its entirety and in such event the Council shall remove the entry in the Local Land Charges Register relating to it

11. **CONDITIONALITY**

This Deed is conditional upon the grant of the Permission and Commencement of Development save where this Deed expressly states otherwise

12. **LOCAL LAND CHARGE**

12.1. This Deed shall be registered as a local land charge by the Council

12.2. Following the performance and satisfaction of all obligations contained in this Deed the Council shall effect the cancellation of the entry in the Local Land Charges Register relating to it

13. **NOTICES**

Any notice required to be served on any party to this Deed shall be deemed to have been properly served if delivered or sent by the recorded delivery service to the address of the party given in this Deed or to such other address as shall have been notified by that party in writing to all other parties

14. **SEVERABILITY**

If any clause of this Deed shall be found to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

15. **DUTY TO ACT REASONABLY**

Where any matter is required to be agreed by any party then such agreement shall not be unreasonably withheld or delayed

16. **NO WAIVER**

No waiver whether express or implied by the Council in respect of any breach or default in performing any of the obligations in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the remaining obligations or from acting upon any subsequent breach or default

17. **DISPUTES**

In the event of any dispute disagreement or difference hereunder and the parties hereto having been unable to resolve the same within four weeks either party shall be entitled to refer the matter in dispute to expert determination by an expert of not less than ten years' standing in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute another professional institution or body the identify of such person in default of agreement being an appointment made by the President of the Royal Institution of Chartered Surveyors who shall determine the matter in such manner as he shall direct in giving notice of his appointment the terms of appointment including that he make reasonable endeavours to determine the matter in dispute and issue his determination in writing giving full reasons therefor within ten weeks of his appointment and his costs shall be paid by the parties as directed AND the parties shall comply with his directions and determination save for matters of law and any manifest error.

18. **FUTURE PERMISSIONS**

18.1. In the event that an application is made pursuant to Section 73 or Section 73B of the 1990 Act for an amendment to the Planning Permission and planning permission is granted by the Council in respect of that application then:

- 18.1.1. references to "Application", "Permission" and "Development" in this Deed shall thereafter be deemed to include the application made pursuant to Sections 73 or 73B, the new planning permission granted pursuant to Section 73 or 73B of the 1990 Act and the development permitted by that permission respectively; and
- 18.1.2. this Deed shall apply to and remain in full force in respect of both the Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council.

in each case **PROVIDED THAT:**

- 18.1.3. nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73B of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and
- 18.1.4. to the extent that any of the planning obligations have been discharged in respect of the original Planning Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 or 73B of the 1990 Act.

19. **DEVELOPER CONSENT**

The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that if it acquires a freehold or leasehold interest in the Site it will be subject to the obligations in this Deed as a person deriving title thereto PROVIDED THAT the Developer shall otherwise have no liability (save in respect of clause [9.19.1](#)) unless it acquires a freehold or leasehold interest in the Site.

20. **JURISDICTION**

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

IN WITNESS WHEREOF the parties hereto have duly executed this Deed the day and year first before written

EXECUTED AS A DEED by affixing)

the Common Seal of **THE ROCHDALE**)

BOROUGH COUNCIL in the presence of:)

Authorised Signatory

SIGNED AS A DEED by

STEVEN WILLIAM LOMAX

In the presence of:

Witness Signature:

Name of Witness:

Address:

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SIGNED AS A DEED by

ELLEN MARY LOMAX

In the presence of:

Witness Signature:

Name of Witness:

Address:

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EXECUTED AS A DEED by

M.C.I DEVELOPMENTS LIMITED

By a Director

In the presence of:

Witness Signature:

Name of Witness:

Address:

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Schedule 1

Description of the Site

Land lying to the North West of Trub Farm, Manchester Road, Castleton legal title to which is registered under Title Numbers GM578069 and GM738970

APPENDIX 1 – PLAN 1

APPENDIX 2 – PLAN 2