
Dated: 15th April 2024

- (1) Global Developments (UK) Limited
- (2) Ashfield District Council

Planning Agreement

section 106 of the Town and Country Planning Act 1990 relating to proposed development at Pendean Way, Sutton in Ashfield

THIS AGREEMENT is made on

15th April

2024

BETWEEN

- (1) **GLOBAL DEVELOPMENTS (UK) LIMITED** (Company Registration Number 04149336) whose registered office is at W H Prior, Railway Court, Doncaster, South Yorkshire, DN4 5FB ("the **Owner**"); and
- (2) **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA (the "**District Council**").

BACKGROUND

- (A) By means of the Planning Application, planning permission is sought by the Owner 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 Site is situated.
- (C) The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- (D) The Owner is the freehold owner of the Site which is registered at HM Land Registry with title number NT526106, NT444828, NT586431, NT587557, NT467045 and NT584606.
- (E) The Owner has agreed to enter into this Agreement with the intent that its interests in the Site 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.
- (F) 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 words and expressions have the following meanings:

"Act"	the Town and Country Planning Act 1990 as amended
"Affordable Housing Contribution"	the sum of 40% of the Open Market Value (evidence of such sum to be provided to the District Council as being the average sum of three independent valuations) of Plot 4 as at the date of completion of the sale of Plot 4 or upon first Occupation of Plot 4 (whichever is the soonest) to be used towards the provision of affordable housing in the district of Ashfield
"Bus Stop Contribution"	the sum of £3,325 (Three Thousand Three Hundred and Twenty Five Pounds) Index Linked payable by the Owner to the District Council for onward payment to the County Council and towards improvements to the bus stop on Kirkby Road denoted AS0645 Sherwood Road.
"Commencement of Development"	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:

- (a) trial holes or other operations to establish the ground conditions of the Site, site survey work, or works of remediation;
- (b) archaeological investigations on the Site;
- (c) any works of demolition or site clearance;
- (d) any structural planting or landscaping works;
- (e) ecological or nature conservation works associated with the Development;
- (f) construction of site compounds boundary fencing or hoardings;
- (g) construction of off-site access or highway works or provision of services (including drainage and media) including temporary access for construction works;
- (h) any other preparatory works agreed in writing with the District Council; and

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

"County Council"	Nottinghamshire County Council of County Hall, West Bridgford, Nottingham NG2 7QP (or any successor authority)
"Development"	the development described in the Planning Application and to be carried out pursuant to the Planning Permission
"Dwelling(s)"	a dwelling built pursuant to the Planning Permission
"Index Linked"	the application to the sum concerned of the indexation set out in Schedule 3 hereto
"Monitoring Contribution"	the sum of £1,000 (one thousand pounds) Index Linked payable by the Owner to the District Council towards the costs of monitoring compliance with this Agreement
"Occupation"	occupation of the Development pursuant to the Planning Permission but not including occupation by any person engaged in the construction, fitting out, decoration or occupation associated with marketing, display or security operations, use as temporary offices or for the storage of plant or materials and the words Occupy and Occupier shall be construed accordingly

"Offsite Biodiversity Contribution"	the sum of £12,000 (Twelve Thousand pounds) Index Linked payable by the Owner to the District Council towards supporting habitat creation and enhancements including but not limited to tree planting, wildflower areas, hedgerows and / or river restoration schemes in Ashfield
"Open Market Value"	the value of a Dwelling to be sold on the open market based on the following assumptions: a) a willing seller; b) a reasonable period for the proper marketing of the Dwelling; and market conditions at the time of the valuation
"Plan 1"	the plan attached hereto at Appendix 1
"Plan 2"	the plan attached hereto at Appendix 2
"Planning Application"	the planning application submitted to the District Council and allocated reference number V/2023/0156 applying for planning permission for 12 Dwellings
"Planning Permission"	a planning permission granted pursuant to the Planning Application
"Plot 4"	the Dwelling described as Plot 4 (a 3-bed property) and as shown edged in yellow on Plan 2
"POS Contribution"	the sum of £24,000 (Twenty Four Thousand pounds) Index Linked payable by the Owner to the District Council towards improvements to Ashfield's Open Space Network (Ashfield's connected network of green access links within and between urban areas)
"Section 73 Consent"	a planning permission granted pursuant to Section 73 of the Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the Act was granted subject to
"Site"	the land shown edged red on Plan 1
"Working Day"	a day other than a Saturday or Sunday or public holiday in England

- 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 a planning authority under the Act.
- 1.7 The expressions "the Owner" and "the District Council" shall where the context so admits include their respective successors and assigns.

2. GENERAL PROVISIONS

Statutory Authority

- 2.1 This Agreement and each of the covenants given by the Owner contained herein is a planning obligation and is made pursuant to section 106 of the Act.
- 2.2 The covenants by the Owner contained herein shall be enforceable by the District Council.

Liability

- 2.3 The Owner covenants with the District Council as set out in **Schedule 1**.
- 2.4 The District Council covenants with the Owner as set out in **Schedule 2**.
- 2.5 The covenants given by the Owner contained herein are made with the intent that the covenants will bind the Owner's interest in the Site and be binding on and enforceable against its successors in title or assigns and subject to **clause 2.7** 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, including part of land, of which he is no longer seised save in respect of any prior subsisting breach.
- 2.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or amendment and/or variation thereto including a Section 73 Consent) 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/or the District Council as evidenced by a memorandum endorsed on this Agreement.
- 2.7 The covenants contained in this Agreement shall not be enforceable against:
- 2.7.1 individual purchasers, lessees, occupiers or tenants of the Dwellings on the Site constructed pursuant to the Planning Permission or their mortgagees or charges and successors in title; or
 - 2.7.2 statutory undertakers in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations or pumping stations; or
 - 2.7.3 anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant.

Commencement of Development

- 2.8 In the event that the Owner disposes of its interest in the Site or any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within 28 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

- 2.9 The obligations in this Agreement shall be conditional upon the issuing of the Planning Permission and the Commencement of Development save for this **clause 2.9** and **clauses 2.10, 2.14, 2.15** and **2.18 – 2.26 (inclusive)** 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.
- 2.10 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 in such event 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 as soon as is reasonably practicable following such written request.
- 2.11 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.
- 2.12 If the Owner makes 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 (if any), the District Council will place such a note, as soon as reasonably practicable, 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. If the Owner also requests the District Council to confirm in writing which obligations under this Agreement have been discharged, then the District Council shall provide such confirmation as soon as reasonably practicable.
- 2.13 Following the performance of all covenants and obligations contained in this Agreement to the District Council's satisfaction the District Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

Determination by Expert

- 2.14 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner 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 either party (notice of which shall be given to the other party or parties) be referred to such expert as the parties 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:
- 2.14.1 the person to be appointed pursuant to **clause 2.14** shall if possible be a person having ten 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; and
- 2.14.2 the reference to the expert shall be on terms that:
- 2.14.2.1 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;
- 2.14.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
- 2.14.2.3 the expert shall be bound to have regard to the said submissions and representations;
- 2.14.2.4 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;

2.14.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and

2.14.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the relevant Owner(s) and the District Council save that the parties retain the right to refer to the Courts on a matter of law.

Approvals

2.15 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

2.16 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.

2.17 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

2.18 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

2.19 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 forgoing provisions would be to defeat the original intention of the parties.

Application of this Agreement

2.20 If any Section 73 Consent is granted after the date of this Agreement:

2.20.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and

2.20.2 the definitions of Planning Application, Development and Planning Permission (other than for the purpose of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself.

PROVIDED THAT in the event of a different section 106 obligation agreed by the District Council being binding on any Section 73 Consent, this obligation shall not apply to that Section 73 Consent if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

Costs

- 2.21 The District Council hereby acknowledges receipt of payment of the Monitoring Contribution and its reasonable legal costs in respect of the preparation of this Agreement.

No Fetter of Discretion

- 2.22 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

- 2.23 No waiver (whether express or implied) by the District Council of any breach or default by the Owner 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 Owner.

General Requirement to Co-operate

- 2.24 Without prejudice to its statutory duties the District Council and the Owner 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.

Interest

- 2.25 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, calculated on a daily basis at a rate of 8% above the Bank of England base for the period the payment is overdue.

Jurisdiction

- 2.26 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

Mortgagee Exclusion

- 2.27 Any mortgagee or chargee of a mortgage or charge registered against any part or parts of the Site shall have no liability under this Agreement unless and until it becomes a mortgagee in possession or successor in title of the Site or part of the Site in which case it too will be bound by the Owner's obligations under this Agreement as if it were a person deriving title from the Owner.
- 2.28 A mortgagee or chargee of the Site shall have no liability after they have discharged the security or disposed of the Site which is subject to their security, whether by sale or otherwise provided that the mortgagee or chargee will not be released from any liability incurred prior to this.

SCHEDULE 1

THE OWNER'S OBLIGATIONS TO THE DISTRICT COUNCIL

The Owner covenants with the District Council as follows:

Part 1 – Financial Contributions

1. The Owner covenants with the District Council to pay to the District Council the Bus Stop Contribution, the Offsite Biodiversity Contribution, the POS Contribution and the Affordable Housing Contribution as follows:

Bus Stop Contribution

- 1.1 To pay the Bus Stop Contribution prior to Commencement of the Development; and
- 1.2 Not to Commence the Development prior to payment of the Bus Stop Contribution.

Offsite Biodiversity Contribution

- 1.3 To pay the Offsite Biodiversity Contribution to the District Council prior to Commencement of the Development; and
- 1.4 Not to Commence the Development or cause or permit Commencement of the Development prior to payment of the Offsite Biodiversity Contribution.

POS Contribution

- 1.5 To pay the POS Contribution as follows:
 - 1.5.1 50% of the POS Contribution prior to Commencement of the Development; and
 - 1.5.2 the remaining 50% of the POS Contribution prior to first Occupation of the 8th (eighth) Dwelling.
- 1.6 Not to:
 - 1.6.1 Commence the Development or cause or permit Commencement of the Development unless and until 50% of the POS Contribution has been paid to the District Council; and
 - 1.6.2 Occupy more than 8 (eight) of the Dwellings unless and until the POS Contribution has been paid to the District Council in full.

Affordable Housing Contribution

- 1.7 To pay the Affordable Housing Contribution on the date of completion of the sale of Plot 4 or prior to first Occupation of Plot 4, whichever is the soonest; and
- 1.8 Not to first Occupy or cause or permit first Occupation of Plot 4 prior to payment of the Affordable Housing Contribution.

Part 2 –General

- 1.9 The Owner covenants to give the District Council:
 - 1.9.1 not less than 7 (seven) days prior written notice of:
 - 1.9.1.1 the Commencement of Development;

- 1.9.1.2 Occupation of the first (1st) Dwelling; and
- 1.9.1.3 Occupation of the eighth (8th) Dwelling.

SCHEDULE 2

DISTRICT COUNCIL'S COVENANTS TO THE OWNER

1. The District Council covenants with the Owner as follows:

Part 1 – Financial Contributions

Bus Stop Contribution

- 1.1 To pass to the County Council (in its capacity as Highways Authority) the Bus Stop Contribution or any part thereof following receipt of written confirmation from the County Council that:
 - 1.1.1 such monies shall be used solely towards improvements to the bus stop on Kirkby Road denoted AS0645 Sherwood Road and for no other purposes whatsoever; and
 - 1.1.2 if all or any part of the monies shall remain unexpended after the period of ten (10) years from the date of receipt by the County Council of the final payment pursuant to **paragraph 1.1 of Part 1 of Schedule 2** by the Owners to the District Council it shall following receipt of a request from the District Council or the Owners repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment
- 1.2 To forward to the Owners any monies received from the County Council (in its capacity as Highways Authority) pursuant to paragraph 1.1.2 of this Part 1.

Offsite Biodiversity Contribution

- 1.3 To use the Offsite Biodiversity Contribution, solely for the purposes set out in this Agreement and for no other purposes whatsoever.
- 1.4 If all or any part of the Offsite Biodiversity Contribution shall remain unexpended after the period of 10 (ten) years from the date of payment by the Owner to the District Council it shall following receipt of a request from the payer repay such unexpended monies to the payer together with interest thereon calculated from the date of payment to the date of repayment.

POS Contribution

- 1.5 To use the POS Contribution, solely for the purposes set out in this Agreement and for no other purposes whatsoever.
- 1.6 If all or any part of the POS Contribution shall remain unexpended after the period of 10 (ten) years from the date of payment by the Owner to the District Council it shall following receipt of a request from the payer repay such unexpended monies to the payer together with interest thereon calculated from the date of payment to the date of repayment.

Affordable Housing Contribution

- 1.7 To use the Affordable Housing Contribution, solely for the purposes set out in this Agreement and for no other purposes whatsoever.
- 1.8 If all or any part of the Affordable Housing Contribution shall remain unexpended after the period of 10 (ten) years from the date of payment by the Owner to the District Council it shall following receipt of a request from the payer repay such unexpended monies to the payer together with interest thereon calculated from the date of payment to the date of repayment.

SCHEDULE 3

INDEXATION PROVISIONS

1. In this Schedule:

"Base Index Date"	means the date of this Agreement
"Base Index Figure"	the figure published in respect of the Index immediately prior to the Base Index Date
"Final Index Figure"	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
"Index"	The Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or in the event of discontinuance any replacement thereof or such alternative index as may be agreed in writing between the Owner and the District Council

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:

2.1 "A" equals the relevant contribution;

2.2 "B" equals the Base Index Figure; and

2.3 "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.

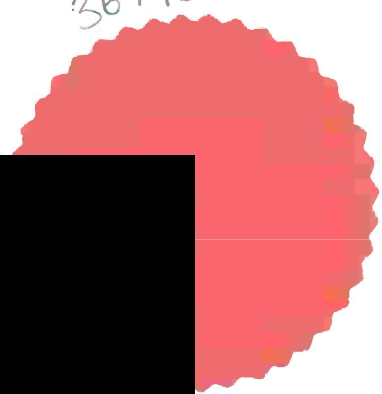
4. If any substitution for the said Index or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the RPI or any index previously substituted therefore on the other hand.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the date first above written

EXECUTED AS A DEED
by **ASHFIELD DISTRICT COUNCIL**
having affixed its common seal
to this deed in the presence of:-

)
)
)
)

36796



~~Chairman / Vice-Chairman~~

~~Chief Executive / Deputy Chief Executive~~
Executive Director



Executed as a deed by
GLOBAL DEVELOPMENTS (UK) LIMITED
acting by Adam Gilbert a director in the
presence of:

)
)
)


.....
Witness signature

ANNA IBBOTSON
.....
Witness name

26 MELBOURNE RD DUNCASTER DUNLOCH
.....
Witness address

FINANCE MANAGER
.....
Witness occupation



APPENDIX 1

Plan 1

Location Plan:

North:

Legend:

-  Application site.
-  Adjacent sites in same ownership.

Ashfield District Council rec'd 17.03.2023



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Project:
Proposed Residential Development

Project Address:
**Land off Pendean Way
Sutton in Ashfield**

Client:
Woodsetts Homes Ltd

Jackson Design Associates

Latimer House, Latimer Way,
Sherwood Energy Village,
Ollerton, Nottinghamshire, NG22 9QW

Telephone: (01623) 863 222
Facsimile: (01623) 863 555
www.jacksonsdesign.co.uk

ARCHITECTURE • DESIGN • MANAGEMENT

j·d·a

Scale (Size):
1:1250 @ A4
Ref (Rev):
21-2333-(LP)

Date:
July 2021

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Papercheck Size
0 10mm 20mm

A4

APPENDIX 2

Plan 2

