

DATED

8th January 2025 *1b.*

(1) ROSENDALE BOROUGH COUNCIL

(2) McDERMOTT DEVELOPMENTS LIMITED

DEED OF VARIATION OF UNILATERAL UNDERTAKING

Under section 106 and section 106A Town and Country Planning Act 1990 relating to

Land at Douglas Road/Tong Lane, Bacup, Lancashire

Woodcocks Haworth & Nuttall
31 King Street, Clitheroe, Lancashire, BB7 2EU
Ref: NBP / 100463.074

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THIS DEED is made on

8th January 2026⁰⁰

BETWEEN

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre Futures Park, Bacup, OL13 0BB ("the Council"); and
- (2) **McDERMOTT DEVELOPMENTS LIMITED** (Co. Regn. 02701792) whose registered office is at Jupiter House, 1 Mercury Rise, Altham Business Park, Altham, Lancashire BB5 5BY ("the Owner")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Property is located and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited.
- (B) The Owner is the registered freehold proprietor of the Property which is registered at the Land Registry under title numbers LA478630 and LA633102 with title absolute, free from encumbrances.
- (C) On 4th June 2004 the Owner applied to the Council pursuant to the Act for permission to develop the Property under Application reference 2004/401 for the approval of matters reserved on the grant of outline planning permission on 8th September 1966 and given reference number 13/1/2423 ("the Application").
- (D) On the 3rd of May 2005 the Owner entered into a Unilateral Undertaking ("the Original Agreement") as a prerequisite of the grant of planning permission made under the Application.
- (E) The purpose of the Original Agreement was to provide open space and secure the maintenance thereof to provide for the needs of prospective residents of the Property and the neighbourhood in general.
- (F) Planning permission was granted to the Owner under appeal reference APP/B2355/W/3356090 on the 6th of May 2025 which provided for open space on the land owned by the Owner under title numbers LA952760, LA692901 and LA478630 ("the Adjoining Land").
- (G) The Council has agreed to the variation of the Original Agreement in respect of the provision of open space as inter alia further open space has been provided on the Adjoining Land.
- (H) This deed is supplemental to the Original Agreement and varies the Original Agreement in the manner set out herein in respect of the Property by agreement with the Council.
- (I) Anything performed in the Original Agreement as amended by the deed of variation is taken to have been performed in this new deed.

THIS DEED WITNESSES THE FOLLOWING:

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 All words and phrases defined in the Original Agreement have the same meaning in this Deed (including for the avoidance of doubt the recitals above) unless explicitly stated otherwise.
- 1.2 In this Deed the terms and expressions defined in the Original Agreement shall have the same meaning in this Deed and generally this Deed shall be interpreted in accordance with the provisions set out in the Original Agreement unless otherwise provided.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106 and Section 106A of the TCPA 1990 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other enabling powers so as to bind the Property and the parties hereto and is enforceable by the Council as the Local Planning Authority for the area within which the Property is situated as set out in the Original Agreement.
- 2.2 The Owner agrees to observe and perform all of the covenants agreements restrictions and obligations on the part of the Owners contained in the Original Agreement as amended by this Deed noting that the obligations and covenants by the Owner in this Deed are planning obligations for the purposes of Section 106 and Section 106A of the TCPA 1990 and are enforceable by the Council in the manner set out in the Original Agreement and this Deed.
- 2.3 The Owner agrees that the covenants and obligations contained in the Original Agreement shall continue in full force and effect except as expressly varied by this Deed PROVIDED THAT the parties hereby agree that anything performed in the Original Agreement is taken to have been performed in this new Deed.
- 2.4 The covenants made herein on the part of the Council shall be enforceable against the Council and any statutory successor to them as local planning authority.
- 2.5 The covenants given by the Owner contained herein are made with the intent that the covenants will bind its interest in the Property and be binding on and enforceable against those deriving title through and under it (other than a disposal to a purchaser of an individual Dwelling).

3. VARIATION TO THE ORIGINAL AGREEMENT AND PLANNING OBLIGATION

- 3.1 The parties to this Deed hereby agree and consent to the following:

- 3.1.1 Clause 3(a) of the Original Agreement shall be deleted and the following inserted in its place:

"3(a) provide and landscape the public open spaces and incidental open spaces shown upon drawing number 26/GA/02 Revision D"

4. APPLICATION OF PLANNING OBLIGATIONS

It is hereby agreed that any steps taken pursuant to the Original Agreement in satisfaction of the obligations therein shall be deemed to have been taken for the purposes of this Deed and mutatis mutandis.

5. MISCELLANEOUS

- 5.1 Except as expressly varied by this Deed the Original Agreement shall remain in full force and effect and be read with all necessary changes being made to give effect to the Original Agreement as varied by this Deed
- 5.2 The expressions "the Owner" shall include those deriving title through and under them in respect of the Property other than a disposal to a purchaser of an individual Dwelling and expression "the Council" includes any successor to its functions as the local planning authority
- 5.3 Insofar as any clause or clauses in this Deed 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 Deed.

6. THIRD PARTY RIGHTS

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the Council's statutory functions.

7. LOCAL LAND CHARGE

This Deed shall be registered as a Local Land Charge.

8. WARRANTY OF TITLE

The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

9. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

10. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated and delivered as a Deed.

IN WITNESS whereof the Owner and the Council have executed this Deed and it is delivered on the date first above written.

EXECUTED AND DELIVERED AS A DEED by
ROSSENDALE BOROUGH COUNCIL
affixing hereto its Common Seal
in the presence of:-

[REDACTED]
.....
Authorised Signatory

CLARE BIRNMISTE
Please print name (Block Capitals)

No. IN SEAL
REGISTER
115310



EXECUTED as a Deed by
MCDERMOTT DEVELOPMENTS
LIMITED acting by a Director:

.....
Director

RICHARD KAY

.....
Please print name (Block Capitals)

in the presence of:

Witness Signature:

Witness Name: Phillip Greaves

Witness Address: [REDACTED]
[REDACTED]



