

DATED 13th May 2022

JELSON LIMITED (1)

and

CHARNWOOD BOROUGH COUNCIL (2)

and

LEICESTERSHIRE COUNTY COUNCIL (3)

SUPPLEMENTAL DEED OF AGREEMENT
under Section 106 of the Town and Country Planning Act 1990
in respect of land off Long Meadow Way, Birstall, Leicestershire
(LPA Planning Ref: P/21/2007/2)



3 The Osiers Business Centre
Leicester
LE19 1DX

Tel: 0116 247 3500

Ref: KMT/229369.22

THIS SUPPLEMENTAL DEED OF AGREEMENT is made the 13th day of May 2022
BETWEEN

1. **JELSON LIMITED** (Co Regn No 571641) of 370 Loughborough Road, Leicester LE4 5PR ("the Owner")
2. **CHARNWOOD BOROUGH COUNCIL** of Southfield Road, Loughborough, LE11 2TX ("the Borough Council")
3. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester, LE3 8RA ("the County Council")

Together "the Parties"

WHEREAS

- a) The Borough Council is the local planning authority for the purposes of Section 106 of the Act for the area in which the Application Land is situated and by whom the obligations contained in this Agreement are enforceable.
- b) The County Council is a local planning authority and is responsible for the provision of education library and civic amenity services for the area in which the Application Land is situated.
- c) The Owner is the freehold owner of the Application Land registered at HM Land registry with title absolute under Title Number LT372123 and warrants that it is free from encumbrances preventing the Owner from entering into this Agreement or that might limit the scope of this Agreement or otherwise prevent it from taking full effect.
- d) The Borough Council granted planning permission on 26 February 2021 under reference P/19/1543/2 ("the Planning Permission") and an Agreement dated 26 February 2021 was entered into under Section 106 of the Act ("the Principal Agreement").
- e) The Owner has submitted to the Borough Council a section 73 application (Borough Council Reference P/21/2007/2) to amend the house types of the Affordable Housing Dwellings as well as clarifying the materials schedule ("the s73 Application") as the Owner has been unable to enter into an agreement with a Registered Provider for the Affordable Housing Dwellings.
- f) Should planning permission be granted pursuant to the s73 Application this will result in a new planning permission ("the s73 Permission") and it is the Parties' intention that

the s73 Permission and all development carried out pursuant to that permission will also be regulated by the Principal Agreement.

- g) The Borough Council is therefore minded to grant the s73 Permission for the Development subject to the Owner entering into this Supplemental Deed of Agreement ("Supplemental Deed") to ensure that all development carried out pursuant to the s73 Permission is bound by and subject to the provisions of the Principal Agreement.

2 INTERPRETATION

- 2.1 The definitions in the Principal Agreement shall apply to this Supplemental Deed unless stated to the contrary
- 2.2 Where the context so admits:-
- 2.2.1 the masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa;
 - 2.2.2 covenants, restrictions, obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally;
 - 2.2.3 reference to the Owner in this Supplemental Deed shall include its successors in title and assigns and all persons deriving title under them except where expressly provided otherwise;
 - 2.2.4 a covenant, restriction or obligation by any party to this Supplemental Deed not to do something shall be construed as including a covenant, restriction or obligation not to permit or knowingly suffer it to be done by a third party;
 - 2.2.5 reference to any statutory or other body shall include reference to its successors in function;
 - 2.2.6 reference to a clause or schedule is a reference to a clause or schedule contained in this Supplemental Deed;
 - 2.2.7 references to statutes, acts, orders, directions, regulations and statutory instruments includes (where appropriate) reference to their amendments and replacements.

3 OPERATIVE CLAUSES

- 3.1 This Supplemental Deed is supplemental to the Principal Agreement and is made pursuant to section 106 of the Act and the covenants restrictions and obligations

contained mentioned or referred to in this Supplemental Deed or agreed or completed pursuant to it are planning obligations for the purposes of that section.

- 3.2 In so far as any of the covenants, restrictions and obligations contained in this Supplemental Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in sections 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers enabling the parties hereto to enter into this Supplemental Deed and in consideration of the covenants, restrictions and obligations hereinafter contained.
- 3.3 No person shall be liable for any breach of the covenants, restrictions or obligations contained or referred to in the Principal Agreement as applied by this Supplemental Deed occurring after they have parted with all of their interest in the Application Land or the part of the Application Land in respect of which such breach occurs but without prejudice to their liability for any subsisting breach prior to parting with such interest.
- 3.4 This Supplemental Deed shall be registered as a Local Land Charge by the Borough Council.
- 3.5 Nothing in this Supplemental Deed shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligation of the Borough Council or the County Council under all statutes bylaws statutory instruments orders and regulations or any exercise of their functions as a local authority.
- 3.6 No terms of this Supplemental Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 3.7 This Supplemental Deed 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 laws of England.

4 AGREEMENTS AND CONTINUING OBLIGATIONS

- 4.1 The Parties hereby agree that the Owner is unable to enter into a sale and purchase agreement with a Registered Provider to deliver the Affordable Housing Dwellings in accordance with paragraph 4.1.6 of the Principal Agreement and the Owner has provided the Borough Council with written notice and evidence of the same.
- 4.2 The Borough Council has given reasonable consideration of the evidence provided in accordance with paragraph 4.1.7 of the Principal Agreement and has provided

written notice that it is satisfied by the evidence so provided pursuant to paragraph 4.1.7(i) of the Principal Agreement.

- 4.3 The Borough Council has provided written notice to the Owner that their preferred option in relation to paragraph 4.1.8 of the Principal Agreement is for the Owner to pay the Affordable Housing Contribution in accordance with sub-paragraph 4.1.8(ii) of the Principal Agreement
- 4.4 The Owner hereby agrees to pay to the Borough Council the Affordable Housing Contribution in the agreed sum of Four Hundred and Seventy Five Thousand Pounds (£475,000) within 28 days of the date of this Agreement.
- 4.5 The Parties covenant that the obligations and covenants in the Principal Agreement (as varied herein) shall (save to the extent that they have already been satisfied) continue to bind the Application Land and continue to bind any development carried out on the Application Land whether in accordance with the Planning Permission or the s73 Permission or either of them from the date hereof SAVE THAT this Supplemental Deed shall not impose any additional requirements in respect of the Planning Permission or the s73 Permission.
- 4.6 In respect of any development carried out pursuant to the s73 Permission references in the Principal Agreement to the terms the Planning Application, the Planning Permission and the Development shall be construed as referring to that pursuant to the s73 Application and s73 Permission
- 4.7 The covenants and obligations given by the Owner herein shall bind the Owner's interests in the Application Land and any successor in title thereto save that the Owner shall not be liable for any breach of any covenants or obligation after it has parted with its interest in the Application Land save and unless such breach occurred prior to the disposal of such interest
- 4.8 If the Borough Council grants a further planning permission which does not give rise to any changes to the number of Dwellings hereby permitted, to include the substitution of house types or other minor variations to the design or layout of the Development or pursuant to section 73 of the Act with the effect of varying or releasing any condition attached to the Planning Permission or the s73 Permission the covenants and provisions of the Principal Agreement as applied by the terms of this Deed shall be deemed to bind such planning permission and to apply in equal terms to the new planning permission save unless either the Borough Council or the County Council in consideration of such application require a new agreement or deed of variation to be entered into.

5 VARIATIONS TO THE PRINCIPAL AGREEMENT

5.1 The Parties hereby agree that Clause 6.1.2 of the Principal Agreement shall be deleted in its entirety and replaced with the following:

6.1.2 That upon the receipt of a written request from the Owner or whoever shall have paid the monies it will repay to the Owner such amount of any payment made to the Borough Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Borough Council of such payment together with interest at the Bank of England base rate from time to time or if greater that has accrued thereon in the period from the date of receipt to the date of repayment, save for in respect of the Affordable Housing Contribution where only any sum not expended within ten years of receipt by the Borough Council shall be so repaid

6 DETERMINATION OF DEED

6.1 This Supplemental Deed shall be determined and have no further effect if the s73 Permission

6.1.1 Expires before Commencement of Development pursuant to the s73 Permission;

6.1.2 Is varied or revoked other than at the request of the Owner; or

6.1.3 Is quashed following a legal challenge

IN WITNESS WHEREOF these presents have been duly executed as a deed by the parties hereto the day and year first before written

EXECUTED AS A DEED by

JELSON LIMITED

in the presence of:

Director



Director/Company Secretary



THE COMMON SEAL of **CHARNWOOD**

)

BOROUGH COUNCIL was hereunto

)

affixed in the presence of: -

)



Authorised Officer



2022/23-14

38696

THE COMMON SEAL of **LEICESTERSHIRE**

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COUNTY COUNCIL was hereunto

)

affixed in the presence of: -

)

Authorised Officer

