

DATED 8th March 2012

THE COUNCIL OF THE CITY OF SALFORD

- and -

MILLER HOMES LIMITED

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)**

relating to

**to Unity Quarter, Oaklands Road, Salford M7 3GP
being part of the site of the former Kersal High School
Mesnefield Road Salford M7 3QB**

Antony P. Hatton
Team Leader and Principal Solicitor
Civic Centre, Chorley Road
Swinton, MANCHESTER M27 5DA
DX 712100 SWINTON 2
Tel: 0161 793 2129
OS/RWL/PAG/PD.3861

THIS AGREEMENT is made the [8th] day of [March] 2012

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF SALFORD** of Salford Civic Centre, Chorley Road, Swinton, Manchester M27 5DA (the "**Council**"); and
- (2) **MILLER HOMES LIMITED** (Scottish company registration number 0255429) whose registered office is situated at Miller House 2 Lochside View Edinburgh Park Edinburgh EH12 2DH ("**the Developer**").

BACKGROUND

- 1 The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site and other land. The Site is situated within the area of the Council and this Planning Obligation is enforceable by the Council.
- 2 The Developer is the leasehold owner of the Site pursuant to a lease for a term of 999 years from 30 March 2007 and registered at the Land Registry under title number MAN84966 together with but subject to all matters contained or referred to in the Property Register and Charges Register thereunder.
- 3 The Application was submitted by the Developer to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application.
- 4 The Council as local planning authority is satisfied that the Development is such as may be approved by the Council under the Act and is minded to grant planning permission for the Development in accordance with the Application but is desirous that the Developer should enter into this agreement without which planning permission would not be granted.
- 5 The Developer has agreed to enter into this agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants hereinafter contained.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation set out in this Clause apply to this agreement.

"the Act" the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008.

“Administration Fee” a sum equating to two and a half per cent (2.5%) of the Contributions (as Index Linked) in accordance with policy OB5 of the Council's Supplementary Planning Document relating to Planning Obligations (adopted 21 March 2007) being a contribution to cover the administrative costs of ensuring that the Contributions are directed towards appropriate schemes.

“Application” the application to which the Council has given reference 11/61152/FUL for full planning permission for the erection on the Site and other land of seventy-six (76) houses and one apartment with associated car parking and landscaping (re-designed estate layout to amend planning permission reference 06/53286/FUL (as amended by planning permission 07/54468/FUL))

“Commencement of Development” the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with demolition, site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of this agreement be deemed not to be material operations and **“Commence”** and **“Commenced”** shall be construed accordingly.

“Contributions” the Open Space Contribution, and the Sports Pitches Contribution together.

“Development” the development undertaken (whether on the Site or not) pursuant to the Planning Permission as specified in the Application.

“Director” the Council's Strategic Director of Sustainable Regeneration or such other officer of the Council as may from time to time be nominated in writing to act in place of the Council's Strategic Director of Sustainable Regeneration.

“Dwelling” a unit of residential accommodation to be constructed pursuant to the Planning Permission and **“Dwellings”** shall be constructed accordingly.

“Expert” a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience

“Index Linked” adjusted on an annual basis or pro rata per diem from 17 November 2006 to the relevant date of payment in accordance with the Retail Price Index.

“Interest” interest at 4% (four per cent) above the base lending rate of the Bank of England from time to time.

“Occupation” 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 **"Occupied"** shall be construed accordingly.

"Open Space Contribution" the sum of forty thousand seven hundred and twenty-seven pounds and twenty-five pence) (£40,727.25) Index Linked to be paid in accordance with Policy H8 of the City of Salford Adopted Unitary Development Plan and directed towards the provision or improvement or maintenance of sports facilities in the vicinity of the Site.

"Plan" the plan attached to this agreement.

"Planning Permission" the planning permission granted pursuant to the Application.

"Retail Price Index" twelve (12) month percentage change in the All Items Retail Price Index published by the Office for National Statistics Centre and in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor.

"Site" the property described in Schedule One.

"Sports Pitch Contribution" the sum of £53,804.25 (fifty-three thousand eight hundred and four pounds and twenty-five pence) Index Linked.

- 1.2 The clause headings do not affect this interpretation.
- 1.3 Unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.
- 1.4 References to any statute or statutory provision include reference to:
 - 1.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision.
- 1.5 Subject to the provisions of Clause 8 references to the Site include any part of it.
- 1.6 A reference to any party in this agreement includes the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980.
- 1.7 "Including" means "including, without limitation".
- 1.8 Any covenant by the Developer or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

- 1.9 Where two or more people form a party to this agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.10 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this agreement is to be unaffected.
- 1.11 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.12 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 interchangeable in that manner.

2 PLANNING OBLIGATION

This agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other enabling legislation and is a planning obligation for the purposes of section 106 of the Act, with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in section 106 or such other enabling powers against the Developer.

3 CONDITION PRECEDENT

- 3.1 This agreement is conditional upon:
- 3.1.1 the grant of the Planning Permission; and
 - 3.1.2 the Commencement of Development
- save for the provisions of clauses 7, 12, 16 and 18 and other clauses which take immediate effect.

4 CONDITION SUBSEQUENT

If the Planning Permission for the Development has not been implemented by the carrying out of a material operation in accordance with the provisions of sections 56, 91 and 93 of the Act or is revoked or modified in whole or in part (other than in approval of an application by or on behalf of the Developer) or quashed or declared unlawful as a result of legal proceedings then this agreement shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach.

5 THE DEVELOPER'S COVENANTS

The Developer on behalf of itself and any person deriving title to any part of the Site from the Developer hereafter hereby covenants with the Council so as to bind the Site to fully observe and perform the obligations on its part in this agreement including those obligations set out in the Schedules and hereby agree that the Site shall be permanently subject to obligations,

restrictions and provisions specified herein, such obligations being planning obligations for the purpose of section 106 of the Act.

6 THE COUNCIL'S COVENANTS

The Council hereby covenants with the Developer to observe and perform the obligations on its part in this agreement including those obligations set out in the Schedules.

7 DISPUTE RESOLUTION

- 7.1 In the event of any dispute arising in connection with any of the terms of this agreement other than a dispute involving the construction or interpretation of the terms of this agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Developer otherwise agree be referred to an Expert to be appointed by agreement between the Council and the Developer.
- 7.2 If the Council and the Developer are unable to agree on the appointment of an Expert within thirty (30) days of one party serving notice on the other calling for the appointment of an Expert, then an Expert shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute.
- 7.3 Any reference of a dispute to an Expert shall if the parties are agreed in writing be deemed to be a reference to an expert (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof.
- 7.4 Any party to this agreement shall be entitled to submit to the Expert representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert shall have regard thereto in making his decision which shall be delivered in writing. The reference of any dispute shall include authority to determine in what manner all the costs of the referral shall be paid.

8 LIABILITIES

- 8.1 A person shall not be bound by the covenants, obligations and restrictions contained in this agreement in respect of any period during which he no longer has an interest in the Site. but this shall not preclude or prejudice any liability for any breach non-performance or non-observance of such covenants, obligations and restrictions that occurs whilst that person does have an interest in the Site nor shall this hinder or preclude the Council's rights as the Local Planning Authority to require that the breach, non-performance or non-observance be remedied after that person has transferred its interest in the Site.
- 8.2 No purchaser of any Dwelling on the Site or any mortgagee thereof or a statutory undertaker after the transfer of statutory apparatus by the Developer to the statutory undertaker shall be liable for any of the covenants contained in this agreement.

9 **WAIVER**

No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

10 **CHANGE IN OWNERSHIP**

The Developer agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan save that any purchase of an individual Dwelling need not be notified.

11 **COUNCIL'S CONSENT OR APPROVAL**

Where in this agreement the consent or approval of Council is required to be given by the Council, the Council confirms that such consent or approval shall not be unreasonably withheld or delayed provided that this shall not fetter the proper discretion of the Council.

12 **LOCAL LAND CHARGE**

12.1 This agreement is a Local Land Charge and shall be registered as such by the Council.

12.2 The Council will upon receipt of a written request by the Developer, or their respective successors in title, at any time after the obligations set out herein have been fulfilled in their entirety, issue written confirmation thereon and thereafter cancel all related entries in the register of local land charges.

13 **NON-PROHIBITION ON DEVELOPMENT**

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) granted (whether or not on appeal) after the date of this agreement.

14 **THE CONTRACTS ACT**

Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit rights or claims whatsoever pursuant thereto.

15 COMMUNICATION

15.1 Any notice or document to be served on or sent pursuant to this agreement shall either be delivered personally or sent by recorded delivery service

15.1.1 to the Council and addressed to the Director at the Council's address first above written;

15.1.2 to the Developer at its respective last known address;

16 FEES

16.1 The Developer shall pay forthwith to the Council reasonable and proper fees reasonably and properly incurred:

16.1.1 relating to the Council's processing of this agreement, such fees being in accordance with the Council's scale of charges in respect of planning agreements in the sum of three hundred and fifty pounds (£350); and

16.1.2 the Council's legal fees reasonably and properly incurred in preparation of this agreement.

16.2 Receipt by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it by the terms of this agreement or by statute or at common law.

17 INTEREST

If any payment due under this agreement is paid late Interest will be payable from the date payment is due to the date that payment is received.

18 JURISDICTION

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

EXECUTED as a deed by the parties on the day and year first hereinbefore appearing.

SCHEDULE 1

The Site

Land situate at and known as Unity Quarter, Oaklands Road, Salford M7 3GP being part of the site of the former Kersal High School, Mesnefield Road, Salford M7 3QB and shown for the purposes of identification only edged red on the Plan but excluding the land shown coloured green on the Plan..

SCHEDULE 2

The Developer's Covenants

The Developer hereby covenants with the Council as follows:

1 CONTRIBUTIONS

- 1.1 To notify the Council in writing within 7 (seven) days of Commencement of Development that Commencement has taken place;
- 1.2 To pay to the Council £47,265.75 (forty-seven thousand two hundred and sixty-five pounds and seventy-five pence) (being 50% of the Contributions) Index Linked together with the Administration Fee within 7 (seven) days of Commencement of Development.
- 1.3 To pay to the Council £47,265.75 (forty-seven thousand two hundred and sixty-five pounds and seventy-five pence) (being 50% of the Contributions) Index Linked together with the Administration Fee prior to Occupation of 50% by number of the Dwellings erected (whether on the Site or not) pursuant to the Planning Permission).

SCHEDULE 3
The Council's Covenants

The Council hereby covenants with the Developer as follows:

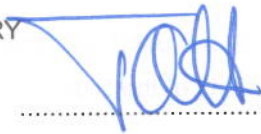
- 1 The Council hereby covenants with the Developer to use all sums received as the Contributions and any interest accrued on these sums solely for the following purposes:
 - 1.1 The Open Space Contribution shall be used for the provision, improvement or maintenance of open space in the vicinity of the Site;
 - 1.2 The Sports Pitch Contribution shall be used for the provision, improvement or maintenance of sports facilities in the vicinity of the Site;
- 2 The Council hereby covenants with the Developer to use all sums received as the Administration Fee and interest accrued on this sum to cover the administrative costs of ensuring that the Contributions are directed towards appropriate schemes.
- 3 At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this agreement when satisfied that such obligations have been performed.
- 4 At the written request of the Developer the Council shall repay to the person making the request any balance of the Contributions and any interest thereon which remains unexpended 10 (ten) years from the date of payment of the Contributions or in the case of monies allocated to maintenance 20 (twenty) years from such date.

THE COMMON SEAL of THE COUNCIL OF THE CITY OF
SALFORD was affixed in the presence of:

AUTHORISED SIGNATORY

Signature:

Name(in block capitals):



TONY HUTTON

Number in
Seal Book 4037

EXECUTED AS A DEED by

)

MILLER HOMES LIMITED

)

acting by a

)

Director and its

)

Secretary or two Directors

)

Director



Ian Murdoch

Director/Secretary