|  |  |  |
| --- | --- | --- |
|  | | |
| **Minute of Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997** | | |
| between | | |
| North Lanarkshire Council  and  [*insert parties*] | | (1)  (2) |
| Subjects: [*insert application site address*] | | |
|  |  | |

**CONTENTS**

**Clause Heading Page**

[**1** **definitions and interpretation** 2](#_Toc172215585)

[**2** **statutory authorities** 5](#_Toc172215586)

[**3** **conditionality** 6](#_Toc172215587)

[**4** **affordable housing** 6](#_Toc172215588)

[**5** **education contribution** 6](#_Toc172215589)

[**6** **play contribution** 6](#_Toc172215590)

[**7** **developer contriBUTIONS** 7](#_Toc172215591)

[**8** **Default** 7](#_Toc172215592)

[**10** **notices** 8](#_Toc172215593)

[**11** **communication in writing** 9](#_Toc172215594)

[**12** **restriction on disposal** 10](#_Toc172215595)

[**13** **registration** 10](#_Toc172215596)

[**14** **discharge and modification** 10](#_Toc172215597)

[**15** **jurisdiction** 11](#_Toc172215598)

[**16** **third party rights** 11](#_Toc172215599)

[**17** **Legal expenses** 11](#_Toc172215600)

[**18** **[counterparts** 11](#_Toc172215601)

[**19** **consent to registration** 12](#_Toc172215602)

**MINUTE OF AGREEMENT**

Between

**NORTH LANARKSHIRE COUNCIL**, constituted under the Local Government etc. (Scotland) Act 1994 and having its Principal Office at Civic Centre, Windmillhill Street, Motherwell, ML1 1AB as planning authority for North Lanarkshire in terms of Section 1 of the Town and Country Planning (Scotland) Act 1997 (who and whose successors as planning authority are hereinafter referred to as the “**Council**”

and

**[XXX]** (who and whose successors in title to the Agreement Subjects (as hereinafter defined) are hereinafter referred to as the “**Proprietor**”)

[and

**[XXX]** (who are hereinafter referred to as the “**Developer**”)]

[with the consent of

**[XXX]** (who are hereinafter referred to as the “**Consenter**”)] [**DN – security holder]**

**WHEREAS**

**(A)** The Council is entitled in terms of Section 75 of the 1997 Act (as hereinafter defined) to enter into an agreement with any person interested in land in its area (insofar as the interest of that person enables him to bind the land for the purpose of restricting or regulating the development of use of the land, either permanently or during such period as may be prescribed by agreement.

**(B)** The Proprietor is the heritable proprietor of the Agreement Subjects.

**(C)** The [Proprietor/Developer] submitted the Planning Application (as hereinafter defined) to the Council on [*insert date*], who resolved to grant the Planning Application subject to the Proprietor [and the Developer] entering into an agreement under Section 75 of the 1997 Act.

**(D)** [the Consenter is the heritable creditor under a standard security granted by the Proprietor over the Agreement Subjects, [recorded/registered] in the [General Register of Sasines/Land Register of Scotland under Title Number XXX] on [*insert date*].

**(E)** [the Proprietor/Developer] and Council agree that the planning obligations contained in this instrument are proper planning obligations for the purposes of the 1997 Act and associated policy. [**DN :- this text is included to demonstrate all parties accept the validity of the planning obligations].**

**NOW THEREFORE** the parties have agreed to and do hereby agree as follows:

1. definitions and interpretation
   1. In this Agreement, the following words and phrases shall have the following meanings ascribed to them unless the context otherwise requires:

“**1997 Act**” means the Town and Country Planning (Scotland) Act 1997, as amended;

“**Affordable Housing”** means the provision of affordable housing in the Cumbernauld Housing Sub-Market Area to persons in housing need at a cost below the market value in terms of the [*insert North Lanarkshire Council’s Affordable Housing Supplementary Planning Guidance*]

“**Affordable Housing Unit**” means a Housing Unit meeting the specifications of the Council or relevant Registered Social Landlord (unless otherwise agreed in writing) and made available to people whose housing needs are not met through the normal operation of the housing market because they cannot afford to buy or rent housing generally available on the open market, including (but not limited to) social rented housing, mid-market rented accommodation, shared ownership, shared equity and discounted sale, or such other Housing Units which form part of some other form of housing which is agreed by the Council (acting reasonably) to be within the definition of affordable housing;

**“Affordable Housing Commuted Sum (Total)”** means the sum of [*insert level of total contribution*] POUNDS(£XXX) STERLING Index-Linked

“**Agreement**” means this agreement;

“**Agreement Subjects**” means [*insert conveyancing description of the application site*];

“**Annual Period**” means the period of twelve (12) months immediately preceding the annual anniversary of the Commencement Date in any year;

“**Commencement of Development**” means the initiation of the Development by the carrying out of a material operation as defined in Section 27 of the 1997 Act, and “**Commence**” and “**Commenced**” shall be construed accordingly;

“**Completion**” means the date on which a completion certificate or permission of temporary habitation or use for which a building warrant is granted in terms of the Buildings (Scotland) Act 2003 has been accepted by the relevant verifier, whichever is the earlier, or, if the relevant verifier is the not the Council, then the date that the Council receives notification that the relevant verifier has accepted the particular completion certificate, and “**Complete**” and “**Completed**” shall be construed accordingly;

“**Commencement Date**” means the date of Commencement of Development;

“**Development**” means [*insert description of development*] on the Agreement Subjects in terms of the Planning Permission;

[“**Education Contribution**” means the [*insert level of per- Housing Unit contribution*] POUNDS (£XXX) STERLING Index-Linked;]

[“**Education Contribution (Total)**” means the sum of [*insert level of total contribution*] POUNDS (£XXX) STERLING Index-Linked;]

“**Housing Unit**” means a residential unit Completed on the Agreement Subjects pursuant to the Planning Permission;

“**Index-Linked**” means increased by the same percentage increase as has occurred in the [*insert appropriate index for each contribution*] Index in the period from [*insert appropriate base date*] until payment of the relevant sum of money due pursuant to this Agreement;

“**Interest**” means interest at the rate of 4% above the base rate of the Bank of Scotland plc or such alternative as is or would have been reasonably equivalent;

“**Keeper**” means the Keeper of the Registers of Scotland as defined in Section 113 of the Land Registration etc (Scotland) Act 2012;

[“**Market Housing Unit**” means all Housing Units which are not Affordable Housing Units;]

“**Payment Date**” means the date one year following the Commencement Date and the anniversary of that date in each subsequent year thereafter;

“**Planning Application**” means the application for planning permission for the Development submitted by the [Proprietor/Developer] to the Council, validated by the Council on [*insert validation date*], and given Council reference [*insert Council reference*];

“**Planning Permission**” means the planning permission granted pursuant to the Planning Application, including any renewal thereof or any further planning permission granted under Section 42 of the 1997 Act;

[“**Play Contribution**” means the sum of [*insert level of per-Housing Unit contribution*] POUNDS (£XXX) STERLING Index-Linked;]

[“**Play** **Contribution (Total)**” means the sum of [*insert level of total contribution*] POUNDS (£XXX) STERLING Index-Linked;] and

“**Registered Social Landlord**” means a landlord registered under Section 20 of the Housing (Scotland) Act 2010 (or their subsidiary).

* 1. The clause headings in this Agreement are for convenience only and do not affect its interpretation.
  2. Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
  3. Words denoting the masculine gender shall include the feminine and neuter genders and words denoting actual persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
  4. Where the context so admits references in this Agreement to a clause are to a clause in this Agreement.
  5. References to a numbered clause or schedule or paragraph are references to the clause, schedule or paragraph of or to this Agreement so numbered.
  6. References in this Agreement to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.
  7. The words ‘including’ and ‘include’ and words of similar effect shall not be deemed to limit the general effect of the words which preceded them.
  8. Obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally.
  9. Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of that restriction.

1. statutory authorities
   1. The obligations in Clauses *[insert reference to planning obligations Clause(s)*] are made into pursuant to Section 75 of the 1997 Act, and are planning obligations binding the Agreement Subjects for the purposes of the 1997 Act and are enforceable by the Council as planning authority against the Proprietor.
   2. Nothing in this Agreement shall prejudice the rights and/or the duties and powers of the Council under the 1997 Act or in the exercise of any other function under any other enactment.
   3. Nothing in this Agreement shall confer regulatory approval for any matter, in particular for the carrying out of any building, engineering or other operations in, on, over or under the Agreement Subjects;
   4. To the extent that any provision hereof is *ultra vires* the statutory functions of the Council or in any other way invalid, unenforceable or unlawful (an “**offending provision**”): (1) the legality and validity of the remaining provisions shall be unaffected, and (2) any offending provision shall take effect subject only to such changes as may be necessary to remedy the lack of vires or such invalidity, unenforceability or unlawfulness.
   5. This Agreement shall not be binding on any individual *bona fide* owner of any Housing Unit.
   6. This Agreement shall not be binding on any utility company that acquires an interest in any part of the Agreement Subjects for the purposes of providing services to the Development, and the liability under this agreement of the selling party in any sale or the landlord of any lease (as the case may be) shall continue notwithstanding.
   7. No party shall have any continuing liability for any of the obligations contained in this Agreement, save for any antecedent breach, following the disposal of their interest in the Agreement Subjects.
   8. If any provision in this Agreement is held in any proceedings to be a provision which cannot competently be included or enforced in any agreement entered into under section 75 of the 1997 Act, such provision shall be enforceable to the same extent and effect as if this Agreement was an agreement in common form amongst the parties.
2. conditionality
   1. With the exception of Clause [*insert reference to specific planning obligations Clause(s)*], which shall have effect from the date of issue of the Planning Permission, this Agreement shall have effect and be binding on the parties hereto with effect from the last date of execution.
3. affordable housing

tbc

1. education contribution
   1. The Proprietor shall pay to the Council the Education Contribution (Total) in accordance with the terms of this Clause 5.
   2. On each Payment Date, the Proprietor shall pay to the Council one Education Contribution in respect of each Housing Unit Completed since the immediately preceding Payment Date.
   3. No Housing Unit shall be Completed by the Proprietor in any Annual Period until the Education Contributions for the preceding Annual Period have been paid to the Council in accordance with the terms of Clause 5.2.
   4. The Council shall put the Education Contribution towards the provision of:
      1. [*insert site-specific education requirements OR*],[the provision of education infrastructure to provide appropriate education capacity to serve the Development, both individually and cumulatively] and towards no other purpose.
   5. The Council shall, on receipt of the Education Contribution, or instalment thereof, pay it into an interest-bearing account held by the Council.
   6. In the event of the Education Contribution not being spent or committed in full by the Council within 10 years of the last date of payment to the Council, then the Education Contribution or the unspent or uncommitted part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietor within 28 days of receipt of a written request from the Proprietor.
2. play contribution
   1. The Proprietor shall pay to the Council the Play Contribution (Total) in accordance with the terms of this Clause 6.
   2. On each Payment Date, the Proprietor shall pay to the Council one Play Contribution in respect of each Housing Unit Completed since the immediately preceding Payment Date.
   3. No Housing Unit shall be Completed by the Proprietor in any Annual Period until the Play Contributions for the preceding Annual Period have been paid to the Council in accordance with the terms of Clause 6.2.
   4. The Council shall put the Play Contribution towards the provision of upgrading existing play areas and/or constructing new play areas in the locality of the Development and towards no other purpose.
   5. The Council shall, on receipt of the Play Contribution, or instalment thereof, pay it into an interest-bearing account held by the Council.
   6. In the event of the Play Contribution not being spent or committed in full by the Council within 10 years or the last date of payment to the Council, then the Play Contribution or the unspent or uncommitted part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietor within 28 days of receipt of a written request from the Proprietor.
3. developer contriBUTIONS
   1. The Proprietor shall notify the Council of Commencement of Development within 7 days of the Commencement Date.
   2. Any financial contribution to be paid under Clauses [*insert financial contribution clauses*] of this Agreement shall be considered to have fallen due for the purposes of Clause 8.1 on the Payment Date following Completion of the relevant Housing Unit.
   3. The Council shall not be required to issue any invoice or notice in relation to any financial contribution to be paid under this Agreement.
   4. The Council will, on request, issue a receipt for any payment made to it in terms of this Agreement.
   5. The Council shall be required to accept payment of any financial contribution to be paid under Clauses [*insert financial contribution clauses*] of this Agreement no more than 28 days prior to the Payment Date on which the financial contribution falls due. The Council may, at its sole discretion, agree to accept payment of any financial contribution earlier than 28 days prior to the Payment Date.
4. Default
   1. In the event of the Proprietor breaching the terms of this Agreement the Council shall be entitled to any or all of the following remedies:-
      1. in terms of the late payment of any financial contributions, to Interest from the date when any payment fell due until the date of actual payment;
      2. to take any other reasonable action which is required to ensure performance of any of the Proprietor's obligations in Clauses [*insert planning obligation clauses*] of this Agreement;

and that without payment of any compensation whatsoever by the Council to the Proprietor or any other party and without prejudice to any other remedy for said breach exercisable by the Council.

1. dispute resolution
   1. [In the event of any dispute or difference arising between the parties as to the intent, meaning or application of this Agreement shall be referred to the decision of an expert to be appointed jointly by the parties hereto or, in default of agreement, by [the President of the Law Society of Scotland for the time being] on the application of either party and who shall act as an expert and not as an arbiter. The expert will be requested to reach her decision within two (2) calendar months of her appointment and to take into account representations submitted by either party within twenty one (21) days of her appointment, which determination shall provide a statement of reasons. The decision of the expert shall be final and binding on the parties.]
   2. [In the event of any dispute or difference arising between the parties as to the intent, meaning or application of this Agreement, whether during the currency hereof or after termination of the same, the matter of difference shall be determined by a single arbitrator to be agreed between the parties or, failing agreement, by a single arbitrator to be appointed by the Sheriff Principal of South Strathclyde, Dumfries and Galloway. The arbitrator so appointed (who shall act as arbitrator and not as an expert) shall not be empowered to state a case for the opinion of the Court of Session in terms of Rules 41 and 69 set out in Schedule 1 to, and applied by Section 7 of, the Arbitration (Scotland) Act 2010. The award or awards, interim and final, of an arbitrator so appointed shall be binding on the parties in accordance with the Law of Scotland and the costs of any such arbitration shall be met by the parties as the arbitrator may determine.]
2. notices
   1. Any notice to be served on any person pursuant to the terms of this Agreement shall be in writing and served in accordance with this Clause 10.
   2. Any notice or document shall only be validly served on the Council if sent by First Class recorded delivery post to [*insert details of person (job title, rather than specific name) to whom notices should be address]*, Civic Centre, Windmillhill Street, Motherwell, ML1 1AB or any other address intimated in writing by the Council for the purposes of this clause.
   3. Any notice or document issued to [the Developer or to] the Proprietor shall be validly served if sent **to** their Registered Office or such other address as may be intimated in writing **to** the Council. Otherwise any notice or document served on any person shall be sufficiently served upon that person if left at, or posted by First Class recorded delivery post to, the last known address of that person.
   4. Any notice sent by first class recorded delivery post shall be deemed to have been duly served at the expiry of 48 hours after the time of posting. In proving service it shall be sufficient to prove that the envelope containing the notice was addressed to the Council [or the Developer] or to the Proprietor and posted to the place to which it was addressed.
3. communication in writing
   1. In the case of all requirements to communicate in writing in terms of this Agreement, except notices, it shall be acceptable for the written communication to be by either: (i) a letter signed by or on behalf of the party issuing the letter; or (ii) an email sent by or on behalf of the party issuing the email
   2. Where written communications are sent by post they shall be addressed:
      1. In the case of the Proprietor at their registered Office and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at their Registered Office or Head Office, and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the Proprietor may have notified in writing, by post or email, to the Council previously;
      2. In the case of the Council, to [*insert details of person (job title, rather than specific name) to whom notices should be address]*, Civic Centre, Windmillhill Street, Motherwell, ML1 1AB or to such other address as the Council may have notified to the Proprietor previously in writing, by post or email;
   3. Where written communications are sent electronically by email they shall be addressed to:
      1. In the case of the Proprietor to [*insert email address*] or to such email address as the Proprietor may have notified in writing, by post or email, to the Council previously;
      2. In the case of the Council to [*insert email address*] or to such other email address as the Council may have notified to the Proprietor previously in writing, by post or email.
4. restriction on disposal
   1. The Proprietor shall not assign, burden, charge, dispone, lease, convey or otherwise dispose of its interest in the Agreement Subjects or any part thereof [other than to the Developer] prior to the [recording/registration] of this Agreement in the [General Register of Sasines/Land Register of Scotland] without procuring that the third party purchaser provides to the Council an undertaking in accordance with Clause 13.
5. registration
   1. The Council undertake to [record/register] this Agreement in the [General Register of Sasines/Land Register of Scotland] as soon as reasonably practicable after the last date of execution hereof.
   2. The Council shall issue its written determination as soon as reasonably practicable following the receipt of:
      1. the Keeper of the Registers of Scotland e-mail acknowledgement of the Application for [recording/registration] of this Agreement in the [General Register of Sasines/Land Register of Scotland];
      2. a clear Legal Report against the Agreement Subjects;
      3. a clear Charges Search against the Proprietor, and
      4. payment in full of the Council’s legal fees in accordance with Clause 26.
   3. The Proprietor undertakes that in the event that the Keeper of the Registers of Scotland requests that the Council provide documentation, information or actions or any kind whatsoever to allow the registration to complete to issue by the Keeper of a fully [recorded/registered] Agreement they will deliver such documentation and information within their control or reasonably obtainable by them to the Council and carry out such action promptly to allow the Keeper to issue the [recorded/registered] Agreement.
   4. In the event that the Keeper of the Registers of Scotland refuses or is unable to issue the [recorded/registered] Agreement by virtue of the Proprietor’s failure to comply with Clause 13.3 hereof the Council, acting reasonably, are entitled, but not obliged, to revoke the Planning Permission in terms of Section 65 of the 1997 Act and the Proprietor agree that they will not (1) oppose such revocation in terms of Section 66 of the 1997 Act nor (2) seek compensation or expenses from the Council.
6. discharge and modification
   1. In the event that the Proprietor wishes to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the 1997 Act shall apply. The Proprietor shall be responsible for the Council’s reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any discharge and/or modification hereto.
   2. In the event of the Planning Permission being quashed, revoked or in any way falling prior to the Commencement Date, this Agreement shall fall and be deemed *pro non scripto* from the date on which the Planning Permission is so quashed, revoked or falls (without prejudice to the Council’s rights and remedies in respect of any antecedent breach of this Agreement).
7. jurisdiction
   1. This Agreement shall be construed in accordance with and governed by the law of Scotland, and subject to the exclusive jurisdiction of the Scottish Courts.
8. third party rights
   1. This Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of this Agreement.
9. Legal expenses
   1. The [Proprietor/Developer] shall be bound to meet the Council’s reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of this Agreement, and the [Proprietor/Developer] shall be responsible for all requisite registration dues, and the dues of providing an Extract to each party to this Agreement.
10. [counterparts
    1. This Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.
    2. Where executed in counterparts:
       1. This Agreement will not take effect until each of the counterparts has been delivered; and
       2. Where any counterpart is being held as undelivered, delivery will take place only when the date of delivery is agreed among the parties after execution of this Agreement.]
11. consent to registration
    1. The parties consent to registration of this Agreement in the Books of Council and Session for preservation and execution.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding [X] pages [and the plan annexed and executed as relative hereto] are executed [in counterpart] as follows: