

THIS AGREEMENT is made the 17th day of October Two Thousand and Nineteen **BETWEEN SOPHIA JANJUA** of 50 Dark Lane, Batley, West Yorkshire WF17 5RN (hereinafter called "the **Owner**") of the first part **AND THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Ramsden Street, Huddersfield West Yorkshire HD1 2TA (hereinafter called "the **Council**") of the second part

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The owner is the freehold owner of those parts of the Site registered under title numbers WYK520150 and WYK847267.
3. By the provision of Section 106 of the Town and Country Planning Act 1990 ("the Act") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land.
5. The Council would not have been willing to grant the Planning Permission but for this Agreement because of the need to secure the payment of a Public Open Space Contribution in accordance with the Local Plan.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

In this Agreement unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this clause:-

"1990 Act" means the Town and Country Planning Act 1990 (as amended).

"the Application"

means the planning application received by the Council on the 17 April 2019 and validated on the 17 April 2019 and registered in the Council under reference number 2019/91326 for the demolition of former public house and erection of 10 no two bedroomed apartments at The Commercial Hotel, 125 Wellington Street, Clerk Green, Batley WF17 5TH.

"Development"

means the development of the Site in accordance with the Planning Permission.

"Plan"

means the plan so marked and attached hereto.

**"Planning
Permission"**

means the planning permission to be granted pursuant to the Application.

**"Public Open Space
Contribution"**

means the sum of £15,796 (fifteen thousand seven hundred and ninety six pounds) towards community play area in the vicinity of the site.

"Site"

means the land at The Commercial Hotel, 125 Wellington Street, clerk Green, Batley West Yorkshire WF17 5TH shown edged red on the Plan.

2. GENERAL

- 2.1. The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Agreement.
- 2.2. The provisions of this Agreement are planning obligations made pursuant to Section 106 of the 1990 Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site.

- 2.3. The expressions "the Council" and "the Owner" shall include their successors in title and assigns.
- 2.4. No person shall be liable for the breach of any covenant contained in this Agreement after he shall have parted with his or its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 2.5. This Agreement shall come into effect upon the date hereof
- 2.6. If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Agreement shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date.
- 2.7. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.
- 2.8. This Agreement is a local land charge and shall be registered as such.
- 2.9. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 2.10. The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Agreement.

3. OWNER COVENANTS

- 3.1 Not to occupy or permit occupation of the third apartment comprised in the Development until the Public Open Space Contribution has been paid to the Council to be applied by the Council to improve off site public open space in the vicinity of the site.

4 COUNCIL'S OBLIGATIONS

- 4.1 The Council hereby covenants to apply the Public Open Space Contribution towards the provision or improvement of recreational facilities in the vicinity of the site the need for which directly arises from the Development **PROVIDED THAT** if the whole or any part of these sums have not been spent on such purposes within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 4.2 The Council shall provide if requested to the Developer such evidence as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.
- 4.3 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 or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

5. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the Court of England and Wales.

6. **DELIVERY**

- 6.1 The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a deed.

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH of)
KIRKLEES was hereunto affixed but is not)
delivered until the date hereof in the presence of)



012728

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Service Director – Legal, Governance and
Commissioning/Authorised Signatory

EXECUTED AS A DEED by)
SOPHIA JANJUA)
In the presence of)

Signature.....

Name of Witness.....

Address.....

.....
Occupation.....