Dated _____

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

ST WERBURGH DEVELOPMENTS LIMITED

A G R E E M E N T

pursuant to Section 106 Town and Country Planning Act 1990
relating to 45 St Werburghs Road
in the City of Manchester

City Solicitor
Manchester City Council
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA

L/BH/EVD3001/3493

THIS AGREEMENT is made the day of

BETWEEN THE COUNCIL OF THE CITY OF MANCHESTER of Town Hall, Albert Square, Manchester ("the Council") of the first part and ST WERBURGH DEVELOPMENTS LIMITED (company registration number 09790572) whose registered office is at 6 Hill Top, Hale, Altrincham, WA15 0NH ("the Owner" which expression shall include the successors in title and assigns of the Owner) of the second part

WHEREAS

A. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situate.

B. The Owner is the registered proprietor with title absolute of the freehold of the Land registered under title number MAN253544 at the Land Registry.

C. The Owner has submitted the Application to the Council and the parties have agreed to enter into this Agreement in order to secure the planning obligation contained in this Agreement.

D. The Council resolved on 2017 to grant the Planning Permission subject to the prior completion of this Agreement.

E. The planning purpose of this Agreement is to improve the amenity of land in the locality of the Land with benefit for occupiers of the Development and to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations. In particular the Council is seeking to mitigate the effect upon the Land and the amenity of land in the locality of the Land that will be caused by the loss of trees that will occur pursuant to the Development.

The Council is satisfied that the obligations in this Agreement are;

(a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations);

(b) directly related to the Development; and

(c) fairly and reasonably related in scale and kind to the Development

OR

(d) will secure other planning benefits.

NOW THIS DEED WITNESSETH as follows:

1. In this Agreement unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them

"Act"	shall mean the Town and Country Planning Act 1990 (as amended)
"Agreement"	shall mean this Agreement
"Application"	shall mean the application for planning permission submitted to the Council for the Development and allocated reference number 116795/FO/2017
"Commencement"	shall mean the date upon which the Development is commenced by the carrying out of a material operation as defined in section 56 of the Act other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" and "Commencing" shall be construed accordingly
"Commencement Notice"	means written notice given by the Owner to the Council within 14 days of Commencement stating that Commencement has taken place and specifying the date of Commencement

“Contribution”	a sum of £23,847.05 (twenty three thousand eight hundred and forty seven pounds and five pence) increased in accordance with clause 14
“Development”	shall mean the development of the Land pursuant to the Planning Permission and substantially comprising the erection of a detached 3 story 5 bedroomed dwellinghouse (Plot 1) and 3 (three) 2 storey, with accommodation in the roof space, 4 bedroomed semi-detached dwellings (Plots 3, 4, 5) and one part single part two storey 5 bedroomed dwelling (Plot 6) with associated car parking, landscaping and boundary treatments
“Inflation”	shall mean the number of the General Index of Retail Prices (All Items) for the specified month produced by the Office for National Statistics
“Inflation Increase”	shall mean the amount calculated by way of the formula contained in clause 14 of this Agreement
“Land”	shall mean the land against which this Agreement by Deed may be enforced and being all that land at 45 St Werburghs Road, Manchester, M21 0UN as shown edged red on the attached plan
“Planning Obligation”	shall mean the obligation of the Owner specified in the Schedule to this Agreement
“Planning Permission”	shall mean planning permission under the Act for the Development to be granted pursuant to the Application in the form of the draft attached in the Second Schedule hereto

"Stakeholder"	shall mean the Council's City Treasurer and his authorised officers
"Stakeholder Account"	shall mean an account held by the Council's City Treasurer and his authorised officers at Barclays Bank plc in which the monies paid under the Planning Obligations are held

2. A reference in this Agreement to an act of Parliament or to any order, regulation, statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.
3. Words importing the masculine gender include the feminine gender and vice versa and words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
4. Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement.
5. Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
6. If any party to this Agreement comprises more than one party then that party shall be jointly and severally liable under this Agreement.
7. Words denoting an obligation on a party to this Agreement to do any act matter or thing include an obligation to procure that it be done and words placing a party to this Agreement under a restriction include an obligation not to permit or allow infringement of that restriction.
8. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.
9. This Agreement is made in pursuance of Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers and enactments which may give validity hereto and facilitate the enforcement of the obligations and provisions herein contained.

10. The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council against the Owner.

11. The Owner covenants with the Council to pay to the Council on the date hereof the Council's reasonable legal costs in connection with this Agreement in the sum of £ (pounds). Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the Owner nor absolve the Owner from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law.

12. The Owner has obtained planning permission to develop the Land under planning reference 112570/FO/2016/S1 (the "First Planning Permission") and as part of a planning agreement (the "First Agreement") relating to the First Planning Permission paid a Management Fee of £288.75 (two hundred and eighty eight pounds and seventy five pence), as defined, being 15% of the planning application fee which is to be used for the purpose of managing and monitoring the First Agreement and the planning obligations contained therein. The Owner and the Council agree that the Management Fee, as defined, paid under the terms of the First Agreement will be used for the purpose of managing and monitoring the planning obligations contained in either the First Agreement or this Agreement depending upon whether the Land is developed pursuant to the First Planning Permission that the First Agreement relates to or the Planning Permission that this Agreement relates to.

13. The Council covenants with the Owner to issue the Planning Permission on the date hereof.

14. The Contribution shall be increased by the application of the formula A = B x (C / D) provided that (C / D) shall always be greater than or equal to 1 and with the following definitions:

    A is the sum actually payable on the date upon which the amount due under the Planning Obligations is paid ("Specified Date")

    B is £23,847.05 (twenty three thousand eight hundred and forty seven pounds and five pence)

C is the Inflation figure for the month closest to the Specified Date and which has been published by the Specified Date

D is the Inflation figure for the month in which this Agreement is dated

15. Nothing herein contained or implied shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and any other authority from exercising powers of compulsory purchase in respect of any part of the Land.

16. No failure or delay by the Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

17. No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

18. If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.

19. Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be approval for any other purpose whatsoever.

20. Nothing in this Agreement prohibits or limits the right to develop any part of the Land in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.

21. This Agreement shall be registered in the Council's Register of Local Land Charges immediately on completion thereof.

22. 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.

23. If the Planning Permission shall expire before the Commencement of Development or shall at any time be revoked or for any reason cease to remain extant this Agreement shall forthwith determine and cease to have an effect in which case the registration of this Agreement on the Register of Local Land Charges will forthwith be cancelled.

24. Following the performance and satisfaction of all the obligations contained in this Agreement the Council will upon receipt of the written request of the Owner forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

25. No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Property but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

26. This Agreement shall be governed by and interpreted in accordance with the laws of England.

27. In respect of the sums payable by the Owner to the Council under the Planning Obligations, the Council covenants with the Owner:

    27.1 to pay such sums into the Stakeholder Account and hold such sums therein until the withdrawal of such sums as may be required for the purposes specified in the Planning Obligations

    27.2 to use such sums withdrawn from the Stakeholder Account solely and exclusively for the purposes specified in the Planning Obligations

    27.3 to repay to the Owner (here meaning the party or parties who shall have actually paid such sum) such amount of the sums which have not been expended, excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend in accordance with the provisions of this Agreement, within 5 (five) years of

the date on which the trees are planted or within 10 (ten) years of the date of this Agreement, whichever is the sooner, together with interest at the Bank of England base rate from time to time from the date of expiration of this ten year period to the date of refund.

28. For the purpose of noting this Agreement on the title of the Owner registered under title number MAN253544 at the Land Registry the Owner will as soon as practicable following completion of this Agreement arrange for a completed AN1 (or any replacement of this form) to be registered at the Land Registry and the Owner will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the Owner from the Land Registry.

29. If any sum payable to the Council under the terms of this Agreement is not paid at the time specified herein the party responsible for making the payment shall pay to the Council interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 4% per annum over Barclays Bank plc base rate from time to time in force and such amount shall be recoverable by action as a liquidated sum.

30. All correspondence in connection with this Agreement shall be sent to the Council at the following address or such other address as may be notified from time to time: Planning and Building Control Department, Ref.112570/FO/2016/S1 Manchester City Council, PO Box 532, Town Hall, Manchester, M60 2LA.

IN WITNESS whereof this Agreement has been executed as a deed in the manner hereinafter appearing and delivered the day and year first before written.

FIRST SCHEDULE

THE PLANNING OBLIGATIONS

The Owner covenants with the Council:

1. to serve the Commencement Notice;
2. not to Commence Development, nor to allow nor to permit the same, until it has complied with paragraph 3 of this Schedule.
3. to pay to the Council the Contribution for the purpose of funding the planting of 7 (seven) trees within the immediate vicinity of the Land and to cover the cost of maintaining those trees for the period of five years following their planting and for the purpose of any other costs and expenses in connection with or incidental to the same.

SECOND SCHEDULE

Form of draft decision notice of planning permission to be attached.

THE COMMON SEAL of THE COUNCIL OF THE
CITY OF MANCHESTER was hereunto affixed in
pursuance of an Order of the Council of the said City:

Authorised Signatory

EXECUTED AS A DEED by ST WERBURGH DEVELOPMENTS LIMITED
acting by a director

DIRECTOR
Signature: ……
Name: (in block capitals) ……
IN THE PRESENCE OF
Signature: ……
Name (in block capitals) ……
Address ……
……
Occupation ……