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PETER WILBRAHAM & CO
SOLICITORS

DATED 31st January 1997

ROSSENDALE BOROUGH COUNCIL

- and -

HURSTWOOD DEVELOPMENTS LIMITED

-and-

NATIONAL WESTMINSTER BANK PLC

AGREEMENT

**under Section 106 of the Town and Country
Planning Act 1990 (as amended)
relating to the
construction of 72 dwellings and change of use of
2 buildings at Loveclough Printworks Site, Rossendale
(Planning Application No. 14/94/245)**



THIS AGREEMENT is made the 31st day of January 1996

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of the Town Hall, Rawtenstall, Rossendale, Lancashire, BB4 7LZ ("the Council"); and
- (2) **HURSTWOOD DEVELOPMENTS LTD** whose registered office is situated at Hurstwood House, Station Court, Newhallhey Road, Rawtenstall, Rossendale, Lancashire BB4 6AJ ("the Developer")
- (3) **NATIONAL WESTMINSTER BANK PLC** whose registered office is situated at 41 Lothbury, London EC2 ("the Mortgagee")

DEFINITIONS

- "Act" the Town and Country Planning Act 1990;
- "Application" the application for planning permission on the Site submitted on 6 June 1994 under reference 14/94/245 to the Council or as the same may be varied or amended;
- "Commuted Maintenance Sum" the sums calculated in accordance with the provisions of Schedule 2 and which shall be applied by the Council to the future maintenance of the Orange Land.
- "Development" development of the Site for residential purposes in accordance with the Application;

"Limy Water"	the stream known as Limy Water the course of which through the Site is shown on Plan 2;
"Orange Land"	that part of the Site which is shown coloured orange on Plan 2 and including the retaining walls coloured red and green;
"Planning Permission"	a planning permission to be granted by the Council in the terms of the draft permission set out in Schedule 3 or as the same may be amended or varied.
"Site"	the land containing 7 acres situated at Loveclough, Rossendale and shown edged in red on Plan 1;

- (1) References to numbered plans shall be deemed to be references to plans so numbered annexed to this agreement.
- (2) References to clauses and to Schedules shall be deemed to be references to the clauses of and Schedules to this agreement and unless otherwise stated references to paragraphs and sub-paragraphs shall be deemed to be references to paragraphs and sub-paragraphs of the Schedule in which such reference appears.
- (3) Any reference herein to any statute or to any provision of the same shall be construed as including reference to any statutory modification or re-enactment thereof from time to time in force.

WHEREAS:-

- (1) The Council is the local planning authority for the purposes of the Act in respect of the Site and is the authority by whom the obligations hereby created are enforceable.

- (2) The Developer is seized for an estate in fee simple in possession of the Site which is registered under Title Number LA 460955 at H.M. Land Registry free from encumbrances save for a Registered Charge in favour of the Mortgagee.
- (3) The Developer has by the Application applied to the Council for planning permission to carry out the Development on the Site in the manner set out in the plans, specifications and particulars forming part of the Application.
- (4) The Council is minded to grant planning permission for the Development in the terms of the draft permission set out in Schedule 3 but requires the Developer to enter into the covenants hereinafter contained in this agreement.
- (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, agreements, conditions and stipulations hereinafter contained.

NOW THIS DEED WITNESSETH as follows:-

- 1.1 THIS agreement is made in pursuance of Section 106 of the Act, and all other powers so enabling and covenants in this Agreement falling within Section 106 of the Act **are** planning obligations to which the section shall apply.
- 1.2 The local planning authority by whom such obligations are enforceable is the Council.
- 2.1 THIS Agreement is conditional and shall only have effect upon the date upon which the Developer shall begin the Development in accordance with the Planning Permission by the carrying out of a material operation in accordance with the provisions of sections 56 and 91-93 of the Act.
- 2.2 For the avoidance of doubt it is hereby agreed and declared that in the event of planning

permission for the development being quashed as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of any party against the others.

3. The Developer with the consent of the Mortgagee and with the intent to bind himself and the Developer's successors in title hereby covenants with the Council that the Developer will :

3.1 observe and comply with those provisions of Schedule 1 which the Developer is to observe or comply with;

3.2 forthwith upon receipt of a notice from the Council in accordance with the provisions of paragraph 2.1 of Schedule 1, dedicate that part of the Orange Land on which the works the subject of such notice have been carried out for use by the public as public open space and give written notice of such dedication to the Council;

3.3 pay so much of the Commuted Maintenance Sum as relates to the works described at paragraph 1.2 of Schedule 1 to the Council upon the expiry of any defects liability or maintenance period in relation thereto

3.4 within 12 months of giving a notice to the Council of the completion of all or part of the works described at paragraph 1.3 of Schedule 1 pay to the Council so much of the Commuted Maintenance Sum as relates to the works comprised in such notice.

4. The Council hereby covenants with the Developer that the Council will:

4.1 observe and comply with those provisions of Schedule 1 which the Council are to observe or comply with;

4.2 upon receipt of any part of the Commuted Maintenance Sum accept forthwith all responsibility for the repair and maintenance of that part of the Orange Land to which

it relates and indemnify and keep indemnified the Developer from and against all actions costs claims demands and proceedings in respect of any future breach non observance or non performance of this obligation.

5. The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the Site shall be bound by the restrictions and obligations contained in this agreement.

6.1 ANY disputes or differences arising between any of the parties hereto as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this agreement or as to any other matter or thing arising out of or connected with the subject matter of this agreement or any failure to agree upon any matter may be referred in accordance with the provisions of this clause to the determination of an independent Chartered Surveyor.

6.2 Subject as provided in Schedule 2 any reference to an independent Chartered Surveyor in accordance with clause 6.1 shall be to a reputable Chartered Surveyor based in Manchester unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President for the time being of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such independent Chartered Surveyor shall be final and binding upon the parties to the dispute (save for manifest error) and, if the parties to the dispute shall agree in writing, such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Acts 1950 and 1979 and if any Chartered Surveyor shall act as an expert pursuant to the terms of this clause then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expeditiously as possible and the reference to him shall include authority to determine in what manner all the costs of the referral shall be

paid.

- 6.3 Where the dispute referred for determination under clause 6.2 shall be or include a dispute as to whether or not the consent or approval of the Council should properly be given as required by this agreement and the independent Chartered Surveyor determines that such consent or approval should have been given then, for all the purposes of this agreement, the consent of the Council shall be deemed to have been given on the date the independent Chartered Surveyor advises the parties to the dispute of his determination.
- 6.4 Notwithstanding the terms contained herein the parties hereto agree that National Westminster Bank Plc shall only be liable for any breach of any provisions of this Agreement during such periods (if any) as it is a mortgagee in possession of the land and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that it shall not in any event be liable for any breach of this Agreement arising prior to it becoming a mortgagee in possession of the land regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the land.
7. If the planning permission has not been implemented by the carrying out of a material operation in accordance with the provisions of sections 56 and 91-93 of the Act within five years from the date hereof this agreement shall forthwith determine and cease to have effect and the Council shall thereupon cancel all related entries in the Register of Local Land Charges.
- 8.1 FOR the purpose of such parts of this agreement as may be subject to the law against perpetuities this agreement shall remain in force for the period of eighty years from the date hereof or (if sooner) as long as any of the covenants, conditions, stipulations and agreements herein may not have been performed.
- 8.2 In this agreement the expressions "the Council" and "the Developer" and "the Mortgagee" shall where the context so admits be deemed to include their respective

successors in title.

- 8.3 * The Developer shall not be liable for the breach of a covenant or obligation contained in this agreement after having parted with all interest in that part of the Site on which the breach has occurred but without prejudice to liability for any subsisting breach of covenant or obligation prior to parting with such interest.
- 8.4 Where the consent or approval of the Council is required under this agreement 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 acting as local planning authority.
- 8.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Deed.
- 8.6 The Developer shall bear the Council's reasonable costs and the costs of the Mortgagee in relation to the preparation and execution of this agreement.
- 8.7 The planning obligations hereby created shall be registered as a Local Land Charge.
9. Notwithstanding the terms contained herein the parties hereto agree that the Mortgagee shall only be liable for any breach of any provisions of this Agreement during such periods (if any) as it is a mortgagee in possession of the land and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that it shall not in any event be liable for any breach of this Agreement arising prior to its becoming a mortgagee in possession of the land regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the land.

IN WITNESS whereof the parties hereto have caused these presents to be duly executed as a deed the day and year first above written.

SCHEDULE 1

- 1 The Developer shall:
 - 1.1 divert Limy Water from the course shown by broken lines to the course marked "Limy Water" and shown by a solid blue line on Plan 1;
 - 1.2 construct, in strict accordance with the Planning Permission and any planning permission for reserved matters relating thereto retaining walls along the course of Limy Water in the positions shown by the red and green lines on Plan 2;
 - 1.3 construct, lay out and landscape the Orange Land in accordance with details which shall have been approved by the Council under condition 2 attached to the Planning Permission for the purpose of enabling it to be used as public open space;
 - 1.4 after completion of all the works referred to in paragraph 1.2 and upon expiry of any defects liability or maintenance period in relation thereto and upon completion of all or part of the works referred to in paragraph 1.3, give notice of the completion of all or part of such works as the case may be to the Council.
 - 1.5 Upon receipt of any notice under sub-paragraph 2.2 of this Schedule and subject to the provisions of clause 6, remedy any defect specified in such notice served by the Council.
 - 1.6. Upon completion of the works referred to in a notice served under sub-paragraph 2.2, give notice to the Council of the completion of such works.
- 2 The Council shall within fourteen days after receipt of a notice served by the Developer under either sub-paragraph 1.4 or sub-paragraph 1.6 inspect such works and within seven days after such inspection give notice to the Developer that -

2.1 the works have been completed to its satisfaction; or

2.2 the works have not been completed to its satisfaction and such notice shall specify and give full particulars of the reasons why the work is not completed to its satisfaction.

PROVIDED ALWAYS that if the Council shall fail to serve a notice in accordance with the provisions of this paragraph the Council shall be deemed to have served a notice under sub-paragraph 2.1 on the Developer on the twenty second day after the receipt by the Council of the notice served by the Developer under sub-paragraph 1.4 or 1.6 as the case may be.

3 A notice served or deemed to have been served by the Council under sub-paragraph 2.1 shall contain or shall be deemed to contain a request by the Council to the Developer to dedicate the Orange Land or the part to which it relates to the Council for public open space provided that the Council shall not be obliged to accept the dedication of any part of the Orange Land unless it has first received payment of the Commuted Maintenance Sum relating to that part.

SCHEDULE 2

- 1.1 The Commuted Maintenance Sum relating to the works which are described in sub-paragraph 1.2 of Schedule 1 shall be such a sum as shall be reasonably agreed by the parties after detailed planning approval for such works has been obtained.
- 1.2 In their application to sub-paragraph 1.1 clauses 6.1, 6.2 and 6.3 shall be construed as if there were substituted for the expressions "Chartered Surveyor" and "Royal Institution of Chartered Surveyors" the expressions "consulting engineer" and "Institution of Civil Engineers" respectively.
- 1.3 The Commuted Maintenance Sum relating to the works which are described in sub-paragraph 1.3 of Schedule 1 shall be such a sum as shall be reasonably agreed by the parties after detailed planning approval for such works has been obtained.
- 1.4 In their application to sub-paragraph 1.3 clauses 6.1, 6.2 and 6.3 shall be construed as if there were substituted for the expressions "Chartered Surveyor" "Royal Institution of Chartered Surveyors" and "Manchester" the expressions "landscape architect" "Institution of Landscape Architects" and "Greater Manchester or Lancashire" respectively.
- 1.5 The Commuted Maintenance Sum shall be calculated in the case of the works described in sub-paragraph 1.3 of Schedule 1 by reference to the annual estimated maintenance sum multiplied by ten with allowance for inflation and advance payment on a discounted cash flow basis.

SCHEDULE 3

Draft Planning Permission

SCHEDULE 3

Draft Planning Permission

ROSSENDALE BOROUGH COUNCIL

Town and Country Planning Act 1990

PLANNING PERMISSION

PART 1 - PARTICULARS OF APPLICATION:

Application number: 94/245 Date received: 8th June 1994
Location of proposed development: Land at Commercial Street, Loveclough,
Rossendale

Particulars of proposed development:

OUTLINE - ERECTION OF 72 NO DWELLINGS AND CHANGE OF USE OF 2 NO EXISTING
BUILDINGS INTO 5 NO UNITS

Name and address of applicant:
Hurstwood Developments Ltd
Station Court
Rawtenstall
Rossendale

Name and address of agent
Kevin Fletcher Smith Pship
11 Riversway Business Village
Preston
Lancs PR2 2YP

PART 2: PARTICULARS OF DECISION

The Rossendale Borough Council hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1990 that PERMISSION HAS BEEN GRANTED for the carrying out of the development referred to in Part 1 hereof in accordance with the application and plans submitted subject to the following conditions:-

1. The development must be begun not later than the expiration of five years beginning with the date of this permission.

SEE SEPARATE SHEET FOR FURTHER CONDITIONS, REASONS AND NOTES (if any).

Reasons -

1. Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

Date

Borough Engineer and Planning Officer: Stubblelee Hall, Bacup, Lancs OL13 0DE
(See separate page for general information and guidance on post-decision procedures).

CONDITIONS REASONS & NOTES

2. Before any development is commenced approval shall be obtained from the local planning authority with respect to the reserved matters, namely, design, external appearance and landscaping. The landscaping proposals shall include all hard and soft landscaping features (as such including where appropriate screen or boundary walls and fences or other means of enclosure) and shall be fully implemented before the building(s) is/are first occupied for the purposes of this permission or at such other time as may subsequently be agreed in writing with that authority. Any trees or shrubs becoming diseased, dying or otherwise being removed within two years of planting shall be replaced by the applicant/developer by species of a similar type and size. Reason: This is an outline permission only.
3. No development shall take place until samples of the proposed natural stone and artificial slate have been submitted to and approved by the local planning authority and the outer face of the building shall not be constructed other than with the approved materials. Reason: In the interests of visual amenity and in order to ensure a satisfactory degree of harmony within the development, as details in this respect have not been submitted with this proposal.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 no material change of elevation, change of use or alteration to form a habitable room of any integral or other garage constructed concurrently with or subsequent to the original dwellinghouse, which would otherwise be permitted by virtue of the provisions of Class A of Part 1 of Schedule 2 to Article 3 of the aforementioned Order, shall be carried out anywhere within the application site without the grant of formal express planning permission in that behalf by the local planning authority. Reason: In order to ensure that the subsisting standard of garage accommodation is not materially affected to the detriment of both visual amenity and more particularly with a view to retaining the existing standard of car parking provision within the application site.
5. No part of the development, hereby approved, shall commence until a scheme for the construction of the site access and the off-site works of highway improvement has been submitted to and approved by the local planning authority in consultation with the highway authority.
6. No part of the development, hereby approved, shall be occupied until the approved highway scheme referred to in Condition 4 has been implemented and completed to the satisfaction of the local planning authority in consultation with the highway authority.
7. No dwelling hereby approved shall be occupied until such time as the recommendations of the Contamination Report of Northern Foundations dated 2 March 1995 have been fully implemented. Reason: In the interests of ensuring that site contamination is appropriately dealt with.

Notes

1. For the avoidance of doubt it is hereby declared that this permission relates to the amended plans numbered 2323/5 received in November 1994 by the local planning authority.
2. A copy of the report from the Environment Agency is attached for information and compliance.
3. A copy of the report from The Coal Authority is attached for information and compliance.

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by affixing)
the Common Seal of)
ROSSENDALE BOROUGH COUNCIL)
in the presence of:-)

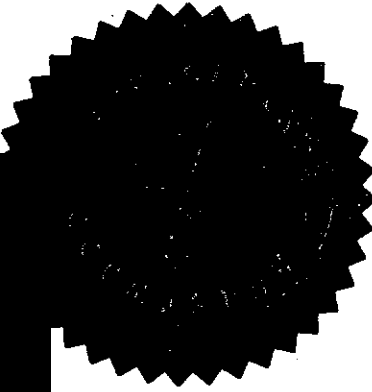
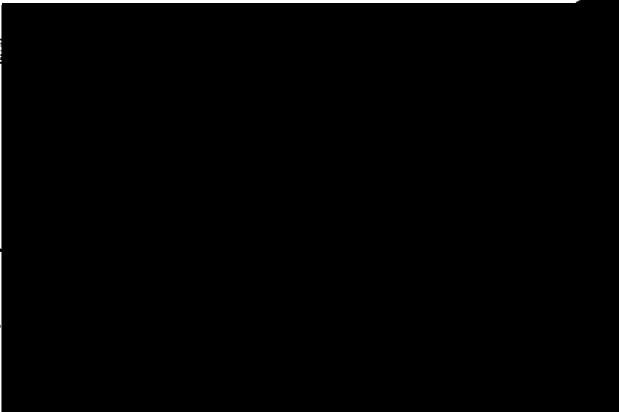


MAYOR

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Director of Legal Services

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by affixing)
the Common Seal of)
HURSTWOOD DEVELO)
in the presence of:-)



Director

Director/Secretary

SIGNED (but not delivered until the date)
hereof) AS A DEED by)
as the Attorney and on behalf of)
NATIONAL WESTMINSTER BANK)
in the presence of:-)



Bank official - Technical and Securities,
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