

Dated

17th June

2010

4259

HURSTWOOD DEVELOPMENTS LIMITED – IN ADMINISTRATION

UNILATERAL UNDERTAKING
Pursuant to Section 106 of the Town
and Country Planning Act 1990
relating to land known as Kearns
Mill, Cowpe Road, Cowpe,
Waterfoot, Rossendale

ADDLESHAW GODDARD

This Deed is made on

17th June

2010

This Deed of Unilateral Undertaking is undertaken by:

Hurstwood Developments Limited (No. 1147083) In Administration whose registered office is at St. James Square Manchester (**Owner**).

Whereas:

- (A) The Owner is registered at HM Land Registry as the freehold proprietor of the Land described in Schedule 1 under Title Number LA958613.
- (B) Rossendale Borough Council (**Council**) is the Local Planning Authority for the purposes of this Deed for the area within which the Property is situated and by whom the obligations contained in this Deed are enforceable.
- (C) The Owner has applied to the Council for permission under Council reference 2010/92 to replace an extant planning permission reference 2005/519 and to extend the time limit for implementation to develop part of the land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in Schedule 2.
- (D) The Council is minded to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Undertaking without which planning permission for the Development would not be granted.
- (E) On 19 September 2008 Brian Green and David James Costley-Wood (**Administrators**) were appointed to act as joint administrators of the Owner and following extension by Court Order the Administrators remain in office.
- (F) On 19 January 2007 the Owner gave a unilateral undertaking which is varied and replaced by this unilateral undertaking.
- (G) The Owner acting by the Administrators is willing to enter into this Undertaking in order that in the event that the Council grants the Planning Permission the obligations of the Owner as set out in this Undertaking shall be secured as planning obligations for the purposes of Section 106 of the Act.
- (H) The Owner has agreed that seven days before implementing the Planning Permission it will pay all Commuted Sums to the Council in accordance with this Undertaking

It is agreed

1

- (a) In this deed (including the Recitals) where the context so requires or admits the following expressions shall have the following meanings:

Act means the Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991

Commuted Sums means the sum of £58,000 to be expended on the provision of Off-Site Transport for the provision of infrastructure, services and facility improvements in accordance with the Planning Obligations in Lancashire Policy togetherwith the sum of £12,314 to be expended on the improvement of the Community Hall in Cowpe

Development means Planning Application reference 2010/92 to replace an extant planning permission reference 2005/519 and to extend the time limit for implementation for part demolition of Kearns Mill, retention and conversion of other mill buildings to create 19 apartments and erection of 20 dwellings at Kearns Mill, Cowpe Road, Cowpe, Waterfoot, Rossendale.

Implement/implementing means carry(ing) out a material operation as defined in Section 56 of the Act

Land means all that land described in Schedule 1 and shown for identification purposes only edged red on the attached plan

Planning Application means an application numbered 2010/92 to replace an extant planning permission reference 2005/519 and to extend the time limit for implementation of planning permission for the Development submitted by the Owner to the Council

Planning Permission means planning permission for the Development reference in the form of the annexed draft

- (b) The expressions **Council** and **Owner** shall include their respective successors in title and assigns
 - (c) Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders
 - (d) References in this Agreement to any clause or appendix without further designation shall be a reference to the clause or appendix to the Agreement so numbered
- 2 This Undertaking is made in pursuance of Section 106 of the Act to the intent that it shall bind all interests in the Land into whosoever hands the same may come and the Owner and his successors in title and assigns and all persons claiming under or through them
- 3 It is hereby agreed and declared as follows:
- (a) the covenants in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council
 - (b) without prejudice to liability for any subsisting breach of covenant prior to parting with such interest no party shall be liable for breach of a covenant contained in this Agreement after having parted with its interest in the Land or in the part in respect of which such breach occurs.
 - (c) all notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:
 - (i) in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
 - (ii) in the case of a notice to be served on the Owner to the Owner at the above address

- (d) if the Planning Permission is not granted or if it is revoked or the Planning Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- (e) unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto
- (f) If the Planning Permission shall expire before the Development is commenced as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.
- (g) Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property 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 Agreement.
- (h) This Agreement is a local land charge and shall be registered as such.

4 The Owner for itself and its successors in title and assigns hereby covenants with the Council as follows:

- (a) To comply with the covenants contained within Schedule 2.
- (b) To give notice in writing to the Council not less than seven days before implementing the Planning Permission and upon giving the said notice to pay the Commuted Sums increased with inflation in accordance with clause 4(d) of this Agreement.
- (c) in the event of late payment of the Commuted Sums Interest will be paid on any sum outstanding at a rate of 3% per annum above the base rate of the National Westminster Bank Plc and accrue from the date payment should have been made to the Council to the date of payment thereof to the Council
- (d) the Commuted Sums shall be uplifted by the amount which bears the same proportion to the Commuted Sums as the amount by which the all items Figure of the Index of Retail Prices published by the Department for Employment or any successor Ministry or Department for the month at the date of payment exceeds the Index Figure of the said Index at 19th January 2007 being the date the Owner gave the unilateral undertaking on permission 2005/519 as outlined above
- (e) the Owner shall on the execution hereof pay to the Council its reasonable legal costs in the sum of £200 properly incurred in the preparation of this Agreement

5 **Dispute Resolution**

Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person (the Expert) to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application

of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute (the President)

The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place It is hereby agreed and declared that:-

- (a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations
- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

6 **Exclusion of Administrators Personal Liability**

It is hereby expressly agreed and acknowledged that the Administrators are party to this Deed only for the purpose of receiving the benefit of this exclusion of liability and neither the Administrators nor their partners firm employees or agents shall incur any personal liability howsoever arising under or in connection with this deed and no claim shall rank as an administration expense of the administration of the Owner or the Administrators

Schedule 1

Kearns Mill (also known as Cowpe Mills) Cowpe Road, Cowpe, Waterfoot, Rossendale, Lancashire, BB4 7EH, shown edged red on the attached plan and forming part of Title Number LA958613.

Schedule 2

The Owner's Obligations

- 1 The Owner covenants with the Council that seven days prior to commencement of the Development the Owner shall pay to the Council:
 - (a) the sum of £58,000 to be expended on the provision of Off-Site Transport and provision of infrastructure, services and facility improvements in accordance with the Planning Obligations in Lancashire Policy; and
 - (b) the sum of £12,314 to be expended on the improvement of the Community Hall at Cowpe.

- 2 The Owner covenants with the Council that prior to the completion of no more than 37 houses within the Development the Owner shall fence off the "Lodge and Recreation Area" which is situated on the Property and shown hatched blue on the Plan A and thereafter the Lodge and Recreation Area shall be open to the public at all reasonable times but subject to such statutory restrictions and requirements as apply from time to time to areas used for such purposes (unless otherwise agreed In writing by the Council) at no cost as a picnic site and for recreational use by the public the lodge to be available to the public for fishing at no cost.

- 3 The Lodge and Recreation Area shall at all times be maintained by the Owner

In witness whereof this document has been)
executed as a Deed by the respective parties)
hereto in the appropriate manner with the)
intention of such document being Delivered on
the part of each of them a Deed on (but not
before) the day and year first before
written Signed as a Deed by **Hurstwood
Developments Limited** acting by one of the
Administrators pursuant to powers conferred
under the Insolvency Act 1986 in the presence
of

.....
Administrator

.....
Signature of

Name

Address ...

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