

Dated this 2nd day of December 2011

(1) ROSSENDALE BOROUGH COUNCIL

(2) NIALL MALONE

(3) BREDA MALONE

AGREEMENT

**Under section 106 of the Town & Country Planning Act 1990 relating to land at
Old Market Hall, Bacup, Lancashire OL13 8GZ.**

Legal Services
Rossendale Borough Council
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made on the 2nd day of December 2011

BETWEEN:

- (1) ROSSENDALE BOROUGH COUNCIL of The Business Centre, Futures, Park, Bacup OL13 0BB (referred to in this Agreement as "the Council")
- (2) MR NIALL MALONE of [REDACTED] and (3) MRS BREDA MALONE of [REDACTED] (together referred to in this Agreement as "the Owner").

BACKGROUND

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B. The Owner is the freehold owner of the Site being registered at H. M Land Registry under title number LA956714 free from encumbrances which would prevent the Owner from entering into this Agreement.
- C. The Owner has submitted the Application to the Council to develop the Site in the manner and for the uses set out in the Application and in the plans, specification and particulars deposited with the Council and forming part of the Application more particularly set out in the Second Schedule.
- D. The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title as hereinafter provided and where the Owner is more than one legal entity all of the Owner's obligations herein can be enforced against all of them jointly and against each individually.
- E. The Council has decided to grant planning permission ("the Permission") for the development in accordance with the Application subject to the making of this Agreement without which the Permission would not be granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

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

"Application"	the application for full planning permission dated 3 rd February 2011 submitted to the Council for the Development and allocated reference number 2011/101
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, 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 Development" shall be construed accordingly.
"Commutated Sum"	the sum of fifteen thousand pounds (£15,000) to be expended towards Play Space/Open Space provision and/or a Parking/Travel Plan (which may include the provision of a Traffic Regulation Order and associated works in the vicinity of the Site, the provision/improvement of bus facilities/services and subsidised travel for residents of the Site).
"Development"	the Development of the Site in accordance with the Planning Permission consisting of the conversion of the Old Market Hall to provide 16 apartments, the demolition of the attached Warehouse and the construction of a three storey building containing nine apartments.
"Dwelling"	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or any such other index as may from time to time be published in substitution therefore.

“Interest”	interest at the base lending rate for the time being of the Bank of England compounded annually.
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
“Plan”	the plan attached to this Deed
“Planning Permission”	the permission to be granted in the form of the draft annexed hereto.
“Site”	the freehold land described in the First Schedule and shown for identification purposes only edged red on Plan 1 annexed to this Agreement.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed 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 Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 13 and 14 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Third Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.3 This Deed shall be registerable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or

otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.10 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 the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council [(or the County Council or Owner)] from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

- 9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10 INDEXATION

- 10.1 Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the [date hereof] until the date on which such sum is payable.

11 INTEREST

- 11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 VAT

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

- 13.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

14 DELIVERY

- 14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

All that plot of land shown edged in red on the plan attached hereto which is land and buildings being the Old Market Hall, Bank Street, Bacup registered at H. M Land Registry under title number LA956714.

SECOND SCHEDULE

The development consisting of the conversion of the Old Market Hall to provide 16 apartments, demolition of attached warehouse and construction of a three storey building containing nine apartments and associated 17 space car park as per the draft attached hereto.

THIRD SCHEDULE

The Owner's Covenants with the Council as follows:

- (1) To give notice in writing to the Council not less than seven days before Commencement of Development.
- (2) To pay the Commuted Sum increased with inflation in accordance with Clause 10 of this Deed prior to Commencement of Development.

FOURTH SCHEDULE

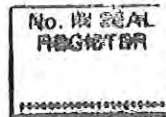
The Council covenants with the Owner as follows:

- (1) The Council shall use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.

- (2) The Council shall pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment.
- (3) The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.
- (4) At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

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 as a DEED on (but not before) the day and year first before written

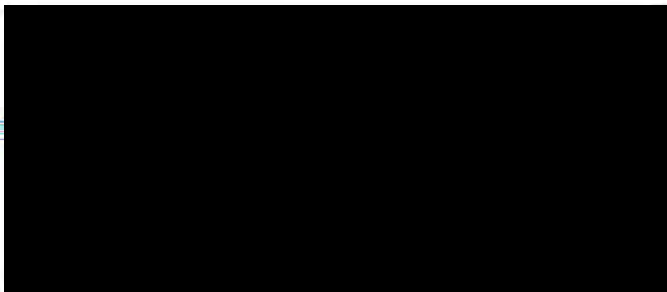
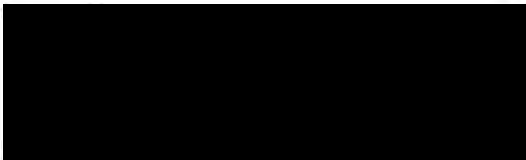
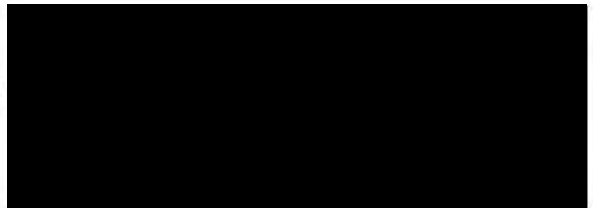
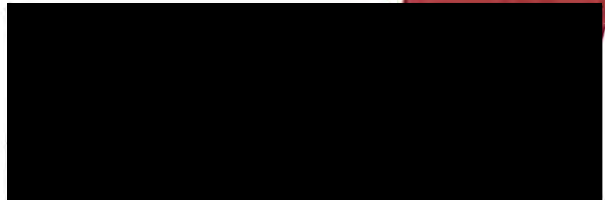
THE COMMON SEAL of ROSSENDALE)
BOROUGH COUNCIL was hereunto)
Affixed to this Deed in the presence of:)



Authorized Signatory:

EXECUTED as a DEED by NIALL MALONE)
In the presence of:

EXECUTED as a DEED by BREDA MALONE)
In the presence of:

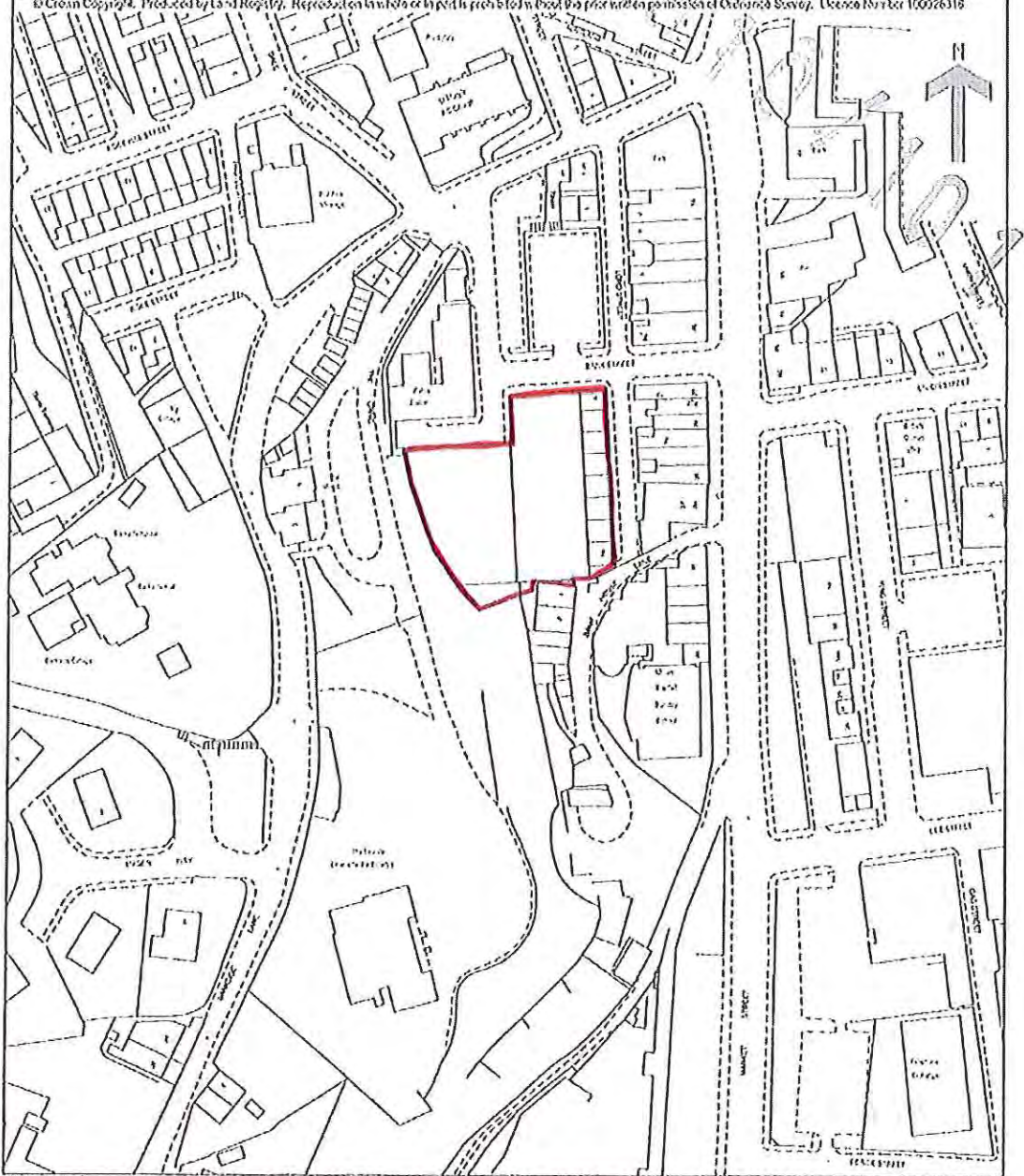


Land Registry
Official copy of
title plan

Title number LA956714
Ordnance Survey map reference SD8622NE
Scale 1:1250
Administrative area Lancashire: Rossendale



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This official copy issued on 10 June 2009 shows the state of this title plan on 10 June 2009 at 08:04:24. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This title is dealt with by Land Registry, Field Office.

3 FEB 2011