

Date 18th day of January 2011

- (1) Rossendale Borough Council
- (2) Geoffrey Thorley Matthews
- (3) Joan Winifred Matthews

AGREEMENT

Pursuant to Section 106 of the Town & Country Planning Act 1990

Relating to the site formerly occupied by Fernlea Filling Station, Rochdale Road,
Bacup, Lancashire OL13 9SE

(Planning Permission 2010/435)

CLB/SS/Z12/001230

Stuart Sugarman
Director of Business
Rossendale Borough Council
The Business Centre
Futures Park
Newchurch Road
Bacup
Lancashire
OL13 0BB

THIS PLANNING OBLIGATION is made the 18th day of *January* 2011

BETWEEN:

- (1) ROSSENDALE BOROUGH COUNCIL of The Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB (the "Council"); and
- (2) GEOFFREY THORLEY MATTHEWS of [REDACTED] (the "Owner"); and
- (3) JOAN WINIFRED MATTHEWS of [REDACTED] (the "Owner")

(Together: the "Parties")

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.
- (B) The Owners are the registered proprietor with title absolute of the freehold interest in the Site which is registered at HM Land Registry under title numbers LA658480, LA523392 and LAN101087.
- (C) A Registered Provider has, by the Application to the Council, applied for Planning Permission for the Development on the Site. The Application was a full application and was given reference number 2010/435 by the Council.
- (D) The Council has resolved to grant a Planning Permission pursuant to the Application subject to the making of this Agreement, without which the Planning Permission will not be granted.

NOW THIS DEED WITNESSETH as follows:

1 Definitions

- 1.1 In this Agreement unless the context otherwise requires the following words, expressions and phrases shall have the meanings hereby ascribed to them:

"Act"

the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004;

“Amenity Open Space”

the area as appropriately identified edged and hatched red in the plan marked “AOS1” and annexed hereto;

"Application"

the application for planning permission under the Council reference 2010/435 seeking Planning Permission on the Site for the demolition of the existing filling station and erection of a 3-storey block of 9 apartments and a 2-storey terrace of 7 houses;

"Commencement"

the carrying out of a material operation as defined by section 56(4) of the Act (excluding any act of demolition remediation or clearance of the Site) in accordance with the Planning Permission and "Commencement" shall be construed accordingly;

"Development"

the development of the Site in accordance with the Planning Permission;

"Plan"

the area edged red on the plan marked “P1” and annexed hereto;

"Planning Permission"

the planning permission to be granted pursuant to the Application and the completion of this Agreement;

“Registered Provider”

a Registered Provider (previously a Registered Social Landlord) registered with the Tenants Service Authority pursuant to the Housing and Regeneration Act 2008 and who shall be registered with the Homes and Communities Agency (previously the Housing Corporation);

"Scheme"

the scheme to be approved by the Council pursuant to paragraph 3 of the Schedule;

"Site"

the land formerly occupied by the Fernlea Filling Station, Rochdale Road, Bacup, Lancashire OL13 9SE which is shown edged red on the Plan.

2 Operative provisions

- 2.1 This Agreement is entered into pursuant to Section 106 of the Act with the intention that the obligations contained herein are planning obligations for the purposes of that section in respect of the Site which may be enforced by the Council against the Owners or any person deriving title under the Owners.
- 2.2 Save for the provisions of Clause 2.15 the provisions of this Agreement shall come into effect only on the Commencement of the Development.

- 2.3 The Owners shall be considered to be liable for the obligations and covenants contained herein until such time as the Owners dispose of its legal interest in the Site or any part thereof to any other person persons or organisation in accordance with paragraph (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest)
- 2.4 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after it shall have parted with its interest in the Site or the relevant part of the Site 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 cease to have effect if:
- 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn;
 - 2.5.2 the Planning Permission shall expire prior to the Commencement of the Development;
 - 2.5.3 development of the Site shall be commenced (here meaning the carrying out of "material operation" as defined by Section 56(4) of the Act) pursuant to any other planning permission granted with respect to the Site.
- 2.6 This Agreement is a local land charge and shall be registered as such on its completion by the Parties
- 2.7 For the purposes of the Contracts (Rights of Third Parties) Act 1999) nothing in this Agreement shall confer on any third party any right to enforce any benefit or any terms of this Agreement.
- 2.8 The Owners hereby covenant with the Council to perform the obligations specified in the Schedule to this Agreement so far as they shall derive legal title to the Site or any part thereof.
- 2.9 The Owners hereby covenant with the Council to observe the covenants
- 2.10 Wherever in this Agreement there is reference to the Council giving its approval to any matter or scheme that reference is on the basis that such approval shall not be unreasonably withheld or delayed.
- 2.11 Where any dispute or difference arises between the Owners and the Council or any such person or organisation deriving a legal title to the Site and the Council in respect of this Agreement either party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert ("the Appointed Expert") having not less than 10 years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors. The identity of such person in default of agreement

being an appointment made on the application of either party at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors provided in that in the absence of a direction by the Appointed Expert in accordance with this clause as to how costs of the reference to the Appointed Expert should be borne as between the parties to the dispute the parties shall bear their own costs and shall share equally the costs and charges of the Appointed Expert.

2.12 The Appointed Expert shall:

- 2.12.1 Afford to each of the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs submissions upon one another's representations;
- 2.12.2 Be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;
- 2.12.3 Be bound to have regard to such representations;
- 2.12.4 Have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the cost and charges of the Appointed Expert) to be met by any party behaving unreasonably;
- 2.12.5 In the making of his/her award not to be liable save to the extent in law as provided in relation to discussions of an Expert;
- 2.12.6 Make awards which are final and conclusive as between the parties to the dispute (except that such award shall not remove the parties' right of appeal on matters of law and any manifest material error); and
- 2.12.7 Be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause.

2.13 Any notice or other communication given or made in accordance with this Agreement shall be in writing, shall be sent by recorded delivery, shall be deemed to have been properly served on the date following the date on which such notice or communication was posted, and shall unless otherwise notified to all the Parties in writing be sent to:

2.13.1 In the case of the Council:

The Director of Business
The Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB

2.13.2 In the case of the Owners:

Geoffrey Thorley Matthews and Joan Winifred Matthews both of Deansgreave Farm, Deansgreave Road, Britannia, Bacup Lancashire

- 2.14 In this Agreement the expressions "the Owners" and "the Council" shall include their respective successors in title and assigns. In addition, the expression "the Owners" shall include any subsequent proprietors of a registered charge in respect of the Site.
- 2.15 The Owners shall pay the Council's legal fees and disbursements incurred in relation to this Agreement on the date of this Agreement, being a sum of £750.00 and shall reimburse the Council any fees paid to HM Land Registry and other searches including company search fees in connection herewith.
- 2.16 In this Agreement unless the context otherwise requires words importing the neuter gender only include the masculine and feminine genders and the masculine shall include the feminine and vice versa and words importing the singular number only include the plural number.
- 2.17 The parties agree that the terms of this Agreement shall not apply to the owners (here meaning freeholders and leaseholders) tenants and occupiers and mortgagees of any of the houses and/or flats to be constructed from time to time on the Site pursuant to Planning Permission.

Schedule

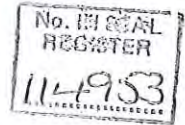
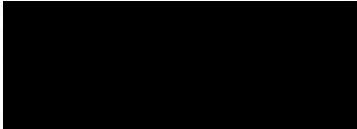
Owner's obligations

The Owners covenant with the Council as follows:

- 1 To notify the Council in writing of the Commencement of the Development, such notice to be served on the Council within 7 days of the Commencement of the Development.
- 2 To build and complete the Development in accordance with the Planning Permission.
- 3 To undertake landscaping/planting in respect of the Amenity Open Space in accordance with the scheme submitted to and approved in writing by the Council prior to Commencement and implemented in the first planting season following first occupation of any of the dwelling units on the Site, unless a variation of this has first been agreed in writing by the Council.
- 4 Subject to paragraph 5 below to ensure that the Development and each of the dwelling units in the Development are constructed in accordance with the Planning Permission and are thereafter retained by a Registered Provider.
- 5 Not to dispose of the legal interest in the Site or any part or parts thereof unless to a Registered Provider SAVE THAT this obligation shall not apply to the grant of any lease or transfer of the freehold in any part of the Site pursuant to the exercise of any statutory rights or to the grant of any tenancies by the Registered Provider in the course of its business as a provider of housing.
- 6 To give the Council immediate written notice of any changes in ownership of any of its interests in the Site, such notice to give full details of the transferee's full name and registered office together with the area of the Site transferred by reference to a plan.
- 7 To pay to the Council within 7 days of the Commencement the sum of £1,200.00 to enable Lancashire County Council (Highways) to process and undertake works associated with a Traffic Regulation Order to restrict parking/waiting on highways in the vicinity of the Site.

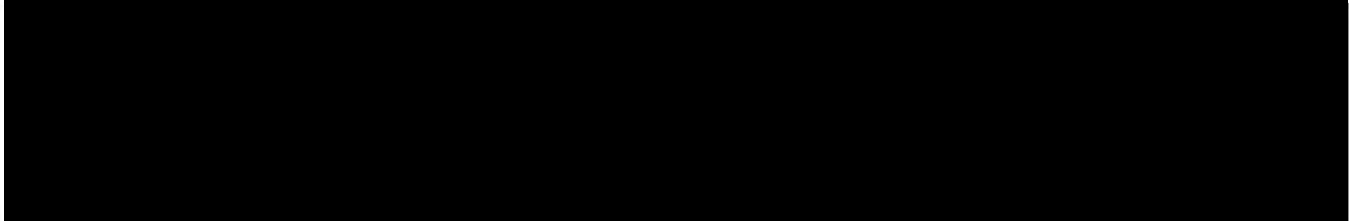
IN WITNESS whereof the Parties have executed this Agreement the day and year first before written.

THE COMMON SEAL of)
ROSSENDALE BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

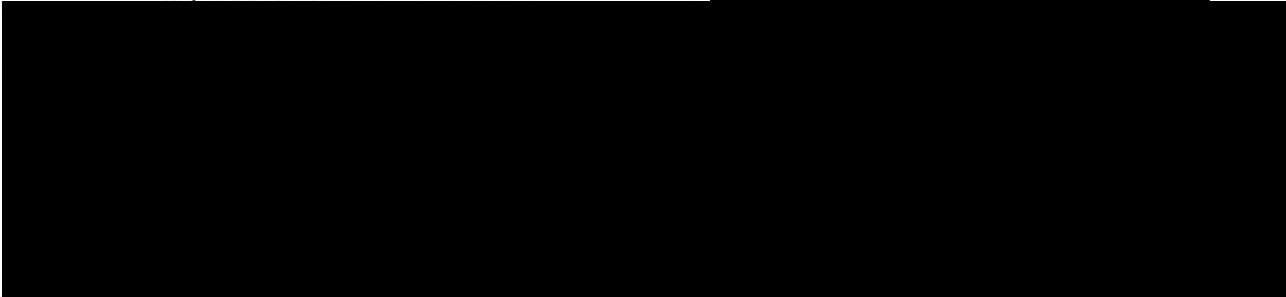


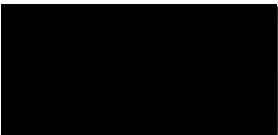
Director of Business/Mayor/Chief Executive

EXECUTED as a Deed)



EXECUTED as a Deed
By Joan Winifred Matthews





REVISIONS SHOWN IN RED IN THIS PLAN

DRAFT

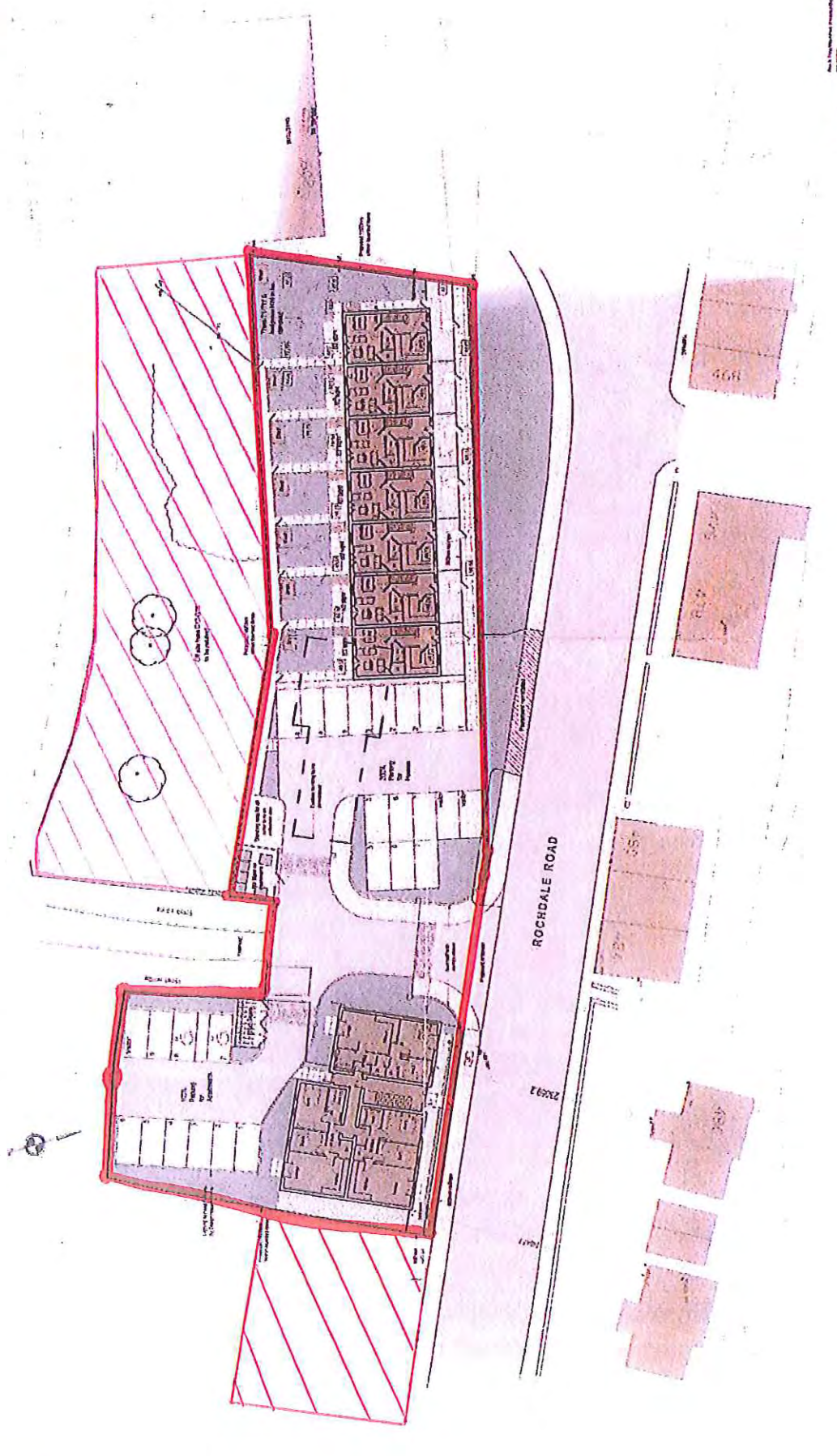
Client:	Project:	Designer:	Scale:
ROCKDALE	ROCKDALE	ROCKDALE	
Project:	Dimensions:	Architect:	Year:
501	100' x 100'	STEEL DESIGN PARTNERSHIP	2023

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Steel Design Partnership
 1234 Main Street
 Suite 500
 Los Angeles, CA 90001
 Phone: (310) 555-1234
 Email: info@steel-design.com

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DATE	PROJECT	CLIENT	SCALE
10/15/10	ROCHDALE RD	ROCHDALE RD	1" = 20'
DESIGNED BY	DRAWN BY	CHECKED BY	DATE
J. J. J.	A. A.	B. B.	10/15/10

street design partnership
 1000 1st Street, Suite 100, San Francisco, CA 94103
 415.774.8888

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