

DATED

10th August

2015

- (1) PRIME STRUCTURES LIMITED
- (2) DAVID FRANCIS SPEAKMAN
- (3) ROSSENDALE BOROUGH COUNCIL

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PLANNING OBLIGATION BY DEED OF  
AGREEMENT UNDER  
SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990

relating to  
Land adjacent to 368 Rochdale Road

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THIS DEED is made on

10th August

2015

**PARTIES:**

- (1) **PRIME STRUCTUES LIMITED** (Company registration no. 08130936) of 340 Deansgate Manchester M3 4LY ("**the Owner**"); and
- (2) **DAVID FRANCIS SPEAKMAN** care of Nexus Solicitors, Carlton House, 18 Albert Square, Manchester M2 5PE ("**Mortgagee**")
- (3) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Bacup OL13 0BB ("**Council**")

**INTRODUCTION:**

- 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 County Council is the highway authority for the purposes of the Act for the area in which the Site is situated.
- C The Owner is the freehold owner of the Site registered at the Land Registry under title number LAN23136.
- D The Mortgagee is the proprietor of a registered charge affecting the Site dated 3 October 2014 and has agreed to enter into this Deed to give its consent to the terms herein.
- E The Application was submitted to the Council by the Owner and the Council resolved on 24<sup>th</sup> February 2015 to grant the Planning Permission subject to the prior completion of this Deed.
- F The Owner has agreed to enter into this Deed pursuant to the provisions of section 106 of the Act upon the terms and conditions hereinafter appearing with the intent that it should be binding not only upon the Owner but also upon any person deriving title from the Owner as provided by section 106 of the Act and any persons claiming through under or in trust for them in respect of the Site.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

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

**"Act"** means the Town and Country Planning Act 1990;

**"Application"** means the application for outline planning permission registered by the Council on 23<sup>rd</sup> December 2014 and allocated reference number 2014/0494;

**"Commencement of Development"** means 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "**Commence Development**" shall be construed accordingly;

**"County Council"** means Lancashire County Council;

**"Deed"** means this Deed;

**“Development”** means the development of the Site pursuant to the Planning Permission by the erection of eight 3-bedroomed dwellings and four 2-bedroomed dwellings together with formation of associated estate road and landscaping/boundary treatments;

**“Dwellings”** means any dwelling (including a house flat or maisonette) to be constructed on Site pursuant to the Planning Permission and reference to **“Dwelling”** shall mean any one of the Dwellings;

**“Interest”** means interest at four per cent above the base lending rate of the Barclays Bank Plc from time to time;

**“Occupation”** and **“Occupied”** and **“Occupier”** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration of the Dwellings or occupation for marketing or display or occupation in relation to security operations;

**“Plan”** means the plan attached to this Deed;

**“Planning Permission”** means the outline planning permission subject to conditions granted by the Council pursuant to the Application;

**“Refuse Contribution”** means the sum of £1,200 payable to the Council in accordance with the provisions of this Deed as a contribution towards the provision of refuse bins at the Site;

**“Site”** means the land adjoining 368-370 Rochdale Road, Bacup OL13 9TH being the land against which this Deed may be enforced as shown (for the purposes of identification only) edged red on the Plan;

**“TRO Contribution”** means the sum of £1,500 to be used by the County Council to promote a traffic regulation order relating to that precludes parking on Rochdale Road which will obstruct the site access or its sightlines and to provide signage in relation to such a traffic regulation order; and

**“Working Day”** means any day Monday to Friday (other than Bank or public holidays).

## **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 its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any obligation covenant undertaking or agreement by any party to this Deed not to do any act or thing includes an obligation covenant undertaking or agreement not to permit or allow the doing of that act or thing.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Sections 106 of the Act and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 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 and successors in title.

### **4 CONDITIONALITY**

- 4.1 Save for the provisions of clauses 12 (change in ownership), 15 (jurisdiction), 16 (delivery) and 17 (notices) which shall come into effect immediately upon completion of this Deed, this Deed is conditional upon:
- 4.1.1 the grant of the Planning Permission by the Council; and
- 4.1.2 the Commencement of Development.

### **5 THE OWNER'S COVENANTS**

The Owner covenants as set out in Schedule 1.

### **6 THE COUNCIL'S COVENANTS**

The Council covenants as set out in Schedule 2.

### **7 MORTGAGEE CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with his consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless he takes possession of the Site or any part thereof in which case he too will be bound by the obligations as if he was a person deriving title from the Owner.

### **8 MISCELLANEOUS**

- 8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.2 This Deed may be registerable as a local land charge by the Council.
- 8.3 Following the performance and satisfaction of all the obligations contained in this Deed the Owner may request that the Council effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 Any obligations in this Deed falling within s.106(1)(d) of the Act shall not be enforceable against individual owners occupiers or tenants of Dwellings or statutory undertakers nor against those deriving title from them but without prejudice to obligations falling within section 106(1)(a)(b) or (c) of the Act or any other power pursuant to which this Agreement is made which shall be enforceable against such persons whether or not they also fall under s.106(1)(d) of the Act.
- 8.8 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 or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause.
- 8.9 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.

## **9 COSTS OF THIS AGREEMENT**

Upon completion of this Deed the Owner shall pay to the Council its reasonable and proper legal costs of £150.00 in connection with the negotiation and completion of this Deed.

## **10 DETERMINATION OF DISPUTES**

- 10.1 Subject to clause 10.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 10.2 For the purposes of this clause 10 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 10.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 10.4.
- 10.4 Any dispute over the identity of the Specialist shall be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to

determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist shall be nominated by the President or next most senior available officer of the Law Society of England and Wales.

10.5 The Specialist shall act as an independent expert and:

10.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;

10.5.2 each party shall have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;

10.5.3 the Specialist shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

10.5.4 the Specialist shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

10.5.5 the Specialist shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

10.5.6 the Specialist shall use all reasonable endeavours to publish his decision within 30 working days of his appointment.

10.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

10.7 This clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

## **11 WAIVER**

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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **12 CHANGE IN OWNERSHIP**

The Owner covenants to give the Council written notice within 14 Working Days of any change in ownership of any of the 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.

## **13 INTEREST**

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.

**14 VAT**

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

**15 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

**16 DELIVERY**

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.

**17 NOTICES**

17.1 Any notice consent or approval to be given pursuant to the terms of this Deed by any party shall not be unreasonably withheld or delayed and the parties to this Deed hereby agree to act reasonably in carrying out their functions obligations and covenants as described in this Deed provided that the Council shall not be required thereby or by any provision of this Deed to act otherwise than in accordance with its statutory frame of reference.

17.2 Any notice, demand or any other communication served by any party under this Deed is to be delivered by hand or sent by first class post, pre-paid or recorded delivery

17.3 Any notice, demand or any other communication served is to be sent to the addresses set out above or to such other address as one party may notify in writing to the others at any time as its address for service and shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Planning S106 Monitoring Officer

17.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

17.4.1 if delivered by hand, at the time of delivery;

17.4.2 if sent by post, on the second working day after posting; or

17.4.3 if sent by recorded delivery, at the time delivery was signed for

17.5 If a notice, demand or any other communication is served after 4.00pm in a Working Day, or on a day that is not a Working Day, it is to be treated as having been served in the next Working Day.

17.6 Notices shall not be sent by email or DX or facsimile.

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



## **SCHEDULE 1**

### **Part 1**

#### **General Provisions**

The Owner covenants as follows:

- 1 To give the Council written notice of the Commencement of Development within seven Working Days of Commencement.

### **Part 2**

#### **TRO Contribution**

- 2 The Owner covenants not to Commence Development until it has paid the TRO Contribution to the Council.

### **Part 3**

#### **Refuse Contribution**

- 3 The Owner covenants not to Commence Development until it has paid the Refuse Contribution to the Council

**SCHEDULE 2**

**Council's Covenants**

The Council covenants as follows:

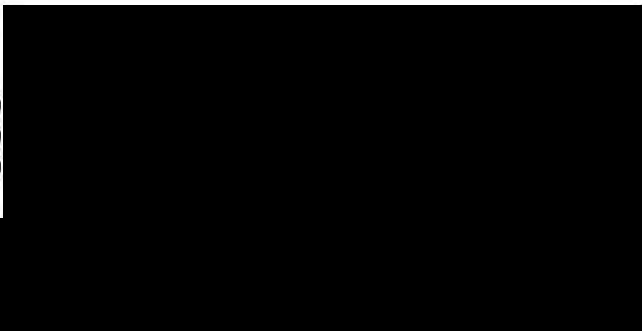
- 1 to issue the Planning Permission within two Working Days of the date of this Deed.
- 2 that at the written request of the Owner or the Mortgagee to provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed;
- 3 to operate abide by and comply with the arrangements terms conditions and obligations for the purposes set out in Schedule 1;
- 4 to use the Refuse Contribution received from the Owners under the terms of this Deed for the purposes for which it is paid and to provide the Owner and the Mortgagee with such evidence as the Owner or the Mortgagee shall reasonably require in order to confirm the expenditure of the sum paid by the Owner under this Deed;
- 5 that in the event that the Refuse Contribution paid under the terms of this Deed has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfillment of that purpose) within five years of the date of receipt by the Council of such payment, to refund to the party who paid such sum any unexpended part of that sum together with Interest for the period from the date of payment to the date of refund

**EXECUTED** as a **DEED** by .....)  
**PRIME STRUCTURES LIMITED** Acting by .....)  
in the presence of:.....)

.....  
Director

Witness Signature .....  
Witness Name .....  
Witness Address .....  
.....  
.....  
Witness Occupation .....

**EXECUTED** as a **DEED** by .....)  
**DAVID FRANCIS SPEAKMAN**.....)  
in the presence of:.....)



Witness Signature...

Witness Name ...

Witness Address

Witness Occupation



NO. IN SEAL REGISTER  
115164

**EXECUTED** as a **DEED** by affixing .....)  
the **COMMON SEAL** of .....)  
**ROSSENDALE BOROUGH**.....)  
**COUNCIL** .....)  
in the presence of:.....)



Authorised Signatory

Witness Signature.....

Witness Name ...

Witness Address

Witness Occupation..



## APPENDIX: THE PLAN

Do not scale from this drawing.  
 All dimensions must be checked on site by the Contractor prior to the commencement of any fabrication or building works.  
 Where applicable, dimensions and details are to be read in conjunction with specialist consultants' drawings and/or other specifications; any discrepancy is to be brought to the attention of Michael Dyson Associates Limited prior to the commencement of any fabrication or building works.  
 © This drawing is the property and copyright of Michael Dyson Associates Limited; it shall not be copied to any other party without the express written consent of an authorised director of Michael Dyson Associates Limited.

**NOTES**

The site boundaries indicated on this drawing have been reproduced from indicative information only. The Client must confirm / verify all boundaries prior to commencement of works.

REV	DATE	AMENDMENTS	BY	APPRD



**Michael Dyson associates ltd**  
 Excellence in Housing Consultancy  
 West House, Meltham Road, Honley,  
 Huddersfield HD9 6LB  
 t. 01484 666888, f. 01484 664186  
 w. www.mdyson.co.uk

**CLIENT:**

EASYBASE HOME LTD

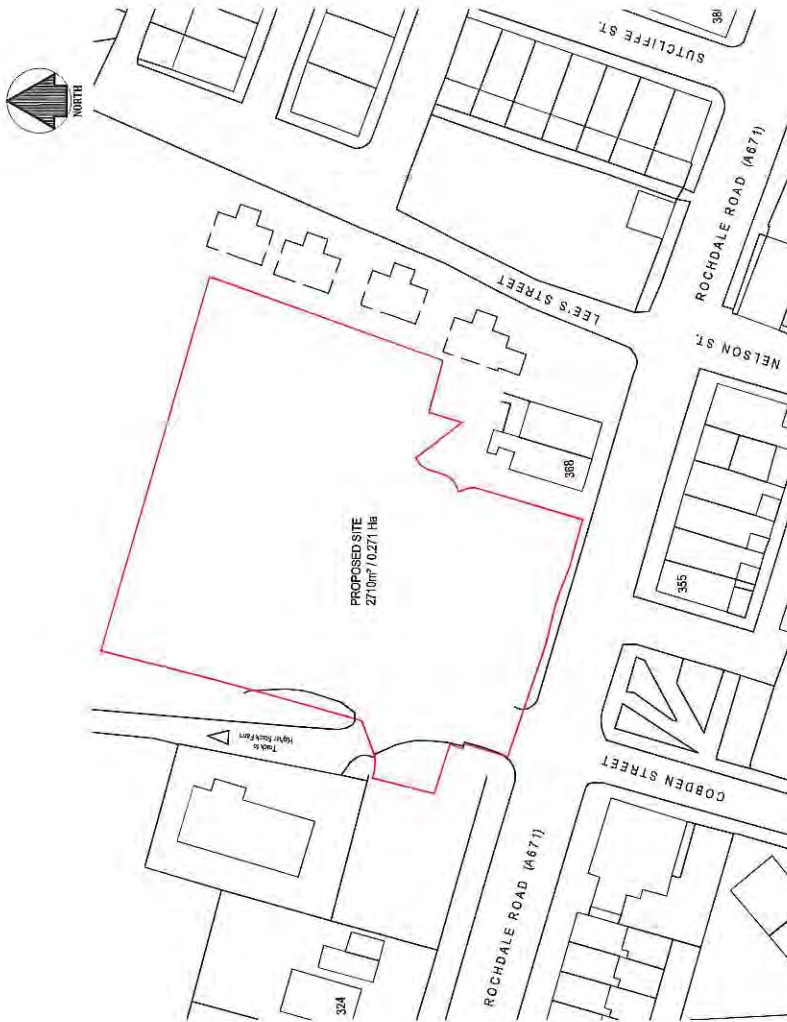
**PROJECT:**

NEW BUILD HOUSING DEVELOPMENT  
 ROCHDALE ROAD, BRITANNIA,  
 BACUP, LANCASHIRE

**TITLE:**

EXISTING  
 SITE LOCATION PLAN

DRAWN BY:	ENVY	APPROVED BY:	
DATE:	14.10.14	DATE:	
SCALE:	1:1000	ORIGINAL DRAWING SIZE	297 x 210 - A4
DRAWING NO.:	01-(EX)-7719	REV.	



**SITE LOCATION PLAN (1:1000)**

