

DATED

30th June

2016

SKIPTON PROPERTIES LIMITED

- and -

NATIONAL WESTMINSTER BANK PLC

- to -

ROSSENDALE BOROUGH COUNCIL

VARIATION TO PLANNING OBLIGATION BY DEED OF UNDERTAKING

under Sections 106 and 106A of the Town and Country
Planning Act 1990 relating to the development of land at
Kearns Mill, Cowpe Road, Waterfoot

Walton & Co
2 Queen Street
Leeds
LS1 2TW

THIS DEED is made the 30th day of June 2016

BY:

- (1) **SKIPTON PROPERTIES LIMITED** (Company registration number 02158429) whose registered office is at Skipton House, Riparian Court, Riparian Way, Cross Hills, Keighley BD20 7BW (hereinafter referred to as "**the Owner**")
- (2) **NATIONAL WESTMINSTER BANK PLC** (Company Registration Number 929027) of Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ (hereinafter referred to as "**the Mortgagee**")

TO:

- (3) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Newchurch Road, Bacup, OL13 0BB (hereinafter referred to as "**the Council**")

INTRODUCTION AND BACKGROUND

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.
- 2 The Owner purchased the Site on 29 September 2015 and is now the freehold owner of the Site registered with Land Registry Title Number LAN129213.
- 3 The Mortgagee is the mortgagee of the Site subject to a legal charge dated 29 September 2015.
- 4 The Owner submitted the Section 73 Application to the Council on 28 October 2015.
- 5 The Council validated the Section 73 Application on 9 December 2015.
- 6 The Council will grant the Section 73 Permission subject *inter alia* to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

1.1 Unless defined in this Deed or the context otherwise requires, a term defined in the Principal Agreement shall have the same meaning in this Deed *mutatis mutandis*.

1.2 In this Deed the following expressions shall have the following meaning:

“Section 73 Application” means the planning application validated by the Council on 9 December 2015 with the Council reference 2015/0454 Variation of Condition 19 (approved plans) of Planning Permission 2015/0024 to allow alterations of levels for the houses and alteration of layout/house types on plots 17-19;

“Section 73 Permission” means the planning permission which may be granted by the Council pursuant to the Section 73 Application;

“Principal Agreement” means a planning obligation by Deed of Undertaking under Section 106 of the Act dated 24 June 2015 which was entered into by Brian Verity, Linda Mary Verity, Sarah Louise Barraclough, Caroline Elizabeth Verity and Robert Graham Trustees Limited (1) and National Westminster Bank PLC (2) and which relates to the development of the Site pursuant to the Planning Permission;

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.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act as substituted by Section 12 of the Planning and Compensation Act 1991 and Section 111 of the Local Government Act 1972.
- 3.2 This Deed is supplemental to the Principal Agreement

4. CONDITIONALITY

- 4.1 This Deed shall take effect upon the date of grant of the Section 73 Permission by the Council.

5. VARIATION OF THE PRINCIPAL AGREEMENT

- 5.1 The parties hereby agree that the Principal Agreement shall be varied in accordance with the provisions of the First Schedule of this Deed.
- 5.2 The Principal Agreement is in all other respects hereby confirmed and shall (subject always to the provisions therein) remain in full force and effect.
- 5.3 This Deed shall be read in conjunction with and alongside the Principal Agreement.

6. MISCELLANEOUS

- 6.1 Upon completion of this Deed the Owner shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed up to a maximum sum of £150 excluding VAT but including disbursements;
- 6.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 6.3 This Deed shall be registrable as a local land charge by the Council.
- 6.4 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.
- 6.5 This Deed shall cease to have effect if the Section 73 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.
- 6.6 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 Section 73 Permission) granted (whether or not on appeal) after the date of this Deed.

7. WAIVER

- 7.1 No waiver (whether expressed or implied) by the Council or the Owner 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 Owner from enforcing any of the

relevant terms or conditions or from acting upon any subsequent breach or default.

8. MORTGAGEE'S CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in the Principal Agreement as varied by 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 for breaches of the Owner's covenants in the Principal Agreement and this Deed unless it has entered into possession of the Site or any part thereof in which case it too will be bound by the Owner's covenants to the extent that the obligations affect the relevant part of the Site which stands charged to the Mortgagee and for any breaches thereof.

9. JURISDICTION

9.1 This Deed is governed by and interpreted in accordance with the laws of England.

10. DELIVERY

10.1 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.

FIRST SCHEDULE
Variation of the Principal Agreement

The Principal Agreement shall be varied as follows:

1. Variation of Clause 1 of the Principal Agreement (Definitions)

- 1.1 The following definitions shall be inserted into Clause 1 of the Principal Agreement after the definition of **“Qualifying Land Remediation Expenditure”** and before the definition of **“Site”**:

“Section 73 Application” means the planning application validated by the Council on 9 December 2015 with the Council reference 2015/0454 Variation of Condition 19 (approved plans) of Planning Permission 2015/0024 to allow alterations of levels for the houses and alteration of layout/house types on plots 17-19;

“Section 73 Permission” means the planning permission subject to conditions to be granted by the Council pursuant to the Section 73 Application;

- 1.2 The definition of **“Development”** in Clause 1 of the Principal Agreement shall be varied as follows:

1.2.1 At the end of the definition in the second column insert ***“;and/or the development of the Site pursuant to the Section 73 Permission.”***

- 1.3 The definition of **“Planning Permission”** in Clause 1 of the Principal Agreement shall be varied as follows:

1.3.1 At the end of the definition in the second column insert ***“and the Section 73 Permission”***.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed
as a Deed on the day and year first before written

EXECUTED AS A DEED)
(but not delivered until the date hereof))
by **SKIPTON PROPERTIES LIMITED**)
in the presence of:)

Director

Director/S

SIGNED AND DELIVERED AS A DEED)
for and on behalf of **NATIONAL**)
WESTMINSTER BANK PLC by a duly)
Authorised Attorney)
In the presence of)

Witness Signatu

Witness Name:

Witness Address

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