

Dated

22nd February

2024

ROSSENDALE BOROUGH COUNCIL

and

HG13 (BAC) PRIVATE INVESTMENTS LIMITED

and

CHARLES STREET COMMERCIAL INVESTMENTS LIMITED

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE
TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND
OFF BLACKWOOD ROAD, STACKSTEADS**

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date: 01/02/2024

THIS DEED IS DATED *22nd February 2024*

PARTIES

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Bacup, OL13 0BB (the **Council**);
- (2) **HG13 (BAC) PRIVATE INVESTMENTS LIMITED** (company number 13810336) whose registered office is at 2-4 Wigan Road, Hindley, Wigan, WN2 3BE (the **Owner**); and
- (3) **CHARLES STREET COMMERCIAL INVESTMENTS LIMITED** (company number 01739793) whose registered address is Lake View, Lakeside, Cheadle SK8 3GW (the **Mortgagee**).

RECITALS

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Site is situated.
- (B) On 5 May 2022 the Council entered into the Original Agreement.
- (C) Planning Permission was granted on 11 May 2022
- (D) The Owner is the freehold owner of the Site pursuant to a Transfer dated 7 June 2022 made between (1) Norman Crook and (2) the Owner subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (E) The Mortgagee is entitled to be the registered proprietor of the charge dated 7 June 2022 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this Deed.
- (G) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

IT IS HEREBY AGREED

1. Interpretation

The following definitions and rules of interpretation apply in this Deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 5 May 2022 between (1) the Council, (2) Norman Crook and (3) Heaton Group Manchester Limited.

Planning Consent: full planning permission granted for the proposed demolition of existing two-storey detached dwelling and proposed construction of 41 no. new dwellings with vehicular access, landscaping/open space and associated works pursuant to reference 2021/0500.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
- 1.3 Clause headings shall not affect the interpretation of this Deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this Deed.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Statutory provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. Variations to the Original Agreement

- 3.1 Save for the definitions and rules of interpretation herein the definitions and rules of interpretation in the Original Agreement (as varied by this Deed) shall apply to this Deed.

3.2 The Original Agreement shall be varied in accordance with the provisions in the schedule. In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

4. Covenants to the Council

The Owner and the Mortgagee covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

5. Mortgagee's consent

The Mortgagee consents to the completion of this Deed and acknowledges that from the date of this Deed the Site shall be bound by the terms of this Deed, as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Site.

6. Local land charge

This Deed shall be registered as a local land charge.

7. Endorsement

Promptly following completion of this Deed the Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This agreement has been varied by a supplemental agreement dated and made between (1) Rossendale Borough Council (2) HG13 (BAC) Private Investments Limited and (3) Charles Street Commercial Investments Limited."

8. Council's costs

The Owner shall pay to the Council on or before the date of completion of this Deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

9. Value added tax

9.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly paid.

9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

10. Third party rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

11. Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE
Variations to the Original Agreement

- 1) *The definition of “Rented Housing” shall be amended by deleting the words “Social Rented Housing” and replacing with “Affordable Rented Housing”.*
- 2) *The following new definition shall be added:*

““Affordable Rented Housing” means Affordable Housing let at no more than 80% of the open market rent in the local area.”
- 3) *Clause 5.1 shall be amended to the following:*

“5.1 Subject to clause 5.2, the Owner hereby covenants so as to bind its interest in the Site with the Council to perform the obligations on its part specified in the Fourth, Fifth, Sixth and Seventh Schedules.”
- 4) *A new clause 5.2 shall be added as follows:*

“5.2 In the event that the Owner:-

 - (a) notifies the Council in writing that all of the Dwellings on the Site are to be delivered as Affordable Housing with the assistance of grant from Homes England by a Registered Provider (such Registered Provider to be approved by the Council before the Dwellings are transferred to them, such approval not to be unreasonably withheld or delayed); and
 - (b) upon the Owner giving the Council notice in writing that the freehold interest in all of the Dwellings has been transferred to that Registered Provider and the Registered Provider gives notice to the Council in writing that it has taken a transfer of the freehold interest in all of the Dwellings,

the following provisions of this Agreement shall have no further effect:

 - 5.2.1 in clause 4.2, the words “and paragraphs 1 and 2 of the 5th Schedule (pre-commencement obligations)”;
 - 5.2.2 in clause 6.1, the words “the Fifth Schedule and”;
 - 5.2.3 clause 7.6;
 - 5.2.4 paragraph 1.2 of the Fourth Schedule;
 - 5.2.5 the Fifth Schedule and the Sixth Schedule; and
 - 5.2.6 paragraph 7(b) of the Seventh Schedule.”
 - 5.2.7 the definition of “the Affordable Housing Mix”
- 5) *Clause 7.7 shall be deleted and replaced with the following:*

“This Agreement shall not be enforceable against:

- 7.7.1 owner-occupiers or tenants of the Dwellings constructed pursuant to the Planning Permission or against those deriving title therefrom;
- 7.7.2 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver;
- 7.7.3 any mortgagee of the Owner from time to time save during such periods (if any) as it is a mortgagee in possession of the Site (or any part thereof)”

EXECUTED AS A DEED by
ROSSENDALE BOROUGH COUNCIL
by affixing its common seal
in the presence of:



No. IN SEAL REGISTER
115210

[Redacted Signature]

Authorised Signatory

EXECUTED as a Deed by
HG13 (BAC) PRIVATE INVESTMENTS LIMITED
acting by a director
in the presence of:

[Redacted Signature]

Witness Signature:

Witness Name (in caps):

Witness Address:

Witness Occupation:

[Redacted Signature]

ANGELA BELL
SWAN MEADOW RD. WIGAN
P. A.

EXECUTED as a Deed by
CHARLES STREET COMMERCIAL INVESTMENTS LIMITED
acting by a director
in the presence of:

Witness Signature:

Witness Name (in caps):

Witness Address:

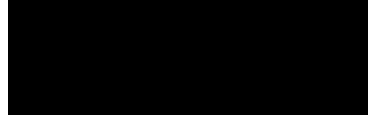
Witness Occupation:

.....
.....
.....
.....

OR

EXECUTED as a Deed by
**CHARLES STREET COMMERCIAL
INVESTMENTS LIMITED**
acting by its attorney:

Attorney Signature:



Attorney Name:

ERIK LEATHER

in the presence of:

Witness Signature:



Witness Name (in caps):

Joana Moroney

Witness Address:

Lake View

Witness Occupation:

Lakeside

Cheadle

SK8 3GW

POST COMPLETION EXEC.