

**DATED** 15<sup>th</sup> December 2015

- (1) **ROSSENDALE BOROUGH COUNCIL**
- (2) **McDERMOTT DEVELOPMENTS LIMITED**

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**PLANNING AGREEMENT**  
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under Section 106 Town and Country Planning Act 1990  
relating to land off Oaklands Drive and Lower Cribden Avenue, Rawtenstall,  
Rossendale

Stuart Sugarman  
Chief Executive  
The Business Centre,  
Futures Park,  
Bacup.  
OL13 0BB

THIS AGREEMENT is made on the 15<sup>th</sup> day of December 2015

**BETWEEN:**

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre Futures Park Bacup OL13 0BB ("the Council")
- (2) **McDERMOTT DEVELOPMENTS LIMITED** (company registration number 02701792) whose registered office is at Jupiter House, 1 Mercury Rise, Altham Business Park, Altham, Lancashire, BB5 5BY ("the Owner")

**BACKGROUND**

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) The Owner is the freehold owner of the whole of the Site registered at the Land Registry (together with other land) under title numbers LA491216, LA489813 and LAN130782 free from encumbrances which would prevent the Owner entering into this Agreement
- (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
- (E) The Owner has by application reference 2015/0334 ("the Planning Application") applied to the Council for permission to develop the Site in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application ("the Development")
- (F) The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this

Agreement without which planning permission for the Development would not have been granted

- (G) The parties agree that the planning obligations contained in this Agreement are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Regulations 2010 (as amended)

## **OPERATIVE PROVISIONS**

### **1. INTERPRETATION**

- 1.1 In this Agreement, the following words and expressions have the following meanings:

<b>“1990 Act”</b>	the Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991
<b>“Application”</b>	an application for full permission for the construction of 34 new residential dwellings with associated roads and driveways at the Site made by the Owner and carrying the reference 2015/0334
<b>“Commencement Date”</b>	the date on which the Development commences by the carrying out on the Site pursuant to the Permission of a material operation as specified in section 56(4) of the 1990 Act
<b>“Contributions”</b>	means the Refuse Bin Contribution and the Off-Site Affordable Dwelling Contribution and ‘Contribution’ shall be

	construed accordingly
<b>“Development”</b>	the development of the Site in accordance with the Permission
<b>“Dwelling”</b>	means a dwelling house built in accordance with the Permission and ‘Dwellings’ shall be construed accordingly
<b>“Index”</b>	means the All Items Retail Price Index published by the Office for National Statistics or such other index as may from time to time be published in substitution for it
<b>“Index Linked”</b>	means an increase to each of the sums payable to the Council (under this Agreement) on an annual basis or pro rata per diem from the date of this Agreement until such time that payment of any sum in this Agreement is made such index linking to be equivalent to any inflationary increase taking as the measure of inflation the Index
<b>“Interest Rate”</b>	means the base lending rate for the time being of the Bank of England compounded annually
<b>“Occupation”</b>	means beneficial occupation for the purposes permitted by the Permission but

**“Off-Site Affordable Dwelling Contribution”**

including occupation by persons engaged in construction fitting out or decoration means the sum of £300,000 to be expended in connection with the provision of improvements to empty homes within the Council’s administrative area for the purposes of providing affordable housing to those in housing need (and in lieu of providing affordable housing within the Development)

**“Permission”**

the planning permission which may be granted in pursuance of the Application Plan 1 attached to this Agreement and so labelled

**“Plan 1”**

**“Refuse Bin Contribution”**

means the sum of £100 per individual Dwelling to be built on the Site (totalling £3,400) to be paid as outlined in the Second Schedule

**“Site”**

the freehold property known as land off Oaklands Drive and Lower Cribden Avenue, Rawtenstall, Rossendale which is currently registered (together with other land) at HM Land Registry under title numbers LA491216, LA489813 and LAN130782 shown for the purposes of

identification only edged red on Plan 1 set out at the First Schedule

**“Statutory Undertaker”**

means any company corporation or board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking

**OPERATIVE PROVISIONS**

- 1 **NOW THIS DEED** is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section to the intent that it shall bind all interests in the Site into whosoever hands the same may come and the Owner and his successors in title and assigns and all persons claiming under or through them.
- 2 Save for the provisions of Clause 9 the provisions of this Agreement shall only come into effect on the Commencement Date.
- 3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his 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 the parting with such interest)
- 4 the covenants on the part of the Owner contained in this Agreement shall not be enforceable against:-
  - 4.1 purchasers lessees or mortgagees of individual Dwellings; or

- 4.2 a Statutory Undertaker which has an interest in any part of the Site for the purposes of its lawful undertaking
- 5 The Owner covenants with the Council to comply with the obligations specified in the Second Schedule
- 6 The Council hereby covenants with the Owner to perform the obligations specified in the Third Schedule
- 7 It is agreed and declared as follows:-
- 7.1 The expressions "the Council" and "the Owner" shall include their successors in title and assigns
- 7.2 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders
- 7.3 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it
- 8 This Agreement is a local land charge and shall be registered as such
- 9 The Owner agrees to pay the Council's reasonable legal fees in the sum of £750 relating to the preparation of the Agreement on the date hereof
- 10 All notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
- 10.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address

- 10.2 in the case of a notice to be served on the Owner to the Owner at the above address
- 11 If the Planning Permission is not granted or if it is revoked or the Planning Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- 12 Unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto
- 13 Whenever 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
- 14 Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement (including the transfer of any of the Affordable Housing Dwellings) shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")



14.1 The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

14.2 If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

14.3 It is hereby agreed and declared that:-

14.3.1 the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations

14.3.2 the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit

14.3.3 the Expert shall have an unfettered discretion to determine the reference to him

14.3.4 the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it

reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

- 15 Any sum referred to in paragraph 2 of the Second Schedule shall be Index Linked.
- 16 If any payment due under this Agreement is paid late interest will be payable from the date payment is due to the date of actual payment at the rate of 3% above the Interest Rate.
- 17 Should the Owner fail to serve notice in accordance with paragraph 1.2 of the Second Schedule the date that the Refuse Bin Contribution becomes due shall be the date that such notice should have been served (which shall be no later than one week before the day that the Commencement Date or date of Occupation (as applicable) actually took place).
- 18 Nothing contained or implied in this Agreement shall prejudice or affect the rights powers and duties of the Council in exercise of their function as Local Planning Authority and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement PROVIDED ALWAYS for the avoidance of doubt the Council shall comply with the obligations on its part contained in this Agreement
- 19 This Agreement is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS whereof these presents have been duly executed as a DEED by the parties hereto the date and year first before written

### **FIRST SCHEDULE**

All that plot of land shown edged red on Plan 1 which is situate at the Site

### **SECOND SCHEDULE**

The Owner covenants with the Council as follows:

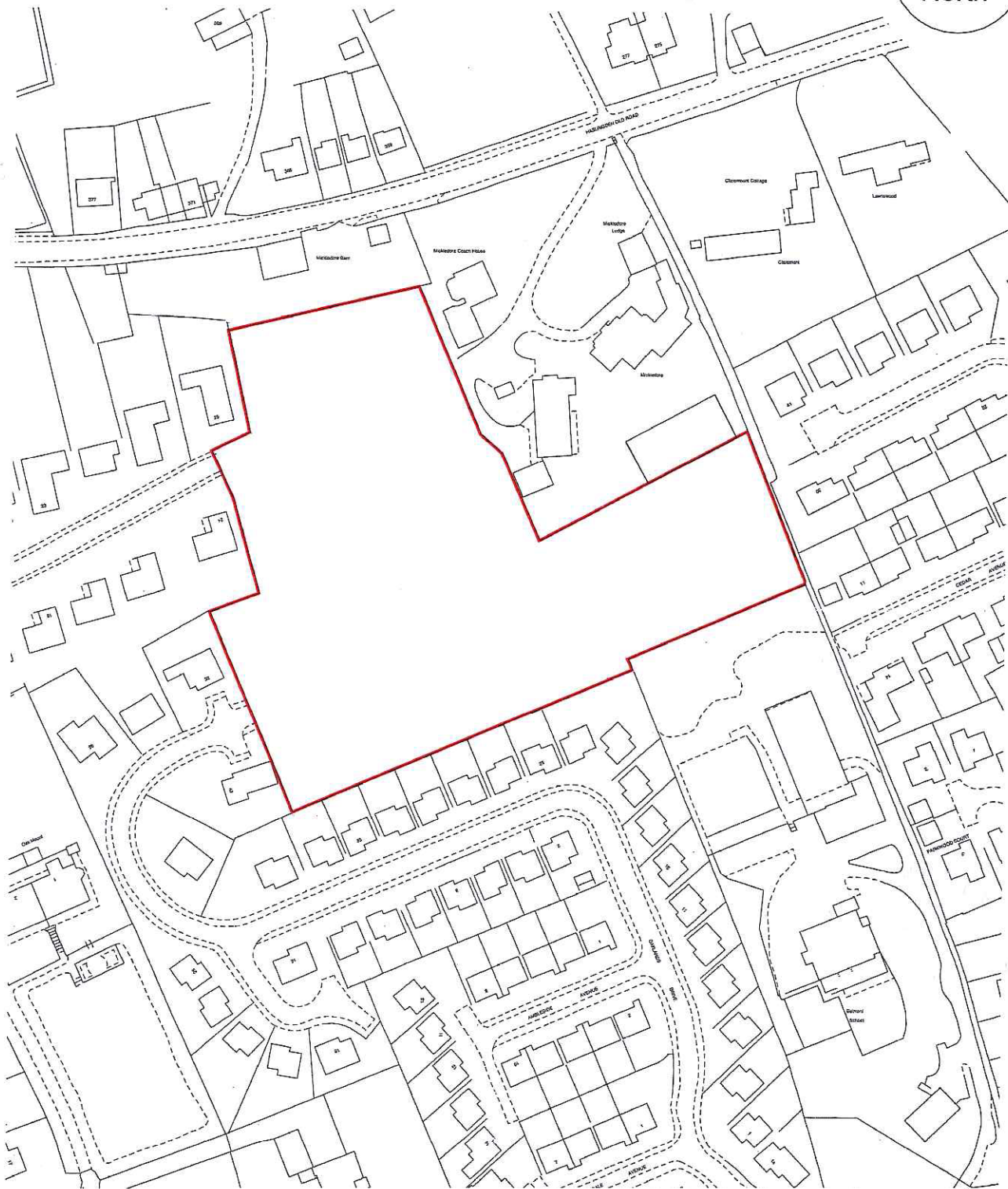
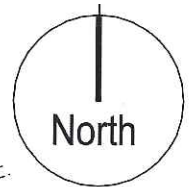
#### **1 Commencement**

- 1.1 To notify the Council in writing of the Commencement Date within seven days of the Commencement Date
- 1.2 To notify the Council in writing when completion of the construction of the first Dwelling on Site has taken place and it is ready for Occupation.

#### **2 Contributions**

- 2.1 To pay to the Council the Off-Site Affordable Housing Contribution in the following instalments, each instalment to be Index Linked:
  - 2.1.1 £150,000 to be paid on Occupation of the 17<sup>th</sup> Dwelling on Site; and
  - 2.1.2 £150,000 to be paid on Occupation of the 26<sup>th</sup> Dwelling on Site.
- 2.2 To pay to the Council the Refuse Bin Contribution prior to Occupation of the first Dwelling on Site, such sum becoming due on the date of notification to the Council under paragraph 1.2 of this Schedule, the Refuse Bin Contribution to be Index Linked.

# PLAN 1



0 10 20 30 40 50m  
1:1250 Scale bar

Project **Oaklands Drive  
Rawtenstall**

Title **Location Plan**

Dwg No

**L0-01**

Scale **1:1250**

Date **Jul 2015**

 **McDermott  
HOMES**

Jupiter House, 1 Mercury Rise, Altham, Lancs BB5 5BY  
Tel: 01282 774586 Fax: 01282 774616  
E. info@mcdermotthomes.co.uk www.mcdermotthomes.co.uk

### THIRD SCHEDULE

The Council covenants with the Owner as follows:

- 1 To issue a receipt on request for each of the Contributions.
- 2 Upon receipt of the Contributions to place the relevant sum in an interest bearing account or in separate accounts as the Council shall in its discretion provide.
- 3 To use the Refuse Bin Contribution for provision of refuse bins for the Site and for no other purpose.
- 4 To use the Off-Site Affordable Housing Contribution for the provision of improvements to empty homes within the Council's administrative area for the purposes of providing affordable housing to those in housing need (and in lieu of providing affordable housing within the Development) and for no other purpose.
- 5 To pay to the Owner such amount of any Contribution paid which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Council of the payment of the last instalment in respect of the relevant Contribution together with any accrued interest.
- 6 To provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the Contributions.
- 7 Upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation to that effect.

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

**SIGNED** as a Deed by **McDERMOTT** )  
**DEVELOPMENTS LIMITED** acting by a )  
director and its secretary or two directors )

Director

Director / Secretary

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

Authorised Signatory



No. IN SEAL  
REGISTER  
115226