

DATED

11th May

2007

(1) ROSSENDALE BOROUGH COUNCIL

(2) JOHN LEONARD YEARSLEY, PETER YEARSLEY, BRIAN TOMKINSON,
FAIRMOUNT TRUSTEE SERVICES LIMITED

SECTION 106 AGREEMENT

pursuant to
section 106 of the
Town and Country Planning Act 1990 (as amended)

in respect of
erection of 45 no. dwellings (including access)

at
land off Eastgate, Whitworth
(Outline Planning Permission 2002/261)

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THIS AGREEMENT is made the 11th day of May, 2007

BY:

- (1) **ROSSENDALE BOROUGH COUNCIL** of Town Centre Offices, Lord Street, Rawtenstall, Rossendale BB4 7LZ (the "**Council**") and
- (2) **JOHN LEONARD YEARSLEY** of 18 Bury and Rochdale Old Road, Bury BL9 7TZ, **PETER YEARSLEY** of Crofthead Farm, Wildhouse Lane, Milnrow, Rochdale OL16 3JW, **BRIAN TOMKINSON** of 1 Hands Lane, Rochdale OL11 5LU and **FAIRMOUNT TRUSTEE SERVICES LIMITED**, (company number 1909678) whose registered office is at Founders Court, Lothbury, London EC2R 7HE (the "**Owner**")

RECITALS

- 1 The Council is the Local Planning Authority for the purposes of the Act for the District within which the Property is situated.
- 2 The Owner is the freehold owner of in the Property registered at HM Land Registry under title number LA479195.
- 3 By the Application planning permission has been sought from the Council to carry out the Development.
- 4 At a meeting of the Council's Development Control Committee held on 10 July 2006 it was resolved that subject to the completion of this Agreement the Permission should be granted subject to conditions.
- 5 The Council is of the opinion that in the event of the Property being developed in accordance with the Application it is desirable that the adjacent bus terminus at Wallbank, Whitworth, be upgraded to include a new bus shelter with lighting and seating, a raised footway, drop kerbs and footway resurfacing and that there be financial provision for running a bus service to Wallbank (including journeys additional to those currently operating).
- 6 The Owner and the Council have agreed to enter into this Agreement in support of the Application so as to create such a planning obligation enforceable by the Council pursuant to Section 106 of the Act upon the terms set forth in this Agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the recitals) (except where the context otherwise requires):

(A) The words and expressions in column 1 shall have the meanings respectively ascribed thereto in Column 2

Column 1

"the Act"

"Affordable Housing
Contribution"

"Agreement"

"Application"

Column 2

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

the sum totalling forty five thousand pounds (£45,000.00) to be paid to the Council by the Owner in accordance with the provisions of this Agreement

means this Agreement which contains planning obligations made pursuant to Section 106 of the Act

means the written application made on behalf of Harry Yearsley Self

Administered Pension Fund and received by the Council on 20 May 2002 for permission for the Development registered under reference 2002/261 as varied or amended.

"Bus Terminus Contribution"

means the sum totalling £20,000.00 to be paid to the Council in accordance with the provisions of this Agreement for the purpose of upgrading the bus terminus at and running a bus service to Wallbank.

"Commencement of Development"

means the date upon which the Development shall begin by the carrying out of a material operation in accordance with provisions of Section 56 of the Act PROVIDED ALWAYS that

- (1) any works necessary in the course of undertaking a survey of or obtaining soil samples from the Property
- (2) works of demolition on the Property
- (3) works or archaeological

excavation on the Property

(4) the erection of hoardings and fences on the Property

(5) erection of temporary buildings on the Property

shall for the purposes of this Agreement be deemed not to be works which shall begin the Development and "Commence the Development" shall be construed accordingly

"Commuted Sums"

means the Affordable Housing Contribution, Bus Terminus Contribution and the Open Space Contribution.

"Development"

means the development of the Property specified in the Application

"Open Space Contribution"

means the total sum of forty five thousand pounds (£45,000.00) being a capital contribution within the context of Policy DC 3 of the Rossendale District Local Plan to be paid to the Council being a contribution towards the provision of open space within the

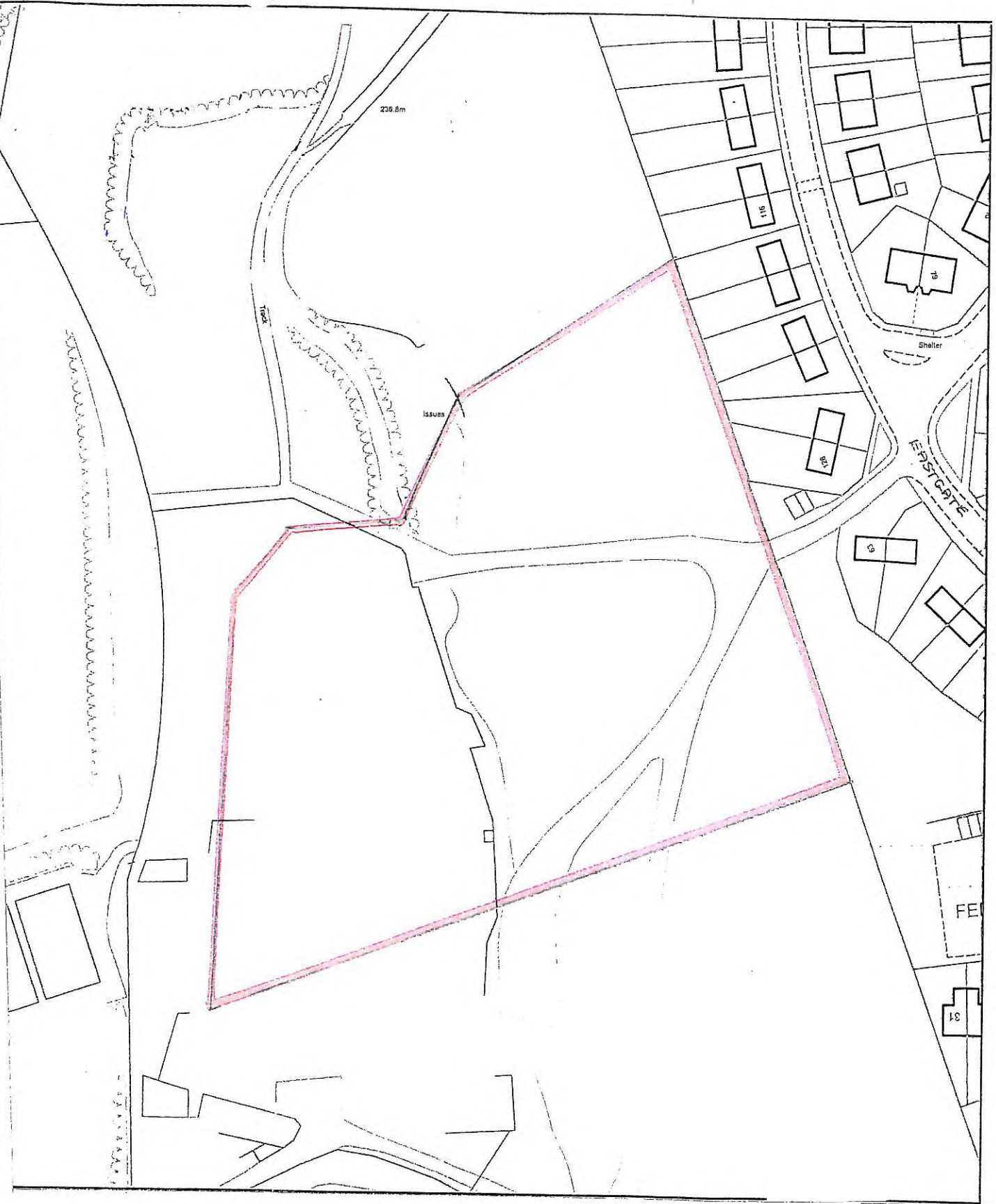
immediate locality of the Property

"Permission" means planning permission granted pursuant to the Application

"Plan" means the plan annexed hereto

"Property" means the property described in Schedule 1 to this Agreement

- (B) Clause headings are for ease of reference only and shall not affect the interpretation of this Agreement and unless otherwise stated references to Clauses or Schedules are to the clauses of or schedules to this Agreement
- (C) The plural shall include the singular and vice versa
- (D) Any reference to any statute or to any provision of the same shall be construed as including reference to any statutory modification or re-enactment thereof from time to time in force
- (E) Words importing any gender include every gender
- (F) Words importing any person or persons include firms companies and corporations
- (G) Unless otherwise stated or the context otherwise requires references to the "Owner" shall be deemed to include any person deriving title from the Owner and references to the "Council" shall be deemed to include any successor to the relevant statutory functions of the Council



LAND AT SPRING MILL, OFF EASTGATE, WHITWORTH, ROSSENDALE

MAYOR

Scale 1:1250th



north

2 STATUTORY POWERS

This Agreement is made pursuant to Section 106 of the Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this Agreement.

3 CONDITION PRECEDENT

This Agreement is conditional and shall only have effect upon:

- 3.1 the grant of Planning Permission; and
- 3.2 the date thirteen weeks after the grant of the planning in circumstances in which no legal proceedings have been commenced by any person to challenge the validity of the Planning Permission provided always that if before the expiry of thirteen weeks after the grant of the Planning Permission any person shall commence legal proceedings to challenge the validity of the Planning Permission then this condition precedent shall not be satisfied until after the final determination of such legal proceedings which shall for the avoidance of doubt include the expiry of the period allowed for any appeal and any appeal hearing and where applicable for any necessary re-determination of the Application by the Council (whereupon the foregoing provisions shall apply again) and the said period shall expire upon the date seven days after the final determination of such legal proceedings in circumstances in which the Planning Permission shall be extant; and
- 3.3 Commencement of Development

4 CONDITION SUBSEQUENT

For the avoidance of doubt it is hereby agreed and declared that in the event of the Planning Permission being revoked or modified in whole or part or quashed or declared

unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of any party against any other in respect of any antecedent breach

5 OWNER'S COVENANTS

5.1 The Owner with intent to bind himself and the Owner's successors in title hereby covenants with the Council as follows:

5.1.1 Seven days prior to Commencement of Development to pay the Bus Terminus Contribution to the Council.

5.1.2 Seven days prior to Commencement of Development to pay the Open Space Contribution to the Council.

5.1.3 Seven days prior to Commencement of Development to pay the Affordable Housing Contribution to the Council.

5.1.4 to give notice in writing to the Council not less than seven days before implementing the Planning Permission and upon giving the said notice to pay the Commuted Sums increased with inflation in accordance with Clause 5.1.6 of this Agreement

5.1.5 in the event of late payment of the Commuted Sums interest will be paid on any sum outstanding at a rate of 3% per annum above the base rate of the National Westminster Bank Plc and accrued from the date payment should have been made to the Council to the date of payment thereof to the Council

5.1.6 the Commuted Sums shall be uplifted by the amount which bears the same proportion to the Commuted Sums as the amount by which the all items Figure of the Index of Retail Prices published by the Department

for Employment or any successor Ministry or Department for the month at the date of payment exceeds the Index Figure of the said Index at the date of this Agreement

5.1.7 the Owner shall on the execution hereof pay to the Council its reasonable legal costs in the sum of £600 properly incurred in the preparation of this Agreement

6 COUNCIL'S COVENANTS

The Council hereby covenants with the Owner:

- 6.1 to expend the Open Space Contribution and the Affordable Housing Contribution and the Bus Terminus Contribution solely upon such expenditure as is reasonably lawfully and properly required to be expended by the Council for the purpose for which that Open Space Contribution or the Affordable Housing Contribution or, as the case may be, the Bus Terminus Contribution has been paid as defined in the definition of the Open Space Contribution or Affordable Housing Contribution or Bus Terminus Contribution in Clause 1 of this Agreement
- 6.2 to repay such part (if any) of the Commuted Sums as shall be unexpended by the Council to the person who first paid the same to the Council on the fifth anniversary of receipt thereof by the Council together with interest thereon at the Local Authority seven day deposit rate in force from time to time (as published in the Financial Times) with such interest to be calculated from the date of receipt of payment by the Council to the date of its re-payment
- 6.3 To fully observe and perform the obligations on the Council's part in this Agreement including the Schedules hereto

7 **NON-IMPLEMENTATION**

If the Planning Permission or any renewal of it has not been implemented by the carrying out of a material operation in accordance with the provisions of Section 56 of the Act within five years from the date of this Agreement or two years from the approval of the last reserved matter relating to the Planning Permission (whichever is the later) then this Agreement shall forthwith determine and cease to have effect save only insofar as the Council shall thereupon issue written confirmation to the Owner that this Agreement has otherwise determined in accordance with this Clause

8 **LIABILITY**

No person shall be liable for the breach of a covenant or obligation contained in this Agreement whilst he shall have no interest in the Property or the part of the Property in respect of which such breach occurs but without prejudice to any liability in respect of any antecedent breach

9 **CONFIRMATION OF COMPLIANCE**

The Council will upon written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof to the Owner

10 **DISPUTE RESOLUTION**

10.1 Any disputes or differences arising between any of the parties hereto as to their respective rights, duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in

accordance with the provisions of this clause to the determination of an independent chartered surveyor.

10.2 Any reference to an independent chartered surveyor in accordance with clause 10.1 shall be to a reputable chartered surveyor based in Lancashire or Greater Manchester unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President for the time being of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such independent chartered surveyor shall be final and binding upon the parties to the dispute (save for manifest error) and, if the parties to the dispute shall agree in writing, such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Acts 1950 and 1976 and if any chartered surveyor shall act as an expert pursuant to the terms of this clause then each of the parties to the dispute shall be entitled to submit to him representations and cross-representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expeditiously as possible and the reference to him shall include authority to determine in what manner all the costs of the referral shall be paid.

10.3 Where the dispute referred for determination under clause 10.2 shall be or include a dispute as to whether or not the consent or approval of the Council should properly be given as required by this Agreement and the independent chartered surveyor determines that such consent or approval should have been given the, for all the purposes of this Agreement, the consent of the

Council shall be deemed to have been given on the date the independent chartered surveyor advises the parties to the dispute of his determination.

11 **NON-PROHIBITION ON DEVELOPMENT**

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not at appeal) after the date of this Agreement

12 **RIGHTS OF THIRD PARTIES**

Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to specific parties executing this Agreement and their successor in title (if any) as defined herein and the provision of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained

13 **LOCAL LAND CHARGES**

The planning obligations hereby created shall be registered as a local land charge by the Council

14 **LAW**

This Agreement shall be governed by the laws of England and Wales

15 **VARIATION**

15.1 Without prejudice to the rights of the Owner pursuant to the Act this Agreement may only be varied or amended in writing signed by or on behalf

of the Council and all the persons against whom it is enforceable PROVIDED THAT the Council or any successor to its relevant statutory functions may absolutely and unconditionally release discharge or terminate any of the planning or other obligations created by this Agreement

15.2 For the avoidance of doubt, any variation or amendment pursuant to Clause 15.1 above should include all parties to this Agreement PROVIDED THAT each such party continues to have a vested interest in the Property at the date of such variation or as the case may be amendment

16 SEVERANCE

If any provision of this Agreement is declared by any judicial or other competent authority to be void or voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties

17 CONFIRMATION OF OBLIGATIONS

The obligations hereby entered into by the Owner are planning obligations for the purposes of the said section 106 and the Local Planning Authority by whom they are enforceable is the Council.

EXECUTED as a DEED by the Owner on the day and year first before written.

SCHEDULE 1

The Property

PROPERTY and premises being part of the site of and formerly occupied with Spring Mill, Whitworth, and more particularly delineated and shown edged red on the Plan.

SCHEDULE 2

The Development

Erection of 45 dwellings.

**THE COMMON SEAL of ROSSENDALE
BOROUGH COUNCIL** was hereunto affixed

In the presence of:

Signature:

Name (in block capitals)



NO. IN SEAL
REGISTER
114769

MAYOR

**SIGNED as a DEED by the said
JOHN LEONARD YEARSLEY**

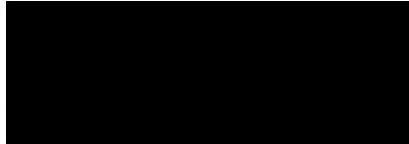
in the presence of:

WITNESS:

Signature:

Name (in block capitals) PHILIP WHITWORTHY

Address



Occupation ACCOUNTANT

**SIGNED as a DEED by the said
PETER YEARSLEY**

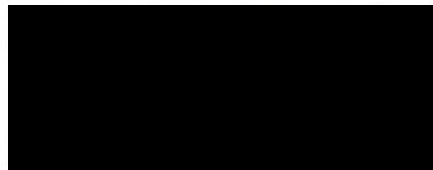
in the presence of:

WITNESS:

Signature:

Name (in block capitals) PHILIP WHITWORTHY

Address



Occupation ACCOUNTANT

SIGNED as a DEED by the said

BRIAN TOMKINSON

in the presence of:

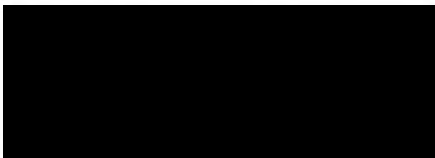
WITNESS:

Signature:

Name (in block capitals)

PHILIP WINTWORTH

Address



Occupation

ACCOUNTANT

SIGNED as a DEED by the said

FAIRMOUNT TRUSTEE SERVICES LIMITED

acting by:

Director:

Signature:

Director/Secretary:

Signature:

cobbetts

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