

Dated

24<sup>th</sup> September

2007

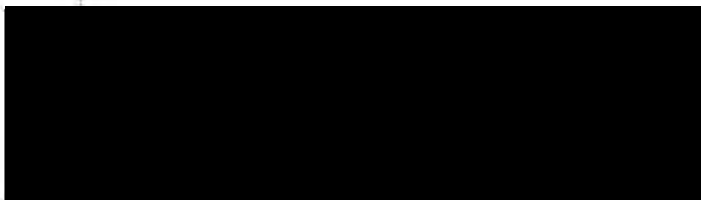
- (1) B&E BOYS LIMITED
- (2) BRIAN BOYS
- (3) ROSSENDALE BOROUGH COUNCIL

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Planning agreement

Under Section 106 of the Town & Country Planning Act 1990 in respect of  
land at Anvil Street, Stacksteads

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THIS DEED is made the 24<sup>th</sup> day of September 2007

**BETWEEN:**

- (1) **B&E BOYS LIMITED** whose registered office is situate at Todd Carr Road, Waterfoot, Rossendale, Lancashire BB4 9SJ (2) **BRIAN BOYS** of [REDACTED] ("together referred to in this Agreement as the Owner"); and
- (3) **ROSSENDALE BOROUGH COUNCIL** of The Kingfisher Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB ("the Council")

1. **DEFINITIONS**

In this Deed the following words and phrases shall where the context so admits have the following meanings:

- 1.1 **"the Act"** means the Town and Country Planning Act 1990 (as amended)
- 1.2 **"Affordable Price"** means:-
- 1.2.1 in relation to Paragraph 3.3 and 3.13 - 3.19 of the First Schedule a sum not exceeding 65% of the Open Market Value
- 1.2.2 in relation to Paragraph 3.23 of the First Schedule a sum not exceeding 50% of the Open Market Value of the Affordable Unit
- 1.3 **"Affordable Rent"** means a weekly rent for each Affordable Unit which accords with the Housing Corporations specified social rental levels for 3 bed properties which at the date of this Agreement is £70.83 per week
- 1.4 **"Affordable Units"** means not less than 2 dwellings to be erected on the Site which shall be made available in accordance with the terms of this Agreement and "Affordable Unit" shall be construed accordingly
- 1.5 **"the Application"** means the application for planning permission for the demolition of existing works and erection of 11 dwellings on the Site (reference number 2006/533)
- 1.6 **"Close Family Association" and "Close Family"** both mean a spouse parent brother sister child grandparent or grandchild who is resident in

the relevant part of the Council's administrative area and who has been resident there for a minimum of five continuous years

- 1.7 **"Commence"** means the carrying out of a material operation as defined by section 56(4) of the Act (excluding any act of demolition remediation or site clearance) in accordance with the Planning Permission and "Commencement" shall be construed accordingly
- 1.8 **"the Development"** means the residential development of the Site in accordance with the Planning Permission
- 1.9 **"Employment"** means that a person is permanently employed or has accepted in writing a firm offer of permanent employment or is in full-time self employment within the Council's administrative area
- 1.10 **"Index Linked"** means as increased or decreased by a percentage equivalent to the percentage increase or decrease in the Retail Price Index as at and from the date of this Agreement to the date of payment
- 1.11 **"Interest Rate"** means the base lending rate for the time being of the Bank of England compounded annually
- 1.12 **"the Off Site Open Space Contribution"** means the sum of £11,000 (eleven thousand pounds) such sum to be Index Linked and to be paid towards the cost of undertaking improvement works at Stubbylee Park
- 1.13 **"Open Market Value"** means the market value of the relevant Affordable Unit (or part equity share thereof as appropriate) assessed in accordance with the Appraisal and Valuation Manual of the Royal Institute of Chartered Surveyors (the Red Book) current for the time being which at the date of this Agreement is £160,000 per Affordable Unit
- 1.14 **"Open Market Units"** means the 9 dwellings to be erected on the Site which shall be available for sale on the open market
- 1.15 **"Plan"** means the plan annexed hereto
- 1.16 **"Planning Permission"** means the planning permission to be granted pursuant to the Application

- 1.17 **"Qualifying Criteria"** means the criteria contained in the Third Schedule of this Agreement which a person must meet to qualify for an Affordable Unit
- 1.18 **"Qualifying Occupier(s)"** means a person(s) who meets the Qualifying Criteria
- 1.19 **"Rented Route"** means a method of occupation by which the Social Landlord shall let the Affordable Units at a rent that does not exceed the Affordable Rent
- 1.20 **"Retail Price Index"** means the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore
- 1.21 **"Shared Ownership Route"** means a method of acquiring part ownership of an Affordable Unit by purchasing a share of the freehold or long leasehold then paying rent on the non-purchased share to the Social Landlord where occupiers can purchase additional shares of the equity in the property in accordance with the terms of this Agreement and "Shared Ownership" shall be construed accordingly
- 1.22 **"Site"** means land at Anvil Street, Stacksteads which for identification purposes only is shown edged in black on the Plan
- 1.23 **"the Social Landlord"** means Harvest Housing Group Limited ("Harvest") or such other housing body registered with the Housing Corporation as is approved in writing by the Council

## 2. **RECITALS**

- 2.1 The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated
- 2.2 The Owner is the part freehold and part leasehold owner of the Site
- 2.3 The Owner has made the Application to the Council

2.4 The Council has decided to grant the Planning Permission subject to the making of this Agreement without which the Planning Permission would not have been granted

3. **OPERATIVE PROVISIONS**

3.1 This Agreement is entered into pursuant to Section 106 of the Act with the intention that the obligations contained herein are planning obligations for the purposes of that Section in respect of the Site which may be enforced by the Council against the Owner or any person deriving title under them

3.2 Save for the provisions of Clause 3.13 and Paragraph 2.1 of the First Schedule the provisions of this Agreement shall only come into effect on the Commencement of the Development

3.3 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 parting with such interest)

3.4 This Agreement shall cease to have effect if:-

3.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

3.4.2 the Planning Permission shall expire prior to the Commencement of the Development

3.4.3 the Council or any other competent authority shall at any time after the date hereof grant a new planning permission under which development of the Site is initiated for the purposes of Section 56 of the Act

3.5 This Agreement is a local land charge and shall be registered as such

3.6 It is not intended that any person(s) who (but for the provisions of the Contract (Rights of Third Parties) Act 1999) would not acquire any interest hereunder should do so by virtue of such Act

- 3.7 The Owner hereby covenants with the Council to perform the obligations specified in the First Schedule of this Agreement
- 3.8 The Council hereby covenants with the Owner to perform the obligations specified in the Second Schedule of this Agreement
- 3.9 Wherever 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
- 3.10 Any dispute between the parties as to any matter the subject of this Agreement shall be referred to an appropriate independent expert (who shall either be agreed between the parties or failing agreement appointed on the application of any of the parties by the President for the time being of the Royal Institution of Chartered Surveyors (or any person acting with his authority)) and the decision of the expert shall be final and binding (save in case of manifest error) and his costs shall be borne as he shall direct
- 3.11 If any sum due under this Agreement shall remain unpaid after the same has become due interest shall be paid thereon from the date the sum becomes due to the date of payment at the rate 3% above the Interest Rate
- 3.12 In this Agreement the expressions "the Owner" and "the Council" shall include their respective successors in title and assigns
- 3.13 The Owner shall pay the Council's legal fees incurred in relation to this Agreement on the date of this Agreement

#### **FIRST SCHEDULE**

##### **Owner's obligations**

1. To notify the Council in writing of the Commencement of the Development and such notice shall be served on the Council within 7 days of the Commencement of the Development
2. **Off Site Open Space Contribution**
  - 2.1 Prior to the Commencement of the Development to pay the Off Site Public Open Space Contribution to the Council

3. **Affordable Housing**

**Construction and transfer of the Affordable Units to the Social Landlord**

- 3.1 To build the Affordable Units in accordance with:-
- 3.1.1 the Planning Permission; and
  - 3.1.2 a specification to be submitted and approved by the Council which shall be in accordance with the Housing Corporation's Scheme Development Standards dated April 2003 (as shall be up-dated or replaced from time to time)
- 3.2 The Owner confirms that as at the date of this Agreement the Open Market Value of each Affordable Unit and the weekly rental payable by the Qualifying Occupier of each Affordable Unit under the Shared Ownership Route are as set out in the Fourth Schedule of this Agreement and that the figures set out in the Fourth Schedule shall be used as an agreed baseline for the future assessment of the Open Market Value and the weekly rental of each Affordable Unit under the Shared Ownership Route
- 3.3 On completion of the construction of the Affordable Units to dispose of the Affordable Units to the Social Landlord at a price not exceeding the Affordable Price and to notify the Council in writing accordingly
- 3.4 Prior to the disposal of the Affordable Units to the Social Landlord to submit in writing to the Council the Owner's assessment of the Affordable Price of the Affordable Units and no disposal of the Affordable Units to the Social Landlord shall take place without the receipt in writing of the Council's approval of the Affordable Price PROVIDED ALWAYS that if within 6 weeks of receipt of the Owner's written assessment of the Affordable Price of the Affordable Units the Council has been unable to approve the assessment then either party shall be entitled to refer the matter to an independent expert in accordance with Clause 3.10 of this Agreement
- 3.5 Any disposal of the Affordable Units pursuant to Paragraph 3.3 above shall be subject to the following terms:-

- 3.5.1 the Owner shall inform the Council of the offer for sale ("the Offer") to the Social Landlord not less than 7 days after the offer letter has been sent to the Social Landlord
- 3.5.2 a draft contract and evidence of title shall be submitted to the solicitors acting for the Social Landlord within 28 days following the Social Landlord's acceptance of the Offer
- 3.5.3 the transfers of each Affordable Unit to the Social Landlord shall be completed within 28 days after exchange of contracts
- 3.5.4 the transfers of the Affordable Units to the Social Landlord shall contain the following provisions:-
  - 3.5.4.1 the grant by the transferor to the transferee of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Units
  - 3.5.4.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the development and future maintenance of the Affordable Units
  - 3.5.4.3 a covenant not to use the Affordable Units other than for the purposes of housing in accordance with the terms of this Agreement
  - 3.5.4.4 a covenant that the Social Landlord shall manage the Affordable Units in accordance with the Housing Corporation's standard terms and conditions for rented schemes
  - 3.5.4.5 a covenant not to dispose of any of the Affordable Units other than in accordance with the terms of this Agreement
- 3.6 Not to allow the occupation of more than 5 of the Open Market Units unless and until the Affordable Units have been transferred to the Social Landlord or (if the provisions of Paragraphs 3.22 - 3.24 below apply) the



Affordable Units have been built and are available for sale and immediate occupation

**Mechanism for dealing with the Affordable Units once they have been transferred to the Social Landlord**

- 3.7 Once the Affordable Units have been transferred to the Social Landlord the Social Landlord shall be entitled to dispose of the Affordable Units either by the Rented Route or the Shared Ownership Route

**Rented Route**

If the Social Landlord adopts the Rented Route the following provisions shall apply in relation to the Affordable Units:-

- 3.8 The Affordable Units shall be available for rent only and the weekly rent to be paid in relation to the occupation of each Affordable Unit shall not exceed the Affordable Rent
- 3.9 The Affordable Units shall only be occupied by a Qualifying Occupier and members of their Close Family
- 3.10 The Affordable Units shall be occupied as the sole or main residence of the Qualifying Occupier
- 3.11 The nomination process set out in paragraph 3.20 below shall be followed in relation to the occupation of the Affordable Units
- 3.12 The Social Landlord shall on request provide written details to the Council to satisfy the Council that the requirements of this Agreement are being met

**Shared Ownership Route**

If the Social Landlord adopts the Shared Ownership Route the following provisions shall apply in relation to the Affordable Units:-

- 3.13 Prior to the first and all subsequent disposals of each Affordable Unit (or the acquisition of each and every additional equity share by a Qualifying Occupier in accordance with Paragraph 3.14.6 below) the Social Landlord shall submit in writing to the Council its assessment of the Affordable Price and no disposal of an Affordable Unit shall take place without the receipt in writing of the Council's approval of the Affordable Price

PROVIDED ALWAYS THAT If within 6 weeks of receipt of the Social Landlord's written assessment of the Affordable Price the Council has been unable to approve the assessment then either party shall be entitled to refer the matter to an independent expert in accordance with Clause 3.10 of this Agreement

3.14 The disposal of each Affordable Unit shall be subject to the following provisions:

3.14.1 a covenant providing that the Affordable Unit shall only be used for the purposes of Shared Ownership

3.14.2 a covenant providing that the Affordable Unit is occupied as the sole or main residence of the Qualifying Occupier


3.14.3 a covenant providing that the Affordable Unit shall only be occupied by a Qualifying Occupier and members of their Close Family

3.14.4 a covenant providing that the equity share of the Affordable Unit purchased by the Qualifying Occupier (which for the avoidance of doubt shall include the initial equity share purchased and any additional equity share purchased in accordance with Paragraph 3.14.6 below) shall be offered for disposal at a price that does not exceed the Affordable Price

3.14.5 a covenant providing that the Affordable Unit shall not be offered to anyone other than a Qualifying Occupier and that each Qualifying Occupier shall initially acquire no more than a 50% equity share in the Affordable Unit PROVIDING ALWAYS that in the event that a Qualifying Occupier exercises their right to acquire further equity shares in the Affordable Unit in accordance with Paragraph 3.14.6 below and the Social Landlord does not exercise its option in Paragraph 3.14.9 below to buy-back the purchased share of the Affordable Unit then the Qualifying Occupier shall be entitled to dispose of the whole of the equity share they have purchased to a Qualifying Occupier at a price that does not exceed the Affordable Price

3.14.6 a covenant preventing a Qualifying Occupier from acquiring any equity in addition to the 50% equity acquired initially within 1

calendar year from the date of acquisition of the Affordable Unit and thereafter that the Qualifying Occupier can only acquire additional equity shares in tranches of 5% or 10% per calendar year and for the avoidance of doubt the price to be paid by the Qualifying Occupier for each additional equity share shall be 5% or 10% (as appropriate) of the Affordable Price PROVIDED ALWAYS that in the event that a Qualifying Occupier fails to acquire the maximum 10% additional equity share in any calendar year than they shall be entitled to acquire up to a 20% additional equity share in the Affordable Unit in the subsequent calendar year

- 3.14.7 a covenant providing that the weekly rental on the non-purchased share of the Affordable Unit shall be rented at a rate of no more than 3% multiplied by the Open Market Value of the non-purchased share of the Affordable Unit divided by 52
- 3.14.8 a covenant that the nomination process set out in Paragraph 3.20 below shall be followed in relation to the disposal of each Affordable Unit
- 3.14.9 an option to buy back clause in favour of the Social Landlord in any transfer of equity to a Qualifying Occupier such that on each disposal the Social Landlord is able to repurchase any additional equity acquired in the Affordable Unit by the previous occupier
- 3.14.10 a covenant that there shall be no disposition of the registered estate other than by charge by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor or conveyancer to the proprietor for the time being of the estate registered under title numbers [ <sup>L A 4 9 2 9 2 0 and L A 4 2 4 0 1 4</sup> ] that the provisions of the First and Third Schedules of the Planning Agreement dated [ ] August 2007 and made between B&E <sup>and Brian Boys</sup> Boys Limited and the Council have been complied with 
- 3.15 For the avoidance of doubt in the event that a Qualifying Occupier acquires 100% of the equity in an Affordable Unit and the Social Landlord does not exercise its option to buy back in Paragraph 3.14.9 above then the Qualifying Occupier shall be entitled to dispose of 100% of the equity

in the Affordable Unit to a Qualifying Occupier and for the avoidance of doubt the provisions of Paragraph 3.14 above (save for Paragraphs 3.14.5, 3.14.6, 3.14.7 and 3.14.9) shall continue apply to that (and all subsequent) disposals of the Affordable Unit

3.16 The Owner shall at its own cost register the covenants restrictions and provisions referred to in Paragraph 3.14.10 above at the Land Registry and shall deliver to the Council an official copy of such title showing the registration of such covenants restrictions and provisions

3.17 The Social Landlord shall retain sale proceeds from:-

3.17.1 the disposal of each Affordable Unit to a Qualifying Occupier (including any subsequent disposals in circumstances where the Social Landlord has exercised the option to buy back an Affordable Unit in paragraph 3.14.9 above) (net of debt and costs); and

3.17.2 the acquisition by Qualifying Occupiers of further equity shares in accordance with paragraph 3.14.6 above (net of debt and costs)

in a ring fenced account to be utilised by the Social Landlord for the provision of further affordable housing within the Council's administrative area

3.18 The Social Landlord shall on request provide written details to the Council to satisfy the Council that the requirements of this Agreement are being met

3.19 The Owner agrees that in the event that Harvest are not the Social Landlord then the following additional covenant shall apply to the disposal of each Affordable Unit (unless otherwise agreed in writing with the Council):-

3.19.1 a covenant providing that the Social Landlord shall at all times retain a minimum share of 25% of the equity in the Affordable Unit

## **Nomination Process**

- 3.20 The nomination process relating to the occupation of each Affordable Unit shall be as follows:-
- 3.20.1 the Social Landlord shall notify the Council in writing of the availability of an Affordable Unit providing details of the Affordable Rent
  - 3.20.2 within 28 working days of receiving the Social Landlord's notification referred to in Paragraph 3.20.1 above the Council shall provide the Social Landlord with the name(s) of a Qualifying Occupier(s)
  - 3.20.3 within 5 weeks of receiving the Qualifying Occupier's details from the Council in accordance with Paragraph 3.20.2 above the Social Landlord shall use its reasonable endeavours to enter into a lease with the Qualifying Occupier
  - 3.20.4 in the event that the Qualifying Occupier fails to enter into a lease for the Affordable Unit the Social Landlord shall immediately inform the Council in writing of the fact
  - 3.20.5 within 3 weeks of receiving the Social Landlord's notification referred to in Paragraph 3.20.4 above the Council shall provide the Social Landlord with the name of a further Qualifying Occupier and the Social Landlord shall use its reasonable endeavours to enter into a lease with this Qualifying Occupier within 5 weeks from the date on which the Social Landlord receives the written notification from the Council referred to in this paragraph
- 3.21 For the avoidance of doubt if the Social Landlord adopts the Rented Route the provisions of Paragraphs 3.8 - 3.12 of this Schedule shall apply to the first and all subsequent lettings of the Affordable Units and if the Social Landlord adopts the Shared Ownership Route the provisions of Paragraphs 3.13 - 3.19 of this Schedule shall apply to the first and all subsequent disposals of the Affordable Units

**Obligations of the Owner if the Affordable Units are not transferred to a Social landlord**

3.22 The obligation in Paragraph 3.3 above to transfer the Affordable Units to the Social Landlord shall cease to have effect upon the expiry of a period of 2 years from the date of the Commencement of the Development if an agreement for sale of the Affordable Units to the Social Landlord has not been exchanged before the expiry of the said 2 year period PROVIDED ALWAYS that it has been demonstrated to the Council's satisfaction that the Owner has used reasonable endeavours to conclude such an agreement with the Social Landlord

3.23 In the event that the circumstances described in Paragraph 3.22 above occur then each Affordable Unit shall be sold at the Affordable Price to a Qualifying Occupier and the sale shall contain the following covenants:-

3.23.1 that the Affordable Unit is occupied as the sole or main residence of the Qualifying Occupier

3.23.2 that the Affordable Unit cannot be disposed of otherwise than at the Affordable Price to Qualifying Occupiers

3.23.3 that the Affordable Unit shall not be disposed of otherwise than to a person(s) nominated in accordance with the procedures set put in Paragraph 3.20 above

3.23.4 No disposition of the registered estate other than by charge by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor or conveyancer to the proprietor for the time being of the estate registered under title numbers [ ~~LA492920 and LA424074~~ ✓ ] that the provisions of the First and Third Schedules of the Planning Agreement dated [ ] August 2007 and made between B&E Boys Limited and the Council have been complied with

3.24 The Owner shall at its own cost apply to register as a Restriction the covenant referred to in Paragraph 3.23.4 above at the Land Registry and shall deliver to the Council an official copy of such title showing the registration of such covenants

## **SECOND SCHEDULE**

### **Council's obligations**

1. To use the Off-Site Open Space Contribution for the purpose set out in Clause 1.12 of this Agreement and for no other purpose
2. Upon receipt of a written request from the person who paid the Off-Site Open Space Contribution to refund any part of the Off Site Open Space Contribution not expended within 8 years of its receipt by the Council to the person who paid it together with interest at the Interest Rate from the date of payment to the date of repayment

## **THIRD SCHEDULE**

### **Qualifying Criteria**

1. First preference shall be given to applicants who in the opinion of the Council are in need of affordable housing and who have lived in Bacup and Waterfoot for at least 12 months prior to the application or who have strong connections with Bacup and Waterfoot either by Employment or Close Family Association
2. Second preference shall be given to applicants who in the opinion of the Council are in need of affordable housing and who have lived in the Council's administrative area for at least 12 months prior to the application or who have strong connections with the Council's administrative area either by Employment or Close Family Association
3. Third preference shall be given to applicants who in the opinion of the Council are in need of affordable housing

## **FOURTH SCHEDULE**

**Table showing the Open Market Value, Affordable Price and weekly rental of the Affordable Units**

Property Type	Open Market Value (as at July 2007)	Affordable price based on initial purchase of a 50% equity share	Weekly rental on a 50% equity share
Dwelling 1	£160,000	£52,000	£46.15
Dwelling 2	£160,000	£52,000	£46.15

**IN WITNESS** whereof the Owner and the Council have executed this Deed the day and year first before written

**EXECUTED** as a **DEED**

by **B&E BOYS LIMITED**

acting by its:

Director

Director/Secre

**THE COMMON SEAL** of

**ROSSENDALE BOROUGH COUNCIL**

in the presence of:-

Mayor

Borough Solicitor



NO. 1000000000  
REGISTER  
1114798

Signed as a Deed by

**BRIAN BOYS** in the presence of:

Witness:

Witness:



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Special Document  
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Planning

ANVIL ST  
STACKSTEADS  
LOCATION PLAN

Scale 1:50 @ A1  
Reviewed by WDC  
2454  
drawing  
0.005

taylor young  
ARCHITECTS

Author: [redacted]  
Date: [redacted]  
Scale: [redacted]