

DATED

4th February

2011

(1) ROSSENDALE BOROUGH COUNCIL

and

**(2) JOHN LEONARD YEARSLEY,
HARRY EDWIN YEARSLEY,
BRIAN TOMKINSON,
JANE ELIZABETH WILKINSON
JONATHAN CARL BAKER
PHILIP JOHN WHITWORTH
FAIRMOUNT TRUSTEE SERVICES LIMITED**

DEED OF VARIATION

**Planning Obligation relating to the development
of land off Eastgate, Whitworth, Lancashire**

THIS DEED OF VARIATION is made the *4th* day of *February* 2011

BETWEEN:

- (1) **THE ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Newchurch Road, Bacup, OL13 0BB ("the Council") and

- (2) **JOHN LEONARD YEARSLEY** of 18 Bury and Rochdale Old Road, Bury, BL9 7TZ
HARRY EDWIN YEARSLEY of Heights House Farm, Off Inchfield Road, Walsden, West Yorkshire, OL14 7QP
BRIAN TOMKINSON of 1 Hands Lane, Rochdale, OL11 5LU
JANE ELIZABETH WILKINSON of 50 Oulder Hill Drive, Bamford, Rochdale, OL11 5LB
JONATHAN CARL BAKER of 21, Woodtop Avenue, Bamford, Rochdale OL11 4BD
PHILIP JOHN WHITWORTH of 5, Springbank Lane, Bamford, Rochdale, OL11 5SE and
FAIRMOUNT TRUSTEE SERVICES LIMITED (Company Registration Number 1909678) Whose Registered Office is at Founders Court, Lothbury, London, EC2R 7HE (collectively referred to as "the Owner")

1. RECITALS

- 1.1 The Council is the local planning authority for the purpose of the Act for the area within which the Property is located

- 1.2 The Owner is the freehold owner of the Property registered under title number LA479195 at HM Land Registry and is the successor in title of the First Owner to the Property

- 1.3 By the Agreement the Council and the First Owner agreed as therein provided to restrict and regulate the development of the Property

- 1.4 The terms of the Agreement assumed that the First Owner would develop the Property in accordance with the Original Permission (which development is referred to in the Agreement as "the Development")

- 1.5 The Council are minded to grant the New Permission in respect of the Property and the parties hereto agree that the Agreement should be varied as herein provided so that its terms shall apply to any development carried out pursuant to the New Permission
- 1.6 The Owner now proposes to develop the Property in accordance with the terms of the New Permission
- 1.7 The Owner by entering into this Deed does so with the intention that the planning obligations contained in this Deed in respect of the Property may be enforced by the Council as planning obligations against the Owner and its successors in title to the Property pursuant to Section 106 of the Act

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Deed unless the context requires otherwise the following words and expressions have the respective meanings as set out opposite to them:-

"the Act"	means the Town and Country Planning Act 1990 as amended
"the Agreement"	means an Agreement dated 11th May 2007 pursuant to Section 106 of the Act made between the First Owner and the Council in respect of the Property
"Commencement of Development"	means the date upon which the New Development shall be commenced by the carrying out on the Site pursuant to the New Permission of a material operation as specified in Section 56(4) of the Act (but not including any operations relating to site investigations safety security or surveys or the demolition of any existing buildings or clearance of or removal of contamination from the Site)
"the First Owner"	means the Owner as set out in the Agreement dated 11 th May 2007

"the New Development"	means the development to be constructed on the Property pursuant to the New Permission
"the New Permission"	means the outline planning permission reference number 2010/433 to be granted pursuant to an application validated on 2 nd September 2010 to extend the time limit by which development under the Original Permission must commence
"the Original Permission"	means the outline planning permission for the erection of 45 residential units on the Property granted by the Council on the 6 th August 2007 under reference 2002/261
"the Property"	means the land described in the Schedule

- 2.2 The masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa
- 2.3 A reference to an Act of Parliament refers to the Act as it applies at the date of this Deed
- 2.4 A reference to a clause or schedule or paragraph is a reference to a clause or schedule or paragraph to a Schedule contained in this Deed
- 2.5 References to any party in this Deed shall include the successors in title of and those deriving title from that party and In the case of the Council shall include its statutory successors

3. OPERATIVE PROVISIONS

- 3.1 This Deed 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 Deed and the obligations contained herein are planning

obligations for the purpose of that section in so far as they fall within the terms of sub-section 106(1) of the Act

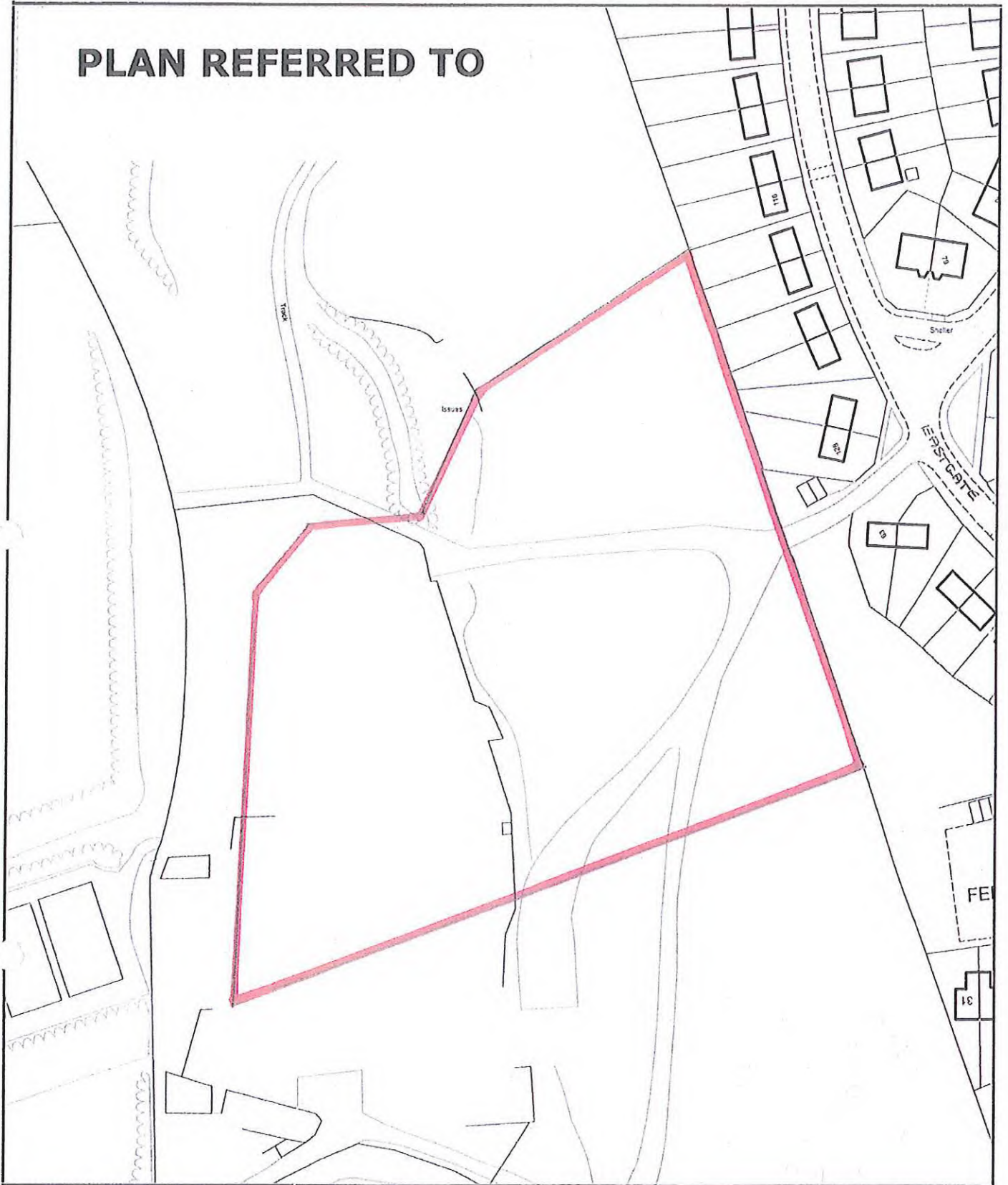
- 3.2 The Council is the local planning authority by which the planning obligations contained in this Deed are enforceable
- 3.3 The obligations contained in this Deed are conditional on and shall not take effect until satisfaction of all the following conditions:
 - 3.3.1 The New Permission has been granted by the Council; and
 - 3.3.2 The Commencement of Development has occurred
- 3.4 The Owner shall not be liable for any breach of the covenants contained in this Deed after he has parted with his entire interest in the Site or the part in respect of which such breach occurs but without prejudice to his liability for any subsisting breach prior to parting with such interest
- 3.5 No person shall be liable for any breach of this Deed unless that person holds an interest in the part of the Site in respect of which such breach occurs or holds such an interest at the date of the breach
- 3.6 This Deed shall cease to have effect if:
 - 3.6.1 The New Permission shall be quashed revoked or otherwise withdrawn or modified (save as to any minor modifications to the New Development as shall be agreed from time to time by the Council and the Owner) prior to the Commencement of Development; or
 - 3.6.2 The New Permission shall expire prior to the Commencement of Development; or
 - 3.6.3 The Council or any other competent authority shall at any time after the date hereof grant a further planning permission under which development which renders the New Permission incapable of implementation is initiated on the Property for the purpose of Section 56 of the Act
- 3.7 The Planning Obligations contained in this Deed shall be registered in the Register of Local Land Charges immediately on completion

- 3.8 If any provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected
- 3.9 If the Owner decides to develop the Property pursuant to the Original Permission then the Agreement shall remain in full force and effect
- 3.10 The Council and the Owner do not intend that the terms of this Deed will be enforceable by virtue of the Contracts (Right of Third Parties) Act 1999 by any person other than the Council

4. THE PLANNING OBLIGATIONS

- 4.1 The Council and the Owner covenant as follows:
- 4.1.1 The terms of the Agreement shall apply to the New Development as it applies to any development carried out pursuant to the Original Permission save that the purpose for which the "Bus Terminus Contribution," payable by the Owner seven days prior to the Commencement of Development to the Council, referred to in Clauses 1.1(A), 5.1.1 and 6.1 of the Agreement shall be paid shall be amended so as to allow the Council to spend the Bus Terminus Contribution on the design (including any feasibility study) and implementation on schemes to make the Development accessible to pedestrians and pedal cyclists and to improve pedestrian and cycle access to the Property as well as for the purpose of upgrading the 'bus terminus at and running a 'bus service to Wallbank and that the Owner will carry out the Development in accordance with the terms of the Agreement as varied by this Deed of Variation.
- 4.1.2 For the avoidance of doubt the Council shall expend the Bus Terminus Contribution as varied herein solely upon such expenditure as is reasonably lawfully and properly required to be expended herein.
- 4.2 The Owner shall on the execution hereof pay to the Council its reasonable costs in the sum of £150 properly incurred in the preparation of this Deed of Variation.
- 4.3 The Council will grant the New Permission and will issue the decision notice to the Owner within five working days of the date of completion of this Deed of Variation.

PLAN REFERRED TO



**LAND AT SPRING MILL, OFF EASTGATE, WHITWORTH,
ROSSENDALE**

Scale 1:1250th



north

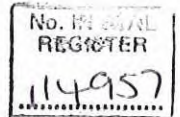
THE SCHEDULE

Details of the Property

All that Freehold plot of land situate at Eastgate, Whitworth, Lancashire and being part of the site of and formerly occupied with Spring Mill registered in the name of the Owner at HM Land Registry and shown edged red on the Plan

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

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



SIGNED AS A DEED by the said
JOHN LEONARD YEARSLEY
in the presence of:

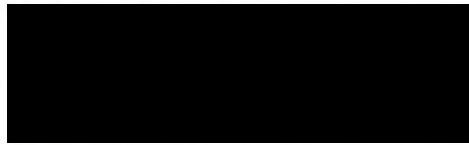
WITNESS

Signature

Name in block capitals

KAREN RYLAND

Address



Occupation

ACCOUNTS CLERK

SIGNED AS A DEED by the said
HARRY EDWIN YEARSLEY
in the presence of:

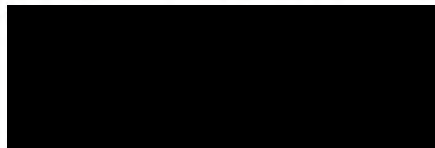
WITNESS

Signature

Name in block capitals

KAREN RYLAND

Address



Occupation

ACCOUNTS CLERK

SIGNED AS A DEED by the said
BRIAN TOMKINSON
in the presence of:

WITNESS
Signature

Name in block capitals

KAREN RYLANCE

Address



Occupation

ACCOUNTS CLERK

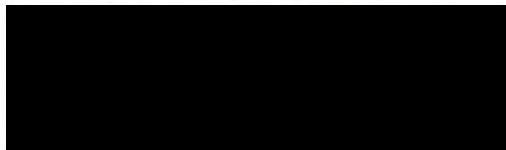
SIGNED AS A DEED by the said
JANE ELIZABETH WILKINSON
in the presence of:

WITNESS
Signature

Name in block capitals

KAREN RYLANCE

Address



Occupation

ACCOUNTS CLERK

SIGNED AS A DEED by the said
JONATHAN CARL BAKER
in the presence of:

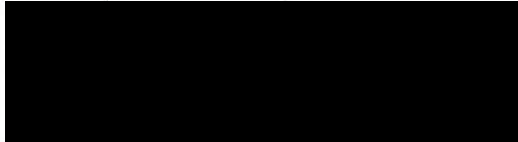
WITNESS

Signature

Name in block capitals

KAREN RYLANCE

Address



Occupation

ACCOUNTS CLERK

SIGNED AS A DEED by the said
PHILIP JOHN WHITWORTH
in the presence of:

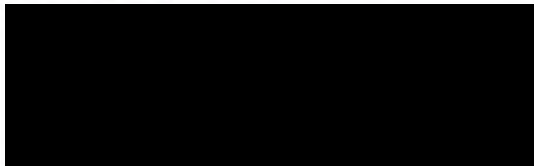
WITNESS

Signature

Name in block capitals

KAREN RYLANCE

Address



Occupation

ACCOUNTS CLERK.

SIGNED AS A DEED by the said
FAIRMOUNT TRUSTEE SERVICES LIMITED

acting by:

Director

Signature

Director/~~Secretary~~

Signature