

Dated this 24th day of October 2012

(1) ROSSENDALE BOROUGH COUNCIL

**(2) JAMES CHRISTOPHER POWER
AND DIANE CHRISTINE POWER**

AGREEMENT

**Under section 106 of the Town & Country Planning Act 1990 relating to land at
Flaxmoss House Helmshore Road Haslingden BB4 4JA**

Stuart Sugarman
Director of Business
Rossendale Borough Council
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made on the 24th day of October 2012

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Bacup OL13 0BB (referred to in this Agreement as "the Council")
- (2) **JAMES CHRISTOPHER POWER AND DIANE CHRISTINE POWER** of Flaxmoss House, Helmshore Road, Rossendale, Lancashire. BB4 4JA ("the Owner")

BACKGROUND

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B. The Owners are the sole owners of the Site being registered at H. M Land Registry under title number LA467111 free from encumbrances which would prevent the Owner from entering into this Agreement.
- C. An Application has been submitted to the Council to develop the Site in the manner and for the uses set out in the Application and in the plans, specification and particulars deposited with the Council and forming part of the Application more particularly set out in the Second Schedule.
- 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 as hereinafter provided and where the Owner is more than one legal entity all of the Owner's obligations herein can be enforced against all of them jointly and against each individually.
- E. The Council has decided to grant planning permission ("the Permission") for the development in accordance with the Application subject to the making of this Agreement without which the Permission would not be granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- "Act" the Town and Country Planning Act 1990
(as amended)
- "Application" the application for full planning permission dated 25th March 2012 submitted to the Council for the Development and allocated reference number 2012/0158
- "Commencement of Development" the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site

notices or advertisements and "Commence Development" shall be construed accordingly.

"Development"

the Development of the Site in accordance with the Planning Permission consisting of the erection of 8 apartments, in a three storey building with basement parking, altered access to Helmshore Road and new access to Campion Drive

"Index"

All Items Index of Retail Prices issued by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or any such other index as may from time to time be published in substitution therefore.

"Interest"

interest at the base lending rate for the time being of the Bank of England compounded annually

"Plan"

the plan attached to this Deed

"Planning Permission"

the permission to be granted in the form of the draft annexed hereto.

"Site"

the freehold land described in the First Schedule and shown for identification

purposes only edged red on the plan annexed to this Agreement.

"Traffic Regulation Sum" the sum of two thousand (£2000) to be expended towards the provision of a Traffic Regulation Order and associated works in the vicinity of both Helmshore Road and Campion Drive

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4. CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 13 and 14 which shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council as set out in the Third Schedule.

6. THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

7. MISCELLANEOUS

7.1 The Owner shall pay to the Council on completion of this Deed the sum of five hundred pounds (£500.00) for the costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registerable as a local land charge by the Council.



IOM Design Ltd.
 CHARTERED ARCHITECTS

TEL: 01524 701641
 EMAIL: f.mccarten@btinternet.com
 4 Castle Bank, Silverdale, Lancs, LA5 0RY

JOB TITLE
 'FLAXMOSS HOUSE'
 HELMSHORE ROAD,
 HASLINGDEN

DRAWING TITLE
 SITE LOCATION PLAN

DRAWN BY IOM DESIGN	DRAWN OCT 2010	SCALE 1:1250 at A4
JOB NO. 22/09	DWG NO. PLANNING-01	REV A

REV A: NEW ACCESS TO FLAXMOSS HOUSE ADDED

- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8. WAIVER

8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. CHANGE IN OWNERSHIP

9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10. INDEXATION

10.1 Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

11. INTEREST

11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12. VAT

12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13. JURISDICTION

13.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

14. DELIVERY

14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

All that plot of land shown edged in red on the plan attached hereto which is land at Flaxmoss House Helmshore Road Haslingden Rossendale Lancashire BB4 4JA registered at H. M. Land Registry under the title number LA467111

SECOND SCHEDULE

The Development of the Site consisting of the erection of 8 apartments in a three storey building with basement parking and altered access to Helmshore Road and new access to Campion Drive

THIRD SCHEDULE

The Owner Covenants with the Council as follows:

- (1) To give notice in writing to the Council not less than seven days before Commencement of Development
- (2) To pay the Traffic Regulation Sum increased with inflation in accordance with Clause 10 of this Deed prior to Commencement of Development

FOURTH SCHEDULE

The Council covenants with the Owner as follows:

- (1) The Council shall use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- (2) At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

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

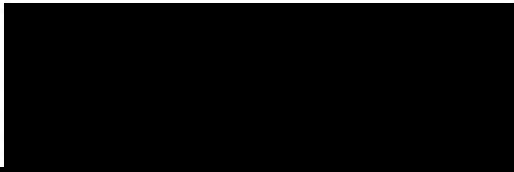
No. IN SEAL REGISTER
115029

THE COMMON SEAL of **ROSSENDALE**)
BOROUGH COUNCIL was hereunto)
affixed to this Deed in the presence of:)



.....
Authorised Signatory

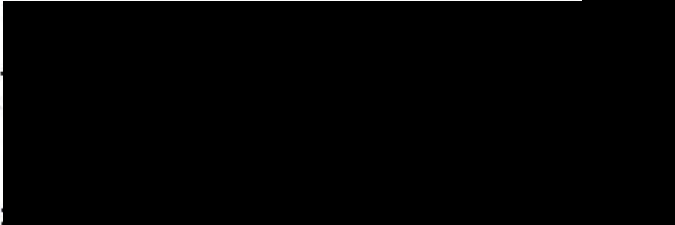
EXECUTED as a DEED by **JAMES**)
CHRISTOPHER POWER In the presence of:)



WIT SIGN
X

Name:

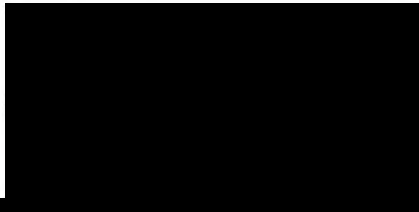
Address:



BURY

BL8 1HS

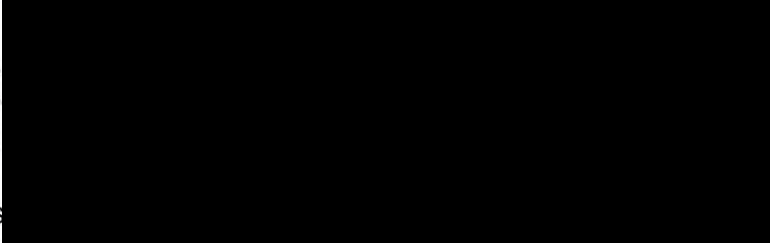
EXECUTED as a DEED by **DIANE**)
CHRISTINE POWER In the presence of:)



WIT SIGN
X

Name:

Address:



BURY

BL8 1HS