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DATED 28th July 2007

ROSSENDALE BOROUGH COUNCIL  
AND  
BROTHER INVESTMENTS LTD  
AND  
NATIONAL WESTMINSTER BANK PLC

AGREEMENT

under section 106 of the Town and Country Planning Act 1990  
re: Erection of Three Storey Office Building and 15 Dwellings at Higher Mill Rawtenstall  
(Planning Permission 2005/729)

LF/SS/Z.12/278

Linda Fisher,  
Head of Legal and Democratic Services  
Rossendale Borough Council,  
P. O. Box 74,  
Kingfisher Business Centre,  
Futures Park,  
Bacup. OL13 0WU

THIS AGREEMENT is made the 25<sup>th</sup> day of July Two thousand and seven between ROSSENDALE BOROUGH COUNCIL of P. O. Box 74 Kingfisher Business Centre Futures Park Bacup Lancashire OL13 0WU ("the Council") of the first part and BROTHER INVESTMENTS LIMITED whose Registered Office is situate at Todd Carr Road Waterfoot Rossendale Lancashire ("the Owner") of the second part and NATIONAL WESTMINSTER BANK PLC whose Registered Office is situate at P. O. Box 76 1<sup>st</sup> Floor 1-3 New Market Street Blackburn BB1 7EN ("the Chargee") of the third part

#### DEFINITIONS

- (i) "the Act" means the Town and Country Planning Act 1990 as amended
- (ii) "the Application" means the full planning application made on behalf of B. & E. Boys Limited and received by the Council on 23<sup>rd</sup> December 2005 reference 2005/729 and as subsequently amended for permission for the Development
- (iii) "Commencement Date" 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
- (iv) "the Development" means the development of the Land and other land in the manner and for the uses set out in the plans, specifications and particulars deposited with the Council and referred to in the Second Schedule
- (v) "the Owner" means the Owner, and where this Agreement provides for any obligation or covenant to be performed by the Owner such obligation or covenant shall be treated as applying to the Owner (as the case may be) jointly and severally

- (vi) "the Permission" means the draft planning permission attached to this Agreement
- (vii) "the Plan" means the plan annexed to this Agreement
- (viii) "the Land" means the Land described in the First Schedule to this Agreement

WHEREAS:

- (i) The Council is the Local Planning Authority for the purposes of the Act for the District within which the Land is situated
- (ii) The Owner is the freehold owner in possession of all the land shown coloured red on the Plan of which with other land it is the registered proprietor at H. M. Land Registry under title numbers LA842903, LA657378, LA8773299, LA914285 and LA873299 free from incumbrances save for a registered charge in favour of the Chargee
- (iii) By the application Brother Investments Limited has applied to the Council for the Permission to carry out the Development
- (iv) The Council is of the opinion that in the event of the Land being developed in accordance with the Application it is desirable that there be provision for
- (a) a contribution towards the improvement and maintenance of the Mill Row Recreation Area, Rawtenstall in lieu of the provision of open space within the Land and associated with the Development
- (b) a payment towards the costs of advertising, making and signing a traffic regulation order introducing a prohibition or restriction of waiting on roads in or adjacent to the Land
- (v) The Council has no objection in principle to the Development and is prepared to approve the same subject to appropriate conditions but requires the Owner to enter into the covenants hereinafter contained
- (vi) The Chargee consents to the covenants contained within this Agreement and agrees to be bound by the covenants in this Agreement

# Higher Mill Rawtenstall



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Scale: 1:1250  
 Date: 21 June 07  
 Centre:

Gwen Marlow  
 Forward Planning

MAYOR

6. In this Agreement the expressions "the Council" "the Owner" and "the Chargee" shall where the context so admits include their respective successors in title and assigns
7. In this Agreement the words importing the masculine gender shall be deemed to include the feminine and the singular to include the plural and vice versa unless the contrary as to gender or number is expressly provided or unless the same is inconsistent with the context and where the expression "the Owner" comprises two or more persons, firms or companies the Owner's obligation shall be construed as joint and several
8. 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
9. The Chargee hereby consents to the execution of this Agreement and in so far as its Charge affects the Land acknowledge that subject as herein provided the Land shall be bound by the restrictions and obligations contained in this Agreement
10. Notwithstanding the terms contained herein the parties hereto agree that the Chargee shall be liable for any breach of any provisions of this Agreement only during such periods (if any) as it is a mortgagee in possession of the land and then only if as such mortgagee in possession it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that the Chargee shall in any event not be liable for any breach of this Agreement arising prior to its becoming a mortgagee in possession of the land regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the land.
11. The Owner shall pay £1200.00 towards the Council's costs for the preparation and engrossment of this Agreement on the signature of this Agreement and shall be responsible for the payment of the reasonable costs of the Chargee in relation thereto

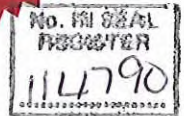
12. The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Land occurring before all the obligations under this Agreement have been discharged. Such notice to give details of the transferees full name and registered office together with the area of the Land or unit of Occupation purchased by reference to a plan.
13. The Owner agrees to serve written notice on the Head of Planning, Legal and Democratic Services confirming the Commencement Date. Such notice to be given seven days prior to the Commencement Date
14. **Inflation/interest**
  - 14.1 the Commuted Sums referred to in Clause 3 (ii) and (iii) 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 of 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
  - 14.2 if any sum shall remain unpaid after the same has become due the Owner shall pay interest thereon calculated in accordance with Clause 14.3 from the date the said sum becomes due to the date of payment thereof to the Council
  - 14.3 any interest which becomes payable in accordance with Clause 14.2 shall:-
    - (a) be at the rate 3% above the rate of interest from time to time (expressed as an annual rate) as determined by the Council to be the rate at which deposits in sterling of an amount equal to the sum due are offered for the same period as the sum due has been outstanding by the leading banks in the London Inter-Bank market for twelve month fixed term loans
    - (b) be capitalised and added to the sum outstanding at the expiry of each period of twelve months from the date the said sum became payable

- (c) accrue from day to day up to the date payment is made to the Council or earlier capitalisation under sub-clause (b) of this Clause and be calculated on the basis of the actual number of days elapsed and a 365 day year

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and these presents have been executed as a deed on behalf of the Owner and the Chargee the day and year first before written

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

✓MAYOR



SIGNED as a Deed by BROTHER )  
 INVESTMENTS LIMITED acting by a )  
 director and its secretary )

Director

Secretary

IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written

SIGNED AND DELIVERED by )  
 )  
 in the presence of )

Attorney of  
 National Westminster Bank plc

Witness :

Address :

Occupation :

Signed and Delivered as a deed  
 For and on behalf of  
 The National Westminster Bank PLC  
 By a duly authorised Attorney  
 In the presence of:

Witness' Signature-Bank employee

FIRST SCHEDULE

The Property

Land and premises adjacent to East Parade Millgate Road Newchurch Road Higher Mill Street Grange Terrace and Alder Bank Rawtenstall Rossendale more particularly delineated and shown edged red on the Plan

SECOND SCHEDULE

The Development

Erection of a Three Storey office building and 15 dwellings