

DATED

2nd february 2017

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN & COUNTRY
PLANNING ACT 1990 RELATING TO LAND AT WHINBERRY VIEW, ROSSENDALE**

between

ROSSENDALE BOROUGH COUNCIL

and

BROTHER DEVELOPMENTS LIMITED

and

HOMES AND COMMUNITIES AGENCY

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THIS DEED is dated the 2nd day of February 2017 ^{CO.}

- (1) **Rossendale Borough Council** of The Business Centre, Futures Park, Bacup, OL13 0BB (**Council**).
- (2) **Brother Developments Limited** (Company Registration Number 02849693) of Todd Carr Road, Waterfoot, Rossendale, Lancashire, BB4 9SJ (**Owner**).
- (3) **Homes and Communities Agency** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (**Mortgagee**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Mortgagee is the registered proprietor of the charge dated 9th February 2016 referred to in the charges registers of title numbers LAN26508 and LAN126832 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (D) On 25th March 2015 the Council, and the Owner and National Westminster Bank Plc and Royal Bank of Scotland Plc entered into the Original Agreement.
- (E) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (F) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 25th March 2015 and made between (1) the Council, (2) the Owner and (3) National Westminster Bank Plc and Royal Bank of Scotland Plc.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 The Council and the Owner have agreed that the Owner shall no longer be required to pay the Commuted Sum and accordingly, the definition of the Commuted Sum and the provisions of the Second Schedule of the Original Agreement shall be deleted in their entirety.
- 3.2 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. ACKNOWLEDGEMENT

The Council acknowledge receipt of the TRO Contribution and the RHSC Contribution such sums having already been paid by the Owner to the Council.

6. MORTGAGEE'S CONSENT

The Mortgagee consents to the completion of this deed and acknowledges that from the date of this deed the Property shall be bound by the terms of this deed, as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property PROVIDED THAT the Mortgagee shall have no liability under this deed (or the Original Agreement) until such time as it/they have taken possession of the Site in which case it/they too will be bound by the obligations as if it were a person deriving title from the Owner.

7. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

8. ENDORSEMENT

Promptly following completion of this deed the Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated [DATE] and made between [PARTIES]."

9. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

10. VALUE ADDED TAX

10.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

10.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

11. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

12. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

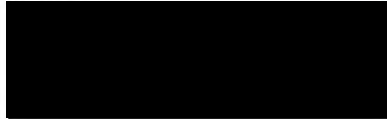
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

No. IN SEAL
REGISTER
115314

THE COMMON SEAL of)
ROSSENDALE BOROUGH)
COUNCIL was hereto)
Affixed in the presence of :



Authorised Signatory



Executed as a DEED by BROTHER)
DEVELOPMENT LIMITED acting by)
a Director in the presence of a)
witness :



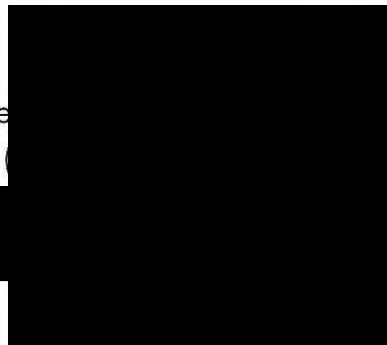
Director

Witness Name

Witness Signature

Address

Occupation



THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
is hereunto affixed in the presence of:)



Authorised Signatory



Paul Tanner
Risk Manager



