

THIS AGREEMENT is made the *fifteenth* day of *April* Two Thousand and fifteen **BETWEEN STEPHEN FRANK HANDLOVICS** and **LYNNE JOAN HANDLOVICS** of 22 Greenfield Mount, Wakefield WF2 0TJ and **RICHARD MCGEE** of 36 Teall Street, Ossett WF5 0NY (hereinafter called the "First Owner" and **MOHAMMED AKRAM** of 264 Keighly Road, Frizinghall. Bradford BD6 4JX and **SHAMIN AKHTAR AKRAM** of 264 Keighly Road, Frizinghall. Bradford BD6 4JX (hereinafter called the "Second Owner" and **BLACKMORES (D) LIMITED** (Company Number 06620187) of 34 Froom Street, Chorley, Lancashire PR6 0AN (hereinafter called the "Developer" and **THE ROYAL BANK OF SCOTLAND PLC** of Credit Documentation, PO Box 339, Manchester M60 2AH hereinafter called the "Mortgagee") and **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire HD1 2TA (hereinafter called the "Council")

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable
2. The First Owner is the freehold owner of the site registered under title number WYK897302 and the Second Owner is the freehold owner of the site registered under title numbers WYK897400 and WYK940880. The First and Second Owners to be referred to collectively as "The Owners" Title Number WYK897302 is subject to a mortgage in favour of the Mortgagee. Title number WYK897400 is subject to a mortgage in favour of the Mortgagee.
3. The Mortgagee is the registered proprietor of the Charge dated 4 February 2011 referred to in entry 5 of the Charges Register and also is the registered proprietor of the Charge dated 30 December 2008 referred to in entry 5 of the Charges Register of title number WYK897400 and has agreed to enter into this deed to give its consent to the terms of this deed.

4. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("the Act") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land
5. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to:-
 - (i) secure the provision of a financial contribution towards the provision of or enhancement of educational facilities
 - (ii) secure the provision of a financial contribution towards the provision of off-site public open space, cycleway and footpath improvements in the area; and
 - (iii) secure the provision of a financial contribution towards the landscaping improvement along the canal side.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

"Company" shall include any company, corporation or other body corporate wherever and however incorporated or established.

"Contribution" means (as the context permits) the education contribution and/or the off-site Public Open Space (POS) cycling and footpath contribution and/or the landscape improvements contribution and "Contributions" shall have a corresponding meaning.

“Developer” means the person carrying out the development at the site, planning permission 2013/90249.

“Education” Contribution means the sum of £100,000(one hundred thousand pounds)to be paid to the Council for the provision or enhancement of educational facilities.

“Implementation” means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the Act save that the term “material operation” shall not include operations in connection with any works associated with demolition, site clearance, remediation works, environmental investigation site and soil surveys, the erection of fencing to site boundary.

“Implement” and **“Implementation”** shall be construed accordingly.

“Landscape Improvement Contribution” means the sum of £10,000(ten thousand pounds) to be paid to the Council for landscape improvements along the canal.

“Off-site public open space, cycleway and footpath improvement contribution” means the sum of £80,000(eighty thousand pounds) to be paid for the provision of the off-site public open space, cycleway and footpath improvements.

“Person” includes a natural person, corporate or incorporated body (whether or not having separate legal personality).

“Plan” means the plan annexed hereto.

“Planning Permission” means the planning permission to be granted under reference number 2013/90249 for the erection of 104 dwellings, demolition of existing buildings and removal of disused railway embankment at Lock Street, Thornhill, Dewsbury WF12 9BZ.

"Reserved Matters Approval" means approval by the Council of one or more matters reserved for approval by the Planning Permission.

"Site" means the land at Lock Street, Thornhill, Dewsbury WF12 9BZ shown edged red on the plan.

"Writing" or **"Written"** does not include faxes and emails.

"Working Day" means any day which is not a Saturday or Sunday, a Bank Holiday or a Public Holiday in England.

2. GENERAL

- 2.1 The Owners covenant with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.2 The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site
- 2.3 The expressions "the Council" and "the Owner" and "the Owners" shall include their successors in title and assigns
- 2.4 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 2.5 This Deed is conditional on the grant and issue of the Planning Permission.
- 2.6 If the Planning Permission expires or is revoked or is quashed without the consent of the Owners this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date

- 2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed
- 2.8 This Deed is a local land charge and shall be registered as such
- 2.9 The provision of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.10 The Developer shall pay to the Council its legal fees reasonably and properly incurred in the preparation of this Deed
- 2.11 Except for the planning obligations contained in this deed specifically regulating the use of land or buildings after construction, no planning obligations contained in this deed shall be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operations purposes

3. FINANCIAL CONTRIBUTIONS

- 3.1 Not to occupy or permit occupation of the second dwelling until £64,600(sixty four thousand six hundred pounds) of the education contribution, off-site public open space cycling and footpath improvement contribution and landscape improvement contribution has been paid to the Council; and
- 3.2 Not to occupy or permit occupation of the thirty first dwelling until the second payment of £62,700(sixty two thousand seven hundred pounds) towards the education contribution, off-site public open space cycling and footpath improvement contribution and landscape improvement contribution has been paid to the Council; and

- 3.3 Not to occupy or permit occupation of the sixty first dwelling until a final payment of £62,700(sixty two thousand seven hundred pounds) towards the education contribution, off-site public open space cycling and footpath improvement contribution and landscape improvement contribution has been paid to the Council.

4. COUNCIL OBLIGATIONS

- 4.1 The Council hereby covenants with the owner as follows:-

4.1.1 To issue a receipt on request for any sum paid to the Council under this agreement;

4.1.2 Not to apply the education contribution/off-site public open space, cycleway and footpath improvement contribution/landscape improvement contribution for any purpose other than for the purpose set-out in this agreement.

4.1.3 In the event that the education contribution/off site public open space, cycleway and footpath improvement/landscape improvement contribution has not been spent or committed for expenditure by the Council within 5 years following the date of receipt of the contribution, the Council shall refund to the Owners any part of the contribution which has not been spent or committed for expenditure together with any accrued interest.

5. MORTGAGEE'S CONSENT

- 5.1 The Mortgagee consents to the completion of this deed and declares that its interest in 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.

5.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

6. REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

7. CANCELLATION OF ENTRIES

7.1 On the written request of the Owners at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

7.2 Following the performance and full satisfaction of all the terms of the agreement or if this deed is determined pursuant to clause 2.5 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on written request of the Owners cancel all entries made in the local land charges register in respect of this deed.

8. NOTICES

8.1 Any notice or other communication to be given under this deed must be in writing and must be:-

(a) delivered by hand; or

(b) sent by pre-paid first class post or other next working day delivery service

8.2 Any notice or other communication given in accordance with clause 8.1 will be deemed to have been received:-

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9 am on a working day, the notice will be deemed to have been received at 9am on that day, and if delivery occurs after 5pm on a working day, or on a day which is not a working day, the notice will be deemed to have been received at 9am on the next working day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9am on the second working day after posting.

8.3 A notice or other communication given under this deed shall not be validly given if sent by email.

8.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9. VALUE ADDED TAX

9.1 Each amount stated to be payable by the Council or the Owners to the other under or pursuant to this deed is exclusive of VAT (if any).

9.2 If any VAT is at any time chargeable on any supply made by the Council or the Owners under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

10. 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.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereto affixed)
but not delivered until the date hereof)
In the presence of:)



006909

Assistant Director – Legal, Governance & Monitoring /Authorised Signatory

EXECUTED AS A DEED by)
BLACKMORES (D) LIMITED)
acting by a director in the presence of:-)



Director

W Witness Signature
I Witness Name *JULIE DEVENPORT*
T Witness Address
N
E
S Witness Occupation *SOLICITOR*
S

Holroyd & Co.
SOLICITORS
27 MARKET STREET
MILNSBRIDGE
HUDDERSFIELD HD3 4ND
TEL: (01484) 645464

SIGNED AS A DEED by)
STEPHEN FRANK HANDLOVICS)
In the presence of:)

Signature of Witness

Name of Witness *JULIE DEVENPORT*

Address of Witness

.....

Occupation of Witness *SOLICITOR*

Holroyd & Co.
SOLICITORS
27 MARKET STREET
MILNSBRIDGE
HUDDERSFIELD HD3 4ND
TEL: (01484) 645464

SIGNED AS A DEED by)
LYNNE JOAN HANDLOVICS)
In the presence of:)

Signature of Witness

Name of Witness *JULIE DEVENPORT*

Address of Witness

.....

Occupation of Witness *SOLICITOR*

Holroyd & Co.
SOLICITORS
27 MARKET STREET
MILNSBRIDGE
HUDDERSFIELD HD3 4ND
TEL: (01484) 645464

SIGNED AS A DEED by)
RICHARD MCGEE)
In the presence of:)

Signature of Witness

Name of Witness *JULIE DEVENPORT*

Address of Witness

.....

Occupation of Witness *SOLICITOR*

Holroyd & Co.
SOLICITORS
27 MARKET STREET
MILNSBRIDGE
HUDDERSFIELD HD3 4ND
TEL: (01484) 645464

SIGNED AS A DEED by)
MOHAMMED AKRAM)
In the presence of:)

Signature of Witness [Redacted]

Name of Witness *JULIE DEVENPORT*

Address of Witness

Occupation of Witness *SOLICITOR*

Holroyd & Co.
SOLICITORS
27 MARKET STREET
MILNSBRIDGE
HUDDERSFIELD HD3 4ND
TEL: (01484) 645464

SIGNED AS A DEED by)
SHAMIN AKHTAR AKRAM)
In the presence of:)

Signature of Witness [Redacted]

Name of Witness *JULIE DEVENPORT*

Address of Witness

Occupation of Witness *SOLICITOR*

Holroyd & Co.
SOLICITORS
27 MARKET STREET
MILNSBRIDGE
HUDDERSFIELD HD3 4ND
TEL: (01484) 645464

SIGNED AS A DEED by)
THE ROYAL BANK OF SCOTLAND PLC)

Acting by these two Officers:-

Director

Director/Secretary

[Redacted]
Wendy Myers
as the Attorney in fact capacity
as Documentor for Sheffield Credit
Documentation to and on
behalf of Royal Bank of
Scotland Plc

In the presence of
J. Maiden
Bank Official
Sheffield Credit Documentation
[Redacted]
2nd Floor 42 [Redacted]
Sheffield S1 2 [Redacted]

DATED 14 April 2015

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

BLACKMORES (D) LIMITED

and

STEPHEN FRANK HANDLOVICS

and

LYNNE JOAN HANDLOVICS

and

RICHARD MCGEE

and

MOHAMMED AKRAM

and

SHAMIN AKHTAR AKRAM

and

THE ROYAL BANK OF SCOTLAND

AGREEMENT

**Under Section 106 of the Town & Country Planning Act 1990 (as amended)
relating to land at Lock Street, Thornhill, Dewsbury**

Julie Muscroft
Assistant Director: Legal, Governance and Monitoring
Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND