

4090

Dated this 5th day of January 2007

(1) HURSTWOOD GROUP LIMITED

AND

(2) NATIONAL WESTMINSTER BANK PLC

Unilateral Undertaking

Pursuant to Section 106 of the
Town and Country Planning Act 1990
relating to land known as
Holly Mount House, St Mary's Way, Rawtenstall, Rossendale

LF/SS/Z.12/238

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

4090

THIS DEED OF UNILATERAL UNDERTAKING IS GIVEN on the *5th January*
2007

THIS DEED OF UNILATERAL UNDERTAKING IS UNDERTAKEN BY:

HURSTWOOD GROUP LIMITED (Company registration number 4799100) of Link 665 Business Centre, A56, Rossendale, Lancashire, BB4 5HU (hereinafter called "the Owner") of the first part and National Westminster Bank PLC (Company registration number 929027) of 6th Floor, 1 Spinningfields Square, Manchester, M3 3AP (hereinafter called "the Mortgagee") of the second part

WHEREAS

- 1.1 The Owner is registered at HM Land Registry as the freehold proprietor of the Land described in the first Schedule under Title Number **LAN27002** subject to a legal charge dated 17th December 2004 in favour of the Mortgagee.
- 1.2 Rossendale Borough Council ("the Council") is the Local Planning Authority for the purposes of this Deed for the area within which the Property is situated and by whom the obligations contained in this Deed are enforceable.
- 1.3 The Owner has by its agent Hurstwood Developments Limited applied to the Council for permission under Council reference 2006/320 to develop part of the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule.
- 1.4 The Council is minded to grant planning permission for the Development in accordance with the Planning Application subject to the making of this

Undertaking without which planning permission for the Development would

not be granted.

1.5 The Owner is willing to enter into this undertaking in order that in the event that the Council grants the Planning Permission the obligations of the Owner as set out in this Undertaking shall be secured as planning obligations for the purposes of Section 106 of the Act.

1.6 The Owner has agreed that seven days before implementing the Planning Permission it will pay all Commuted Sums to the Council in accordance with this Undertaking

NOW THIS DEED WITNESSETH as follows:-

1. **IN THIS DEED** (including the Recitals) where the context so requires or admits the following expressions shall have the following meanings:-

1.1.1 "the Act" The Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991

1.1.2 "the Planning Application" An application numbered 2006/320 and 2006/322LB for planning permission for the Development submitted by the Owner's Agent to the Council

1.1.3 "the Commuted Sums" the sum of £10,000 to be expended on the the provision of CCTV within Rawtenstall Town Centre. The sum of £32,000 to be expended on regeneration schemes (including the provision of affordable housing) within Rawtenstall Town

Centre.

- 1.1.4 "the Development" Planning Application reference 2006/320 for the conversion of Holly Mount House to 15 apartments, erection of 20 apartments in two blocks and erection of eighteen houses at Holly Mount House, St Mary's Way, Rawtenstall, Rossendale.
- 1.1.5 "implement" Carry(ing) out a material operation as defined in
"implementing" Section 56 of the Act
- 1.1.6 "the Land" All that land described in the First Schedule and shown for identification purposes only edged red on the attached plan
- 1.1.7 "the Planning Permission" Planning permission for the Development reference in the form of the annexed draft
- 1.2. The expressions "the Council" and "the Owner" shall include their respective successors in title and assigns
- 1.3 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders
- 1.4 References in this agreement to any clause or sub-clause or Appendix without further designation shall be a reference to the clause or sub-clause of or Appendix to the Agreement so numbered
2. **THIS UNDERTAKING** is made in pursuance of Section 106 of the Act to the intent that it shall bind all interests in the Land into whosoever hands the

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SITE SPECIFIC HAZARDS

IN ACCORDANCE WITH THE REQUIREMENTS OF THE CON REGULATIONS FROM THE FOLLOWING SIGNIFICANT RESIDUAL HAZARDS HAVE NOT BEEN DESIGNATED OUT OF THIS PROJECT AND MUST BE TAKEN INTO CONSIDERATION BY CONTRACTORS PLANNING TO UNDERTAKE THE WORKS SHOWN ON THIS DRAWING:

REV	DATE	NOTES	INT.
REV B	05/02/06	Boundaries Amended	RSL
REV A	08/08/05	Boundaries Confirmed	RSL

PROJECT
HOLLY MOUNT HOUSE
ST. MARY'S WAY
RAWTENSTALL

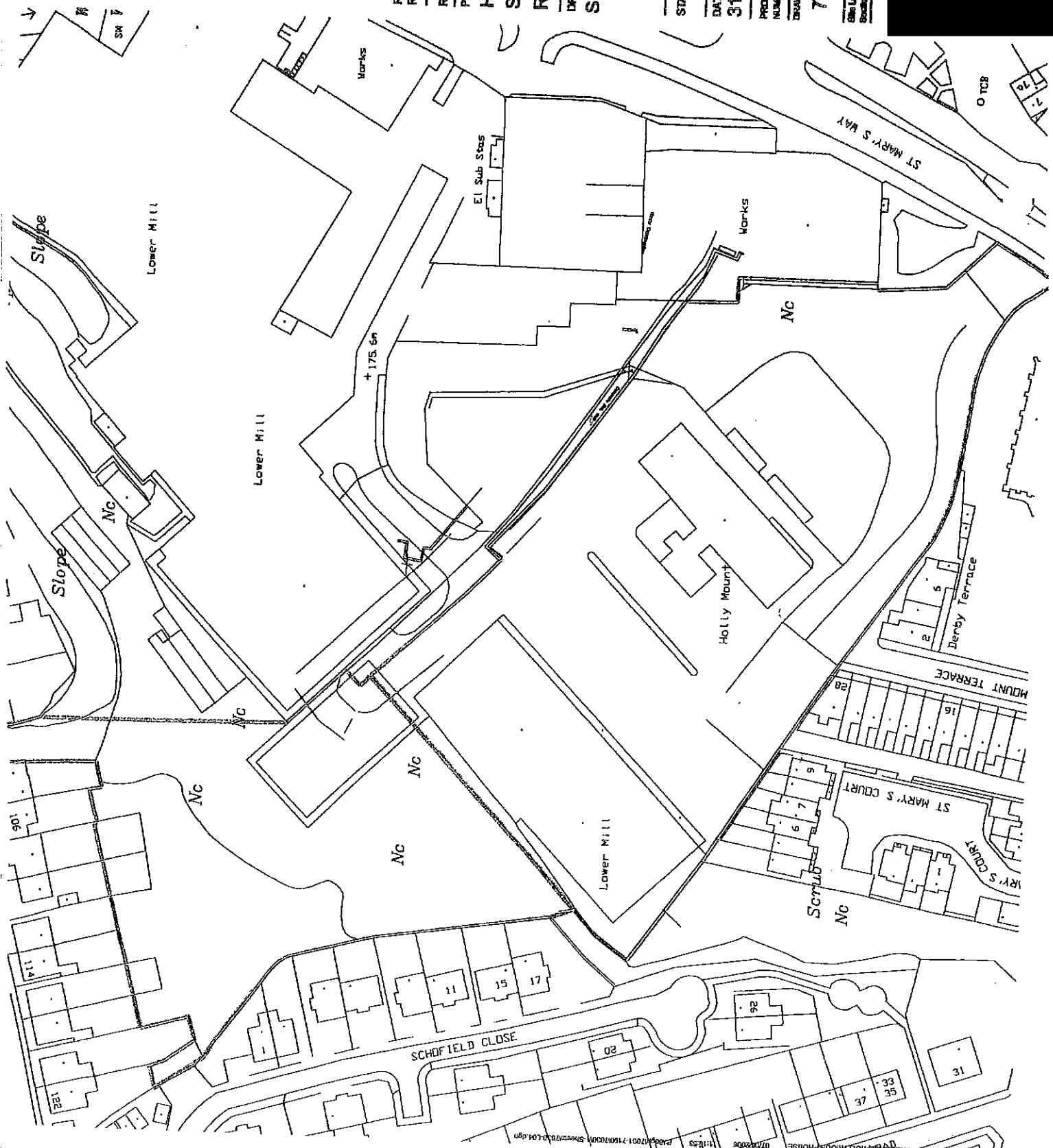
DRAWING TITLE
SITE LOCATION PLAN

STATUS

DATE	DRAWN	CHECK	SCALE
31-05-06	MMC		1:250
PROJECT NUMBER	LIMIT / BLOCK	CI / SFB CODE	TYPE & NUMBER
7030			REVISION LETTER
DRAWING NO.			

Site Location Plan	L	CA Plans	P	Structural	E
Sections	B	Details	B	Public	C
				Colour	C

GLASGOW LUTON



same may come and the Owner and his successors in title and assigns and all persons claiming under or through them

3. IT IS HEREBY AGREED AND DECLARED as follows:-

- 3.1 the covenants in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council
- 3.2 without prejudice to liability for any subsisting breach of covenant prior to parting with such interest no party shall be liable for breach of a covenant contained in this Agreement after having parted with its interest in the Land or in the part in respect of which such breach occurs.
- 3.3 all notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
 - 3.3.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
 - 3.3.2 in the case of a notice to be served on the Owner to the Owner at the above address
- 3.4 if the Planning Permission is not granted or if it is revoked or the Planning Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- 3.5 unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto

3.6 If the Planning Permission shall expire before the Development is commenced as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.

3.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.

3.8 This Agreement is a local land charge and shall be registered as such.

4. **THE OWNER** for itself and its successors in title and assigns hereby covenants with the Council as follows:-

4.2 To comply with the covenants contained within the second schedule

4.3 to give notice in writing to the Council not less than seven days before implementing the Planning Permission and upon giving the said notice to pay the Commuted Sums increased with inflation in accordance with Clause 4.4 of this Agreement

4.4 in the event of late payment of the Commuted Sums interest will be paid on any sum outstanding at a rate of 3% per annum above the base rate of the National Westminster Bank Plc and accrue from the date payment should have been made to the Council to the date of payment thereof to the Council

4.5 the Commuted Sums 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

for 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

4.6 the Owner shall on the execution hereof pay to the Council its reasonable legal costs in the sum of £200 properly incurred in the preparation of this Agreement

5. **MORTGAGEE CONSENT**

The Mortgagee consents to the Owner giving this undertaking to satisfy the requirements of the Planning Permission

6. Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

It is hereby agreed and declared that:-

- (a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations
- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

FIRST SCHEDULE

Holly Mount House, St Mary's Way, Rawtenstall shown edged red on the attached plan and forming part of Title Number LAN 27002.

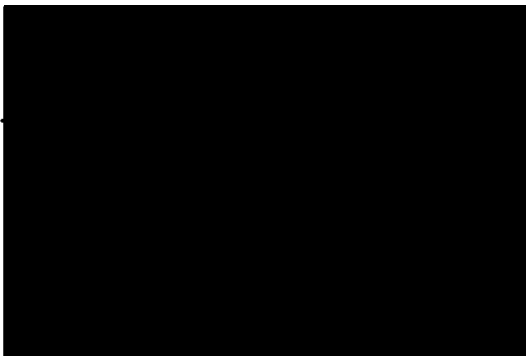
SECOND SCHEDULE

The Owner's Obligations

1. The Owner covenants with the Council seven days prior to the implementation of the Development the Owner shall pay to the Council the sum of £10,000 to be expended on the provision of CCTV within Rawtenstall Town Centre.
2. The Owner Covenants with the Council that seven days prior to the implementation of the Development the Owner shall pay to the Council the sum of £32,000 to be expended on regeneration schemes (including the provision of affordable housing) within Rawtenstall Town Centre.

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

EXECUTED AS A DEED BY)
HURSTWOOD GROUP LIMITED)
in the presence of:-)



Director/~~Company Secretary~~

Director/~~Company Secretary~~

EXECUTED (but not delivered)

