

Dated this *8th* day of *May* 2013

(1) CALICO HOMES LIMITED

(2) ROSSENDALE BOROUGH COUNCIL

AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990
relating to land at Springfield Court Bacup

Legal Services
Rossendale Borough Council
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made on the 8th day of May 2013

BETWEEN:

- (1) **ROSSENDALE- BOROUGH COUNCIL** of The Business Centre, Futures, Park, Bacup OL13 OBB ("the Council")
- (2) **CALICO HOMES LIMITED** incorporated and registered in England and Wales with company number 03752751 whose registered office is at Centenary Court Croft Street Burnley Lancashire BB11 2ED ("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 Owner is the owner of the Site being registered at HM Land Registry under title numbers LAN128007, LAN60976 and LA734158 free from encumbrances which would prevent the Owner from entering in this Agreement
- C. The Owner has submitted the Application to the Council to develop the Site in the manner and for the use 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 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 PROVISION'S

1 DEFINITIONS

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

"Act" means the Town and Country Planning Act 1990 (as amended)

"Application" means the application for full planning permission dated 26 January 2012 submitted to the Council for the Development and allocated reference number 2012/0044

"Commencement Date" means the date on which the Development commences by the carrying out on the Site pursuant to the Permission of a material operation as specified in section 56(4) of the 1990 Act

"Development" means the development of the Site in accordance with the Permission and described in the Second Schedule

"Highways Commuted Sum" means a financial contribution of Two Thousand Five Hundred Pounds (£2,500.00) to the Council to fund the processing of a traffic regulation order and associated works in the vicinity of the Site

"Permission" means the planning permission which may be granted in pursuance of the Application

"Plan" means the plan attached to this Agreement

"Site" means the freehold property known as Springfield Court described in Schedule 1

- 1.2 The expressions "the Council" and "the Owner" shall include their 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

2 AGREEMENT

NOW THIS DEED is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section to the intent that it shall bind all interests in the Site into whosoever hands the same, may come and the Owner and his successors in title and assigns and all persons claiming under or through them:-

- 2.1 The Owner covenants with the Council to comply with the obligations specified in the Third Schedule
- 2.2 No person or company shall be liable for any breach of this Agreement unless he or it holds an interest in the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach

- 2.2 This Agreement shall take effect on the date of the implementation of the Permission by the carrying out of a material operation as defined in the Act S56(4).
- 2.3 For the purpose of determining whether or not a material operation has been carried out there shall be disregarded operations consisting of site clearance, demolition work, site preparation, 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 construction of access or service roads
- 2.4 The payment of the Highways Commuted Sum shall not constitute a material operation within the meaning of the Act s 56 (4)
- 2.5 If the Permission expires within the meaning of the Act, SS91, 92, 93 or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or their successors in title this Agreement shall cease to have effect.
- 2.6 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission granted by the Council after the date of this Agreement.
- 2.7 The Owner shall pay the Council's costs of £500 for the preparation and completion of this Agreement.
- 2.8 This Agreement shall be registered as a Local Land Charge.

3 TERMINATION

This Agreement shall cease to have effect if:-

- 3.1 the Permission shall be quashed revoked or otherwise withdrawn or modified prior to the date of this Agreement or
- 3.2 the Permission shall expire prior to the date of this Agreement or
- 3.3 planning permission shall be granted subsequently and implemented for proposals incompatible with the Development or with the terms of this Agreement
- 3.4 Where this Agreement comes to an end under the provisions of this clause the Council will vacate or cancel the entry made in the Local Land Charges Register in relation to this agreement or otherwise record the fact that it has come to an end and no longer affects the site on receipt of a written request to vacate/cancel from the owner or their successors in title

4 NOTICES

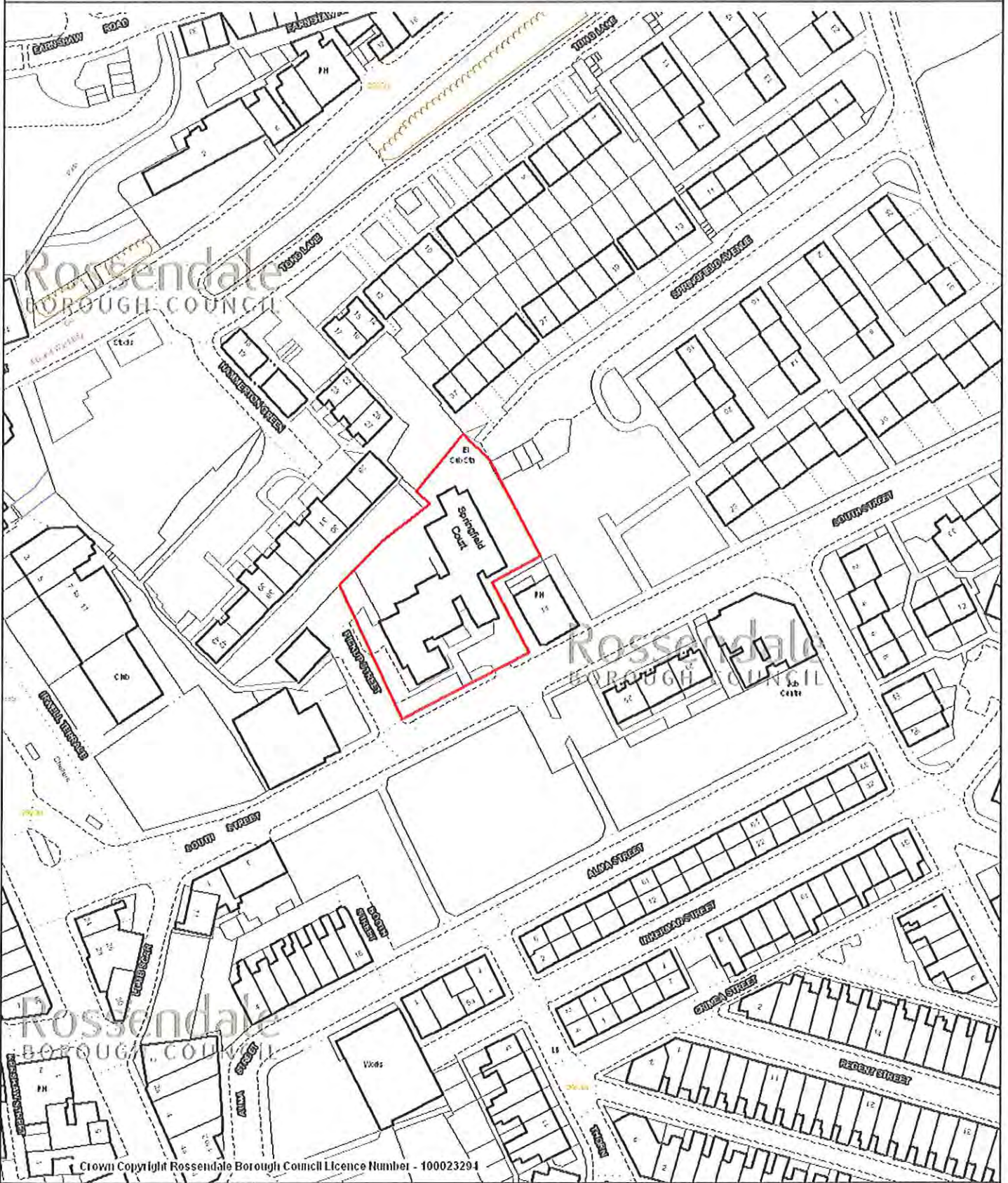
All notices served pursuant to this Agreement shall be In writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-

- 4.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
- 4.2 in the case of a notice to be served on the Owner to the Owner at the above address

5 DISPUTES

- 5.1 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 falling 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")
- 5.2 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
- 5.3 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
- 5.4 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

Springfield Court, South Street, Bacup.



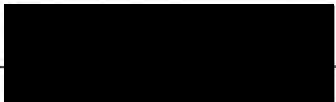
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Rossendale
BOROUGH COUNCIL

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Date 5/3/2013



- (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

6 THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement and this Agreement does not create any right enforceable by any person not a party to it.

FIRST SCHEDULE

All that plot of land known as Springfield Court and shown edged red on Plan and which is registered at HM Land Registry under title numbers LAN128007, LAN60976 and LA734158

SECOND SCHEDULE

The Development consisting of the erection of 9 residential dwellings

THIRD SCHEDULE

The Owner covenants with the Council that prior to the Commencement Date the Owner will pay the Highways Commuted Sum to the Council

IN WITNESS WHEREOF the parties hereto have duly executed this document as a Deed in the presence of the Persons mentioned below the day and year first before written

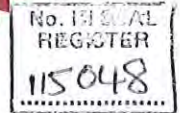
THE COMMON SEAL of ROSSENDALE

BOROUGH COUNCIL has hereunto

Affixed to this Deed in the Presence of:




Authorised Signat



SIGNED as a deed by

Name ... Signature*x*

and

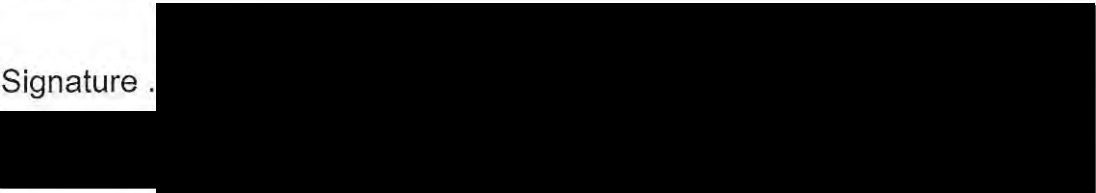
Name ... Signature*x*



As attorneys (appointed under a Power of attorney) for
CALICO HOMES LIMITED
In the presence of:

Witness Signature .

Address



Occupation

