

2007/030

Dated

13th June

2007

- (1) ROSSENDALE BOROUGH COUNCIL
- (2) HURSTWOOD DEVELOPMENTS LIMITED
- (3) LANCASHIRE COUNTY COUNCIL
- (4) NATIONAL WESTMINSTER BANK PLC

AGREEMENT

under section 106 Town and Country Planning Act 1990
relating to land off New Hall Hey Road, Rawtenstall

LF/SS/Z12/266

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

THIS AGREEMENT is made on the 13th day of June 2007

BETWEEN:

- (1) ROSSENDALE BOROUGH COUNCIL of Futures Park, Newchurch Road, Bacup, Lancashire, OL13 0BE ("The Council")
- (2) HURSTWOOD DEVELOPMENTS LIMITED (Co no 1147083) of Link 665 Business Centre, A56, Rossendale, Lancashire, BB4 5HU ("The Landowner")
- (3) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall Preston Lancashire PR1 8XJ ("The County Council")
- (4) NATIONAL WESTMINSTER BANK PLC (Co no 929027) of 6th Floor, 1 Spinningfields Square, Manchester, M3 3AP ("The Mortgagee")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) The County Council is the Highway Authority for the area in which the Site is located
- (C) The Landowner is the freehold owner of the whole of the Site (other than public highway land) subject to Legal Charge in favour of the Mortgagee but otherwise free from encumbrances which would prevent the Landowner entering into this Agreement
- (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 Landowner and its successors in title as hereinafter provided and where the Landowner is more than one legal entity all of the Landowner's obligations herein can be enforced against all of them jointly and against each individually

- (E) The Landowner has by application reference 2007/030 ("The Application") applied to the Council for permission to develop the Site in the manner and for the uses set out in the Application and in the plans specifications and particulars deposited with the Council and forming part of the Application more particularly set out in the Second Schedule ("The Development")
- (F) 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 planning permission for the Development would not have been granted
- (G) The Landowner agrees (i) To pay the sum of (a) £375,000 to the County Council as Highway Authority in accordance with Schedule 3 (b) £50,000 public art contribution (ii) Before occupation of any Unit constructed on the Development to agree in writing an initial Travel Plan with the County Council and the Council and to implement the initial Travel Plan and thereafter the annual reviews to the Travel Plan and (iii) To provide and implement a Car Park Management Plan

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

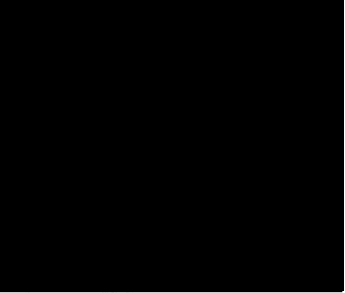
"1990 Act"	the Town and Country Planning Act 1990
"Application"	an application for full planning permission for the development of the Sites made by Hurstwood Developments Limited carrying the reference 2007/030

“Commuted Sum”	the sum of (£375,000) three hundred and seventy five thousand pounds towards sustainable transport initiatives to include but not limited to funding towards improved bus links to the Site; ensuring the Site are provided with direct public transport links; upgrading public infrastructure provision at the Site and improving upgrading & provision of pedestrian/cycle routes on the local highway network including Queens Square and the sum of £50,000 (Fifty thousand pounds) towards public art
“Development”	the development of the Site in accordance with the Permission and described in the Second Schedule
“Car Park Management Plan”	A management plan to be agreed in writing with the Council for the Public Car Park Area four months prior to the let of the first of the Units to be built at New Hall Hey to provide free parking for members of the public not visiting the units at New Hall Hey and instead visiting Rawtenstall town centre for a period of 3 hours
“Permission”	the planning permission to be granted in pursuance of the Application
“Plan 1”	Plan 1 attached to this Agreement (New Hall Hey)
“Plan 2”	The Plan showing the Public Car park Area to be

	laid out in accordance with the covenants in Schedule 3
"Public Car Park Area"	that area of land shown edged blue on Plan 2
"Site"	the freehold lands described in the First Schedule and shown for the purposes of identification only edged red on Plan 1 to this agreement
"Travel Plan"	means a 5 year plan proposing actions, arrangements and initiatives to encourage a more sustainable means of travel to the Development and providing a programme of implementation of those actions arrangements and initiatives.

2. **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 and WITNESSES as follows:-

- 2.1 The Landowner covenants with the Council and the County Council to comply with the obligations specified in the Third Schedule
- 2.2 It is agreed and declared as follows:-
- 2.3 The expressions "the Council" "the Landowner" and "the County Council" shall include their successors in title and assigns
- 2.4 This Agreement is a local land charge and shall be registered as such but only against the site at New Hall Hey Road, Rawtenstall and in respect of that site
- 2.5 The Landowner agrees to pay the Council's reasonable legal fees of £800 relating to the preparation of the Agreement



2.6 **THE LANDOWNER** for itself and its successors in title and assigns of the site at New Hall Hey Road, Rawtenstall hereby jointly and severally covenants with the Council and the County Council

2.6.1 to pay the Commuted Sum increased with inflation in accordance with Clause 2.7.1 and subject to the provisions as set out at 2.6.5 hereof

2.6.2 to pay to the County Council and the Council the sums outlined in Schedule 3 on the dates therein specified increased with inflation in accordance with Clause 2.7 and subject to the provisions as set out at 2.6.5 hereof

2.6.3 to pay to the Council interest in accordance with Clause 2.7.2 on any sum due under this Agreement which remains unpaid after the same has become due

2.6.4 to serve notice on the Council six months prior to the occupation of the first unit

2.6.5 No moneys comprising commuted sums shall be payable under the terms of this Agreement if the Site as shown edged red on Plan 1 and known as New Hall Hey Rawtenstall is developed or development shall have commenced thereon solely pursuant to a planning permission other than the Permission provided that the other planning permission is itself the subject of a planning obligation the terms of which require the payment of a commuted sum or sums to the Council or the County Council in respect of interalia sustainable transport measures and further that the sum or sums have been paid as and when they fall due under the terms of that planning obligation

2.7 **IT IS HEREBY AGREED AND DECLARED** as follows:-

2.7.1 the Commuted Sum or any part thereof shall be uplifted by the amount 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 or part payment exceeds the index figure of the said Index at the date of this Agreement

2.7.2 if any sum shall remain unpaid after the same has become due the Landowner shall pay interest thereon calculated in accordance with Clause 2.7.3 from the date the said sum becomes due to the date of payment thereof to the Council or County Council

2.7.3 any interest which becomes payable in accordance with Clause 2.7.2 shall:-

(a) be at the rate 3% above the base lending rate of National Westminster Bank plc from time to time.

(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

2.8 Unless expressly stated nothing in this Agreement shall create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto

2.9 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:-

2.9.1 In the case of a notice to be served on the Council addressed to its Chief Executive at the above address

2.9.2 In the case of a notice to be served on the Landowner to the Landowners' registered office addressed to the Group Solicitor.

3. 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")

3.1 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 therefor and shall be binding upon the parties

3.2 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

3.3 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

4. **THE COUNTY COUNCIL** hereby covenants with the Landowner to use the Commuted Sum for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Landowner and the Council and the County Council shall agree.

4.1 The County Council covenants with the Landowner that it will repay to the Landowner such amount of the Commuted Sum paid by the Landowner to the County Council under this Deed which has not been expended in accordance with the provisions hereof within 5 years of the date of the receipt by the County

Council of such monies together with interest at the base rate from time to time of the Royal Bank of Scotland plc for the period from the date of payment to the date of refund.

- 4.2 The County Council shall provide to the Landowner such evidence as the Landowner shall reasonably require in order to confirm the expenditure of the Commuted Sum paid by the Landowner under this Deed.

5. **MORTGAGEE'S CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Landowner with its consent and that the site at New Hall Hey Road Rawtenstall shall be bound by the obligations contained in this Deed and that the Mortgagee shall have no liability under this Deed unless it takes possession of the said site in which case it too would be bound by the obligations as if it were a person deriving title from the Landowner.

IN WITNESS whereof these presents have been duly executed as a DEED by the parties hereto the date and year first before written

SCHEDULE 1

ALL that plot of land shown edged red on Plan 1 which land lies to the north west of New Hall Hey Road, Rawtenstall

SCHEDULE 2

The Development consisting of the erection of three retail units measuring 3356 sq. m., 1412 sq. m. and 1412 sq. m.

SCHEDULE 3

The Landowner covenants with the Council and the County Council as follows:

- (1) One month prior to the occupation of the first unit to be built on the Development to pay to the County Council the sum of £100,000.00 and on each of the first, second and third anniversaries of such date the sum of £75,000.00 and on the fourth anniversary of such date to pay the sum of £50,000 towards public art ("the Commuted Sum")
- (2) Six months prior to occupation of the first unit to be built on the Development to pay a further £50,000 of the Commuted Sum to the County Council to be used for upgrading and provision of pedestrian/cycle routes to the Site
- (3) Prior to the first occupation of each unit at New Hall Hey to agree in writing with the Council (in consultation with the County Council) a Travel Plan in relation to each unit including:-
 - i) where possible, local recruitment of employees for that unit ;
 - ii) encouragement of the use of public transport by employees on that unit ;
 - iii) car sharing by employees of that unit ; and
 - iv) parking restraint.
- (4) From the date of first opening for trade of each unit the Landowner shall implement the Travel Plan for that unit and will appoint a travel co-ordinator to deliver the Travel Plan, effect annual reviews thereof and liaise with the County Council and/or the Council as appropriate.
- (5) Prior to the occupation of any unit the Landowner shall lay out which for the avoidance of doubt shall include the marking out thereof to a standard to be agreed with the Council the Public Car Park Area in accordance with the Plan 2

- (6) to ensure the Public Car Park Area is available at all times as free public car parking for members of the public not visiting the units at New Hall Hey and instead visiting Rawtenstall town centre the parking to be available as free parking for a period of three hours.
- (7) Four months prior to the let of the first of the units to be built at New Hall Hey to agree in writing with the County Council the Car Park Management Plan and to carry out the Development in accordance with the agreed Car Park Management Plan.

7.1 Within 56 days of the Council receiving the draft Car Park Management Plan the Council will notify the Landowner in writing of its approval of the draft Car Park Management Plan or will acting reasonably provide in writing its proposed amendments to the draft Car Park Management Plan pursuant to which the Landowners shall submit a revised draft Car Park Management Plan incorporating those amendments as are reasonable PROVIDED THAT if the Council does not notify the Landowner of its decision within 56 days referred to above (or such other period as may be agreed in writing) it shall be deemed that the Council has approved the Car Park Management Plan submitted to it.

7.2 From the date of first opening for trade to the public of any of the units on New Hall Hey the Car Park Management Plan as approved by the Council or as deemed approved shall be implemented.

7.3 The Car Park Management Plan shall provide for the car park associated with all uses related to the Planning Application to be operated as a free short-stay car park for a period of three hours with penal charges after three hours to discourage

long stay parking (over three hours) and shall be available to all users irrespective of shopping destination.

THE COMMON SEAL of ROSSENDALE
BOROUGH COUNCIL was affixed to this
DEED in the presence of:



NO. 116986
REGISTER
114783

[Redacted]
Mayor

EXECUTED as a DEED by HURSTWOOD
DEVELOPMENTS LIMITED
acting by:



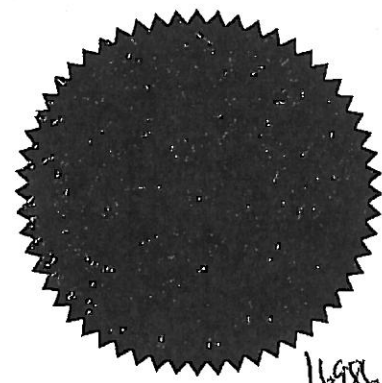
Director

Director/Secretary

THE COMMON SEAL of LANCASHIRE
COUNTY COUNCIL was affixed to this
DEED in the presence of:

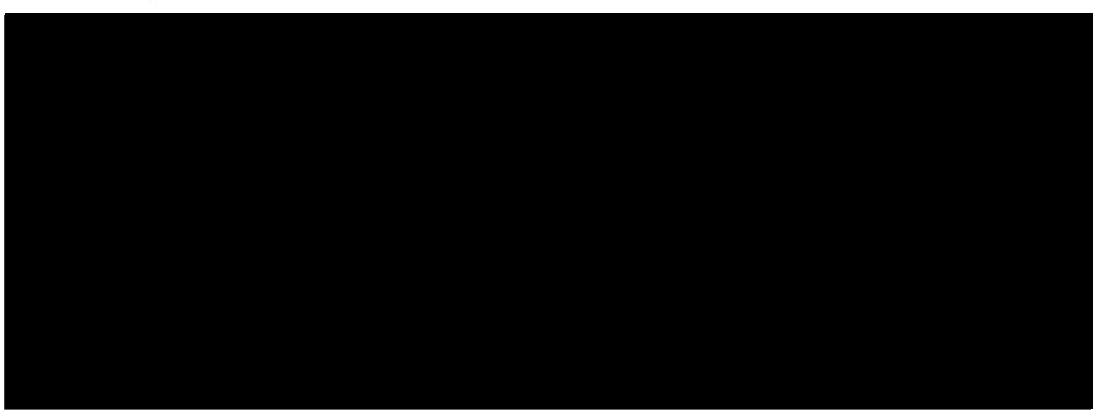


Authorised Signatory

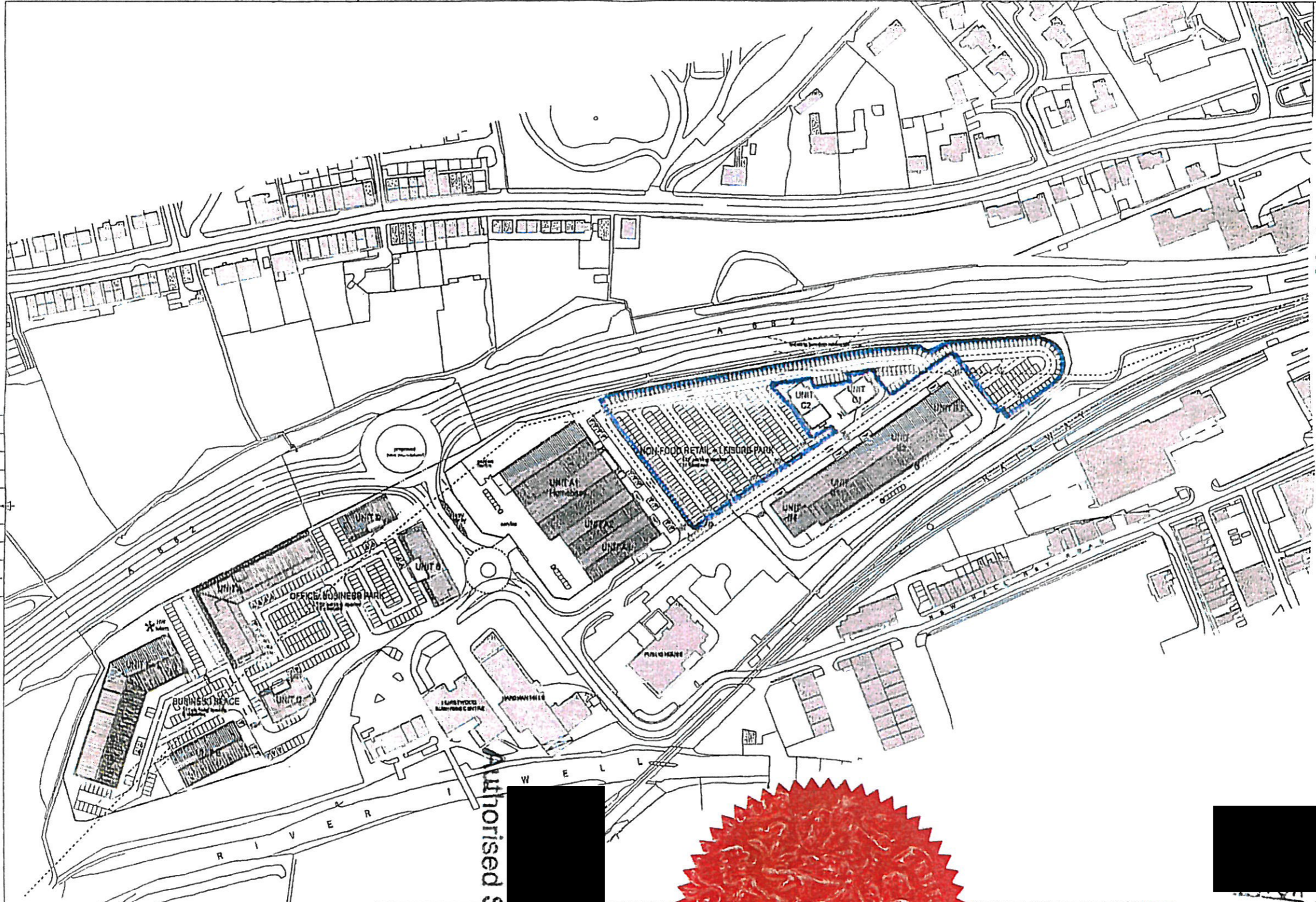


~~EXECUTED (but not delivered
Until the date hereof) AS A DEED
By []
As the Attorney and on behalf of
NATIONAL WESTMINSTER BANK PLC~~

116986



20071030



NOTES

REVISIONS FOR BUILDING PLAN

NO.	REVISION	DATE
1	ISSUED FOR TENDER	10/30/07
2	REVISED FOR BUILDING PLAN	10/30/07

REVISIONS FOR MECHANICAL PLAN

UNIT	STORY	TOTAL AREA (sqm)	MECHANICAL AREA (sqm)	TOTAL MECHANICAL AREA (sqm)
P, R, H, L, E, L	1	7,000	1,000	8,000
TOTAL				8,000

REVISIONS FOR STRUCTURAL PLAN

UNIT	STORY	TOTAL AREA (sqm)	STRUCTURAL AREA (sqm)	TOTAL STRUCTURAL AREA (sqm)
P, R, H, L, E, L	1	7,000	1,000	8,000
TOTAL				8,000

REVISIONS FOR ELECTRICAL PLAN

UNIT	STORY	TOTAL AREA (sqm)	ELECTRICAL AREA (sqm)	TOTAL ELECTRICAL AREA (sqm)
P, R, H, L, E, L	1	7,000	1,000	8,000
TOTAL				8,000

TOTAL AREA SUMMARY

UNIT	STORY	TOTAL AREA (sqm)
P, R, H, L, E, L	1	7,000
TOTAL		7,000

Authorised Signatory

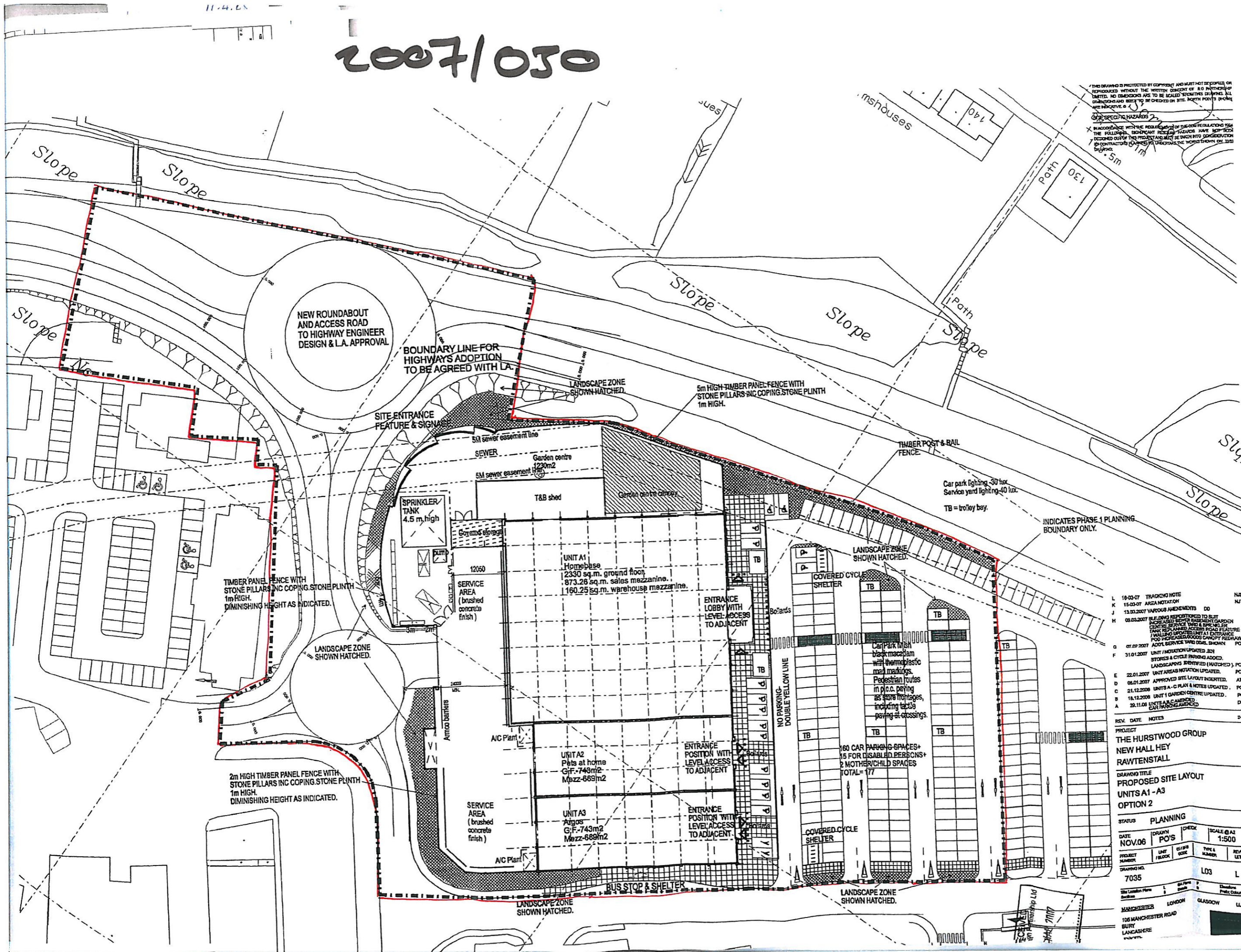


Building Design Partnership
Architects, Engineers & Cost Consultants
Sunlight House
PO Box 85, Quay Street
Manchester M60 3JA
Telephone: +44 (0)161 831 8444
Fax: +44 (0)161 832 4200

RAWTENSTALL MASTER PLAN New Hall Hay Site	
Site Plan	0/01
MRP000	100 (0-) A100

Plan 2

2007/030



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IN ACCORDANCE WITH THE REQUIREMENTS OF THE CONTROL OF ASBESTOS REGULATIONS 2002 THE FOLLOWING ASBESTOS SURVEY HAS BEEN CONDUCTED OUT OF THIS PROJECT AND BE BROUGHT INTO CONSIDERATION BY CONTRACTORS TO AVOID THE HAZARDS SHOWN ON THIS DRAWING.

REV.	DATE	NOTES	DATE
L	16-03-07	TRACKING NOTE	N/R
K	15-03-07	AREA NOTATION	N/R
J	13-03-2007	VARIOUS AMENDMENTS	DO
H	08-03-2007	BUILDING REPOSITIONED TO SUIT INCREASED EXISTING LANDSCAPED GARDEN CENTRE SERVICE YARD & SPRINKLER TANK WITH FENCED ACCESS ROAD FEATURE WALLING UPON UNIT A1 ENTRANCE POOL INCREASED WOODS CANOPY REDRAWN. ABOVE SERVICE YARD DRAIN. SHOWN.	POS
G	07-02-2007		
F	31-01-2007	UNIT 1 NOTATION UPDATED. NEW STORES & CYCLE PARKING ADDED. LANDSCAPING IDENTIFIED (HATCHED).	POS
E	22-01-2007	UNIT AREAS NOTATION UPDATED.	POS
D	06-01-2007	APPROVED SITE LAYOUT INSERTED.	ATT
C	21-12-2006	UNITS A-C PLAN & NOTES UPDATED.	POS
B	16-12-2006	UNIT 1 GARDEN CENTRE UPDATED.	POS
A	29-11-06	UNITS A-C CANCELLED. CAR PARKING ADDED.	DNS

REV. DATE NOTES

PROJECT
THE HURSTWOOD GROUP
NEW HALL HEY
RAWTENSTALL

DRAWING TITLE
PROPOSED SITE LAYOUT
UNITS A1 - A3
OPTION 2

DATE	DRAWN	CHECK	SCALE @ A2
NOV.06	PO'S		1:500
PROJECT NUMBER	UNIT / BLOCK	DATE / REV	TYPE & NUMBER
7035			
DRAWING NO.	LO3	L	
MANCHESTER	LONDON	GLASGOW	LUTON
105 MANCHESTER ROAD BURY LANCASHIRE			