

DATED 25th March 2015

- (1) ROSSENDALE BOROUGH COUNCIL
- (2) BROTHER DEVELOPMENTS LIMITED
- (3) NATIONAL WESTMINSTER BANK PLC and THE ROYAL BANK OF SCOTLAND
PLC

PLANNING AGREEMENT

under Section 106 Town and Country Planning Act 1990
relating to land at Whinberry View, Bacup Road, Rawtenstall

Stuart Sugarman
Director of Business
The Business Centre,
Futures Park,
Bacup.
OL13 0BB

THIS AGREEMENT is made on the 25th day of March 2015

BETWEEN:

(1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre Futures Park Bacup OL13 0BB ("the Council")

(2) **BROTHER DEVELOPMENTS LIMITED** Company Registration Number 02849693 of Todd Carr Road Waterfoot Rossendale Lancashire BB4 9SJ ("the Owner")

(3) **NATIONAL WESTMINSTER BANK PLC** Company Registration Number 00929027 of P. O. Box 76 1st Floor 1-3 Market Street Blackburn Lancashire BB1 7EB and **THE ROYAL BANK OF SCOTLAND PLC** Company Registration Number 090312 of 2nd Floor 280 Bishops Gate, London, EC2M 4RB ("the Mortgagees")

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 considers it expedient in the interests of proper planning of its area that the development of the Site should be restricted or regulated in accordance with this Agreement
- (B) Lancashire County Council ("the County Council") is the Highway Authority and also the Education Authority for the area in which the Site is located
- (C) The Owner is the freehold owner of the whole of the Site registered at H. M. Land Registry under title numbers LAN26508 and LAN136832 free from encumbrances which would prevent the Owner 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 Owner and its successors in title

- (E) The Owner has by application reference 2014/0355 ("the Planning Application") applied to the Council for permission to develop the Site 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 ("the Development")
- (F) The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the Development would not have been granted
- (G) The parties agree that the planning obligations contained in this Agreement are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Regulations 2010 (as amended)
- (H) The Owner agrees to pay the TRO Contribution to the Council as agents for the County Council in accordance with the Second Schedule

OPERATIVE PROVISIONS

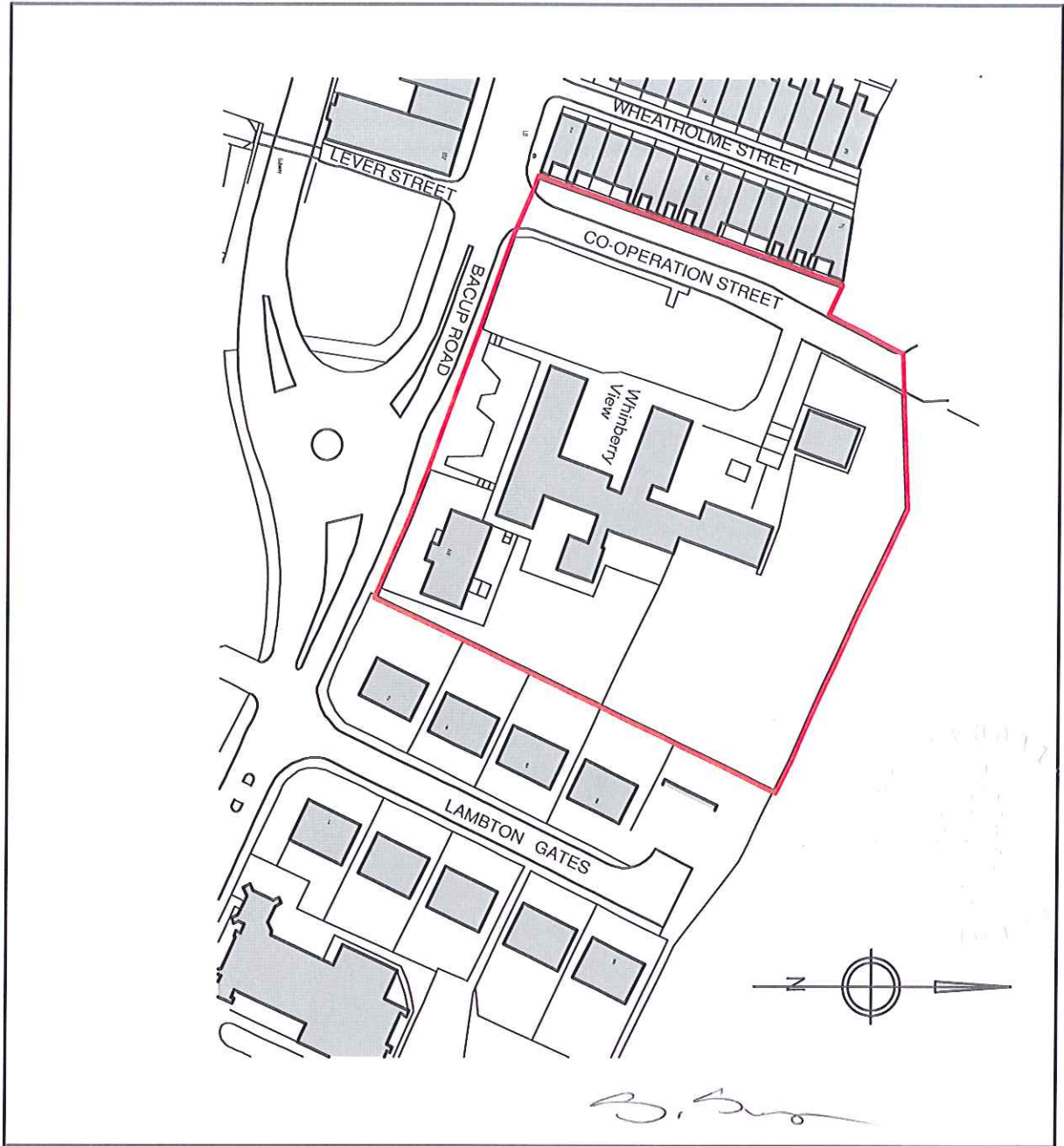
1. INTERPRETATION

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

"1990 Act"	the Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991
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“Application”	an application for full permission for the development of the Site made by B and E Boys carrying the reference 2014/0355
“Commencement Date”	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
“Commuted Sum”	The sum of £136,237.00 (one hundred and thirty six thousand two hundred and thirty seven pounds) by way of a commuted sum for the provision of Affordable Housing within the borough of Rossendale
“Development”	the development of the Site in accordance with the Permission
“Disposal”	a disposition within the meaning of section 205 of the Law of Property Act 1925 including (but not limited to): <ul style="list-style-type: none"> (a) a sale (b) an exchange in return for other property;

	(c) a grant of a lease for a terms of more than 7 years;
“Index”	All Items Index of Retail Prices issued by Office for National Statistics
“Permission”	the planning permission which may be granted in pursuance of the Application
“Plan”	Plan attached to this Agreement
“the RHSC Contribution”	means the total sum of £1,000 (One thousand pounds) plus reasonable and proper disbursements (limited to £200 in aggregate) to progress the revocation of the Hazardous Substances Consent for the storage of Natural Gas at Cloughfold Gasholder site to be paid as outlined in clause 2.11 hereof
“Site”	the freehold property known as land at Whinberry View home for the Elderly and 166 Bacup Road, Rawtenstall, Rossendale BB4 7PA and which is registered at H. M. Land Registry with title absolute under title number LAN26508 and LAN136832 and shown for the

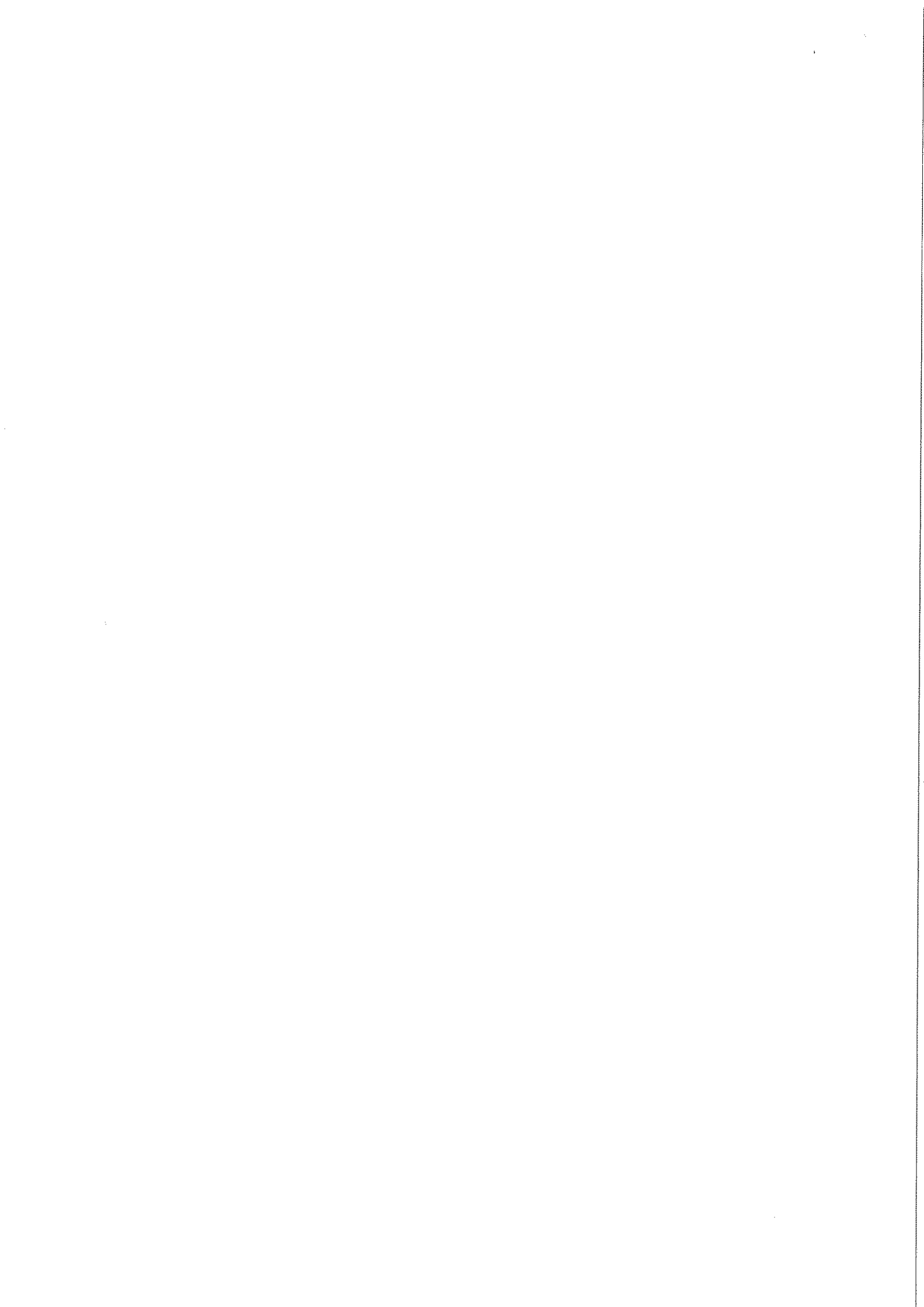


SITE LOCATION PLAN
Scale 1:1250

Handwritten signature

nicol thomas

Client:	B & E Boys Limited		
Job:	Whinberry View, Rawtenstall		
Drawing title:	LOCATION PLAN		
Drawing Number: (Job number)	M2814.L1		Revision A
Scale:	1:1250 @ A4		
Date:	OCTOBER 2014		
Drawn by/checked by:	S		



purposes of identification only edged red
on the Plan

“Statutory Undertaker”

means any company corporation or board
or authority at the date of this Agreement
authorised by statute to carry on an
undertaking for the supply of telephone
and television communications electricity
gas water or drainage and any authorised
successor to any such undertaking

“the TRO Contribution”

means a non-refundable sum of £1,200
(One thousand two hundred pounds) to
fund a Traffic Regulation Order to restrict
parking and waiting of vehicles at the
Bacup Street/Co-Operative Street junction
to be paid as outlined in clause 2.11
hereof

“Unit”

means any one of the 29 (twenty nine)
residential dwelling units to be constructed
as part of the Development pursuant to

the Permission and "Units" shall be
construed accordingly

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 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 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time for the time being in force
 - 2.2 The provisions of this Agreement shall come into effect on the date hereof with the exception of the covenants undertakings and obligations contained within the Second and Third Schedule hereof which shall become binding on the owner on the Commencement Date
 - 2.3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his interest in the Site or the relevant part of the Site in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to the parting with such interest)

- 2.4 the covenants on the part of the Owner contained in this Agreement shall not be enforceable against:-
- 2.4.1 purchasers lessees or mortgagees of individual units or
 - 2.4.2 a Statutory Undertaker which has an interest in any part of the Site for the purposes of its lawful undertaking
- 2.5 The Owner covenants with the Council to comply with the obligations specified in the Second Schedule
- 2.6 The Council hereby covenants with the Owner to perform the obligations specified in the Third Schedule
- 2.7 It is agreed and declared as follows:-
- 2.8 The expressions "the Council" "the Owner" "County Council" and "Mortgagee" shall include their successors in title and assigns
- 2.9 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
- 2.10 This Agreement is a local land charge and shall be registered as such
- 2.11 The Owner agrees to pay the TRO Contribution and RHSC Contribution within 28 days of this Agreement
- 2.12 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted after the date of this Agreement
- 2.13 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:-

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

2.13.2 in the case of a notice to be served on the Owner to the Owner at the above address

- 2.14 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
- 2.15 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
- 2.16 Whenever in this Agreement there is reference to the Council giving its approval to any matter or scheme that reference is on the basis that such approval shall not be unreasonably withheld or delayed
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")

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
3. Any sum referred to in clause 5 of the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid
 4. If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date of actual payment
 5. The Mortgagees hereby consent to the Owner entering into this Agreement and confirm that the Site shall be subject to the provisions of this Agreement
PROVIDED THAT the Mortgagee shall otherwise have no liability under this 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
 6. Nothing contained or implied in this Agreement shall prejudice or affect the rights powers and duties of the Council in the exercise of their functions as Local Planning Authority and their rights powers and duties under all public and private

statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement PROVIDED ALWAYS for avoidance of doubt the Council shall comply with the obligations on its part contained in this Agreement

7. This Agreement is governed by and interpreted in accordance with the law of England and Wales

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

FIRST SCHEDULE

All that plot of land shown edged red on Plan annexed hereto which is situate at
Whinberry View Home for the Elderly and 166 Bacup Road, Rawtenstall, Rossendale

BB4 7PA

SECOND SCHEDULE

The Owner covenants with the Council as follows:

1. To notify the Council in writing of the Commencement Date
2. To notify the Council of the date of the Disposal of the first Unit
3. To notify the Council of the date upon which the Disposal of the fifteenth Unit on the Site has been achieved
4. To pay the Commuted Sum to the Council as follows:
 - a. 50% of the Commuted Sum (£68,118.50) shall be paid to the Council within 7 days of the date of a Disposal of the first Unit on the Site; and
 - b. The remaining 50% of the Commuted Sum (£68,118.50) shall be paid to the Council within 7 days of the date upon which the Disposal of 15 Units on the Site has been achieved

THIRD SCHEDULE

The Council covenants with the Owner as follows:

1. To issue receipts on request for the Commuted Sum, the TRO Contribution and the RHSC Contribution which is paid to the Council in accordance with the terms of the Second Schedules of this Agreement.

2. That, in the event that any part of the relevant Contributions referred to in clause 2.11 and in the Second Schedule is not expended (or not allocated or not committed for expenditure) within a period of 5 (five) years from the date on which it was paid, to repay such remaining sum to the Owner (and not for the avoidance of doubt their successors in title) or their nominee.

3. To issue the Permission within three Working Days of the date of this Agreement.

THE COMMON SEAL of ROSSENDALE)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:-)

[Handwritten signature]

Authorised Signatory



No. IN SEAL REGISTER
5140

EXECUTED as a Deed by BROTHER)

DEVELOPMENTS LIMITED acting by a)

Director in the presence of a witness:)

[Handwritten signature]
Director

Witness Name: JOHN EDWARD LEE

Witness Signature: *[Handwritten signature]*

Address: 531 Newchurch Rd
Waterfoot
BB4 9HH

Occupation: DIRECTOR

[Handwritten signature]
I. ALDIE
SARLESINGTON
UNIT 01, BRISTOLWOOD C
DUNSTON WAY
SHADWORTH BUSINESS
CENTRE
LEWIS HAN
BB1 2QR

~~SIGNED AS A DEED BY~~
~~THE COMMON SEAL~~ of)
NATIONAL WESTMINSTER BANK PLC)
was affixed to this DEED in the presence of:-)

ACTING BY AN AUTHORIZED SIGNATORY

MICHAEL KNOX
[Handwritten signature]
135 BISHOPSGATE
LONDON

[Handwritten signature]

~~SIGNED AS A DEED BY~~
~~THE COMMON SEAL~~ of)
ROYAL BANK OF SCOTLAND Plc was)
affixed to this DEED in the presence of:-)
~~AUTHORIZED SIGNATORY~~

MICHAEL KNOX
[Handwritten signature]
135 BISHOPSGATE
LONDON
EC2M 3UR
BANKER

[Handwritten signature]

