

DATED 26th June 2003

ROSSENDALE BOROUGH COUNCIL

AND

ELITE HOMES (NORTH) LIMITED

AND

THE CO-OPERATIVE BANK PLC

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to the erection of 52 detached dwellings and associated garages on land at  
Commercial Street, Loveclough (Planning application no. 14/2002/500)

RWL/SS/Z.12/202

Mark Weston,  
Director of Corporate Support,  
Rossendale Borough Council,  
Town Hall,  
Rawtenstall,  
Rossendale,  
Lancashire. BB4 7LZ

THIS AGREEMENT is made the 26<sup>th</sup> day of June Two thousand and three between ROSSENDALE BOROUGH COUNCIL of the Town Hall Rawtenstall Rossendale BB4 7LZ ("the Council") of the first part ELITE HOMES (NORTH) LIMITED whose Registered Office is situate at Cedar House, Woodlands Park, Ashton Road, Newton-Le-Willows, WA12 OHR ("the Developer") of the second part and THE CO-OPERATIVE BANK PLC whose Registered Office is situate at P O Box 101, 1 Balloon Street, Manchester, M60 4EP ("the Mortgagee") of the third part

#### DEFINITIONS

- "the Act" means the Town and Country Planning Act 1990 as amended;
- "the Application" means the application for planning permission on the Site and submitted under reference 14/2002/500 to the Council or as the same may be varied or amended;
- "Commutated Maintenance Sum" means the sums calculated in accordance with the provisions of Schedule 2 and which shall be applied by the Council to the future maintenance of the Orange Land;
- "Contribution" means the sum of ten thousand pounds (£10,000);
- "the Development" means the development of the Site for residential purposes in accordance with the Application;
- "Maintenance Period" means the period of twelve months from the date of issue of a Works Completion Notice not being a Notice in response to which the Council has properly given notice under sub-paragraph 2.1.2 of Schedule 1;
- "Orange Land" means that part of the Site which is shown coloured orange on Plan 2 and including the retaining walls;
- "Planning Permission" means a planning permission to be granted by the Council in the terms of the draft permission set out in Schedule 3 or as the same may be amended or varied;

“Site” means the land containing 8.38 acres situated at Loveclough Rossendale and shown edged with a heavy black line on Plan 1;

“the Works” means the construction laying out and landscaping works to be carried out to the Orange Land in accordance with a naturalised planting scheme and details of which shall have been approved by the Council under condition 4 attached to the Planning Permission;

“Works Completion Notice” means a notice in writing to be issued by the Developer to the Council confirming that the Works have been completed;

- (1) References to numbered plans shall be deemed to be references to plans so numbered annexed to this agreement
- (2) References to clauses and to Schedules shall be deemed to be references to the clauses of and Schedules to this Agreement and unless otherwise stated references to paragraphs and sub-paragraphs shall be deemed to be references to paragraphs and sub-paragraphs of the Schedule in which such reference appears
- (3) Any reference herein to any statute or to any provision of the same shall be construed as including reference to any statutory modification or re-enactment thereof from time to time in force

WHEREAS:

- (i) The Council is the Local Planning Authority for the purposes of the Act in respect of the Site and is the authority by whom the obligations hereby created are enforceable
- (ii) The Developer is seized for an estate in fee simple in possession of the Site which is registered under title number LA929385 at H. M. Land Registry free from incumbrances save for a Registered Charge in favour of the Mortgagee
- (iii) The Developer has by the Application applied to the Council for planning permission to carry out the Development on the Site in the manner set out in the plans specifications and particulars forming part of the Application

- (iv) The Council is minded to grant planning permission for the Development in the terms of the draft permission set out in Schedule 3 but requires the Developer to enter into the covenants hereinafter contained in this agreement
- (v) The Developer has agreed to enter into this agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements and conditions and stipulations hereinafter contained

NOW THIS DEED WITNESSETH:

- 1.1 This Agreement is made in pursuance of Section 106 of the Act and all other powers so enabling and covenants in this Agreement falling within Section 106 of the Act are planning obligations to which the section shall apply
- 1.2 The local planning authority by whom such obligations are enforceable is the Council
- 2.1 This Agreement is conditional and shall only have effect upon the date upon which the Developer shall begin the Development in accordance with the Planning Permission by the carrying out of a material operation in accordance with the provisions of Sections 56 and 91-93 of the Act
- 3. The Developer with the consent of the Mortgagee and with the intent to bind itself and the Developer's successors in title hereby covenants with the Council that the Developer will:
  - 3.1 observe and comply with those provisions of Schedule 1 which the Developer is to observe or comply with;
  - 3.2 subject to compliance with the provisions of Schedule 1 transfer the Orange Land to the Council for use by the public as public open space;
  - 3.3 pay the Commuted Maintenance Sum to the Council upon the transfer of the Orange Land to the Council
- 4. The Council hereby covenants with the Developer that the Council will:
  - 4.1 observe and comply with those provisions of Schedule 1 which the Council is to observe and comply with;

- 4.2 upon the transfer of the Orange Land and upon receipt of the Commuted Maintenance Sum accept all responsibility for the repair and maintenance of the Orange Land and indemnify and keep indemnified the Developer from and against all actions costs claims demands and proceedings in respect of any future breach non-observance or non-performance of this obligation
- 4.3 In accordance with the provisions of paragraph 1.6 of Schedule 1, the Council will accept a transfer of the Orange Land when requested so to do by the Developer
- 4.4 In the event that the Council does not use the whole or any part of the Contribution as referred to in paragraph 1.1 of Schedule 1 within a period of five years from the date of payment then the Council shall repay to the person or body which actually paid the Contribution to the Council the whole or any remaining balance of the Contribution
5. The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the Site shall be bound by the restrictions and obligations contained in this Agreement
- 6.1 Any disputes or differences arising between any of the parties hereto as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with the provisions of this clause to the determination of an independent landscape architect
- 6.2 Subject as provided in Schedule 2 any reference to an independent landscape architect in accordance with clause 6.1 shall be to a reputable landscape architect based in Greater Manchester or Lancashire unconnected to any of the parties hereto and experienced in residential development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President for the time being of the Institution of Landscape Architects or his duly appointed deputy and the decision of such independent landscape architect shall be final and binding upon the parties to the dispute (save for manifest error) and if the parties to the dispute shall agree in writing such reference

shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitration pursuant to the Arbitration Act 1996 and if a landscape architect shall act as an expert each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expeditiously as possible and the reference to him shall include authority to determine in what manner all the costs of the referral shall be paid

- 6.3 When the dispute referred for determination under clause 6.2 shall be or include a dispute as to whether or not consent or approval of the Council should properly be given as required by this Agreement and the independent landscape architect determines that such consent or approval should have been given then for all the purposes of this Agreement the consent of the Council shall be deemed to have been given on the date the independent landscape architect advises the parties to the dispute of his determination
7. Notwithstanding the terms contained herein the parties hereto agree that the Mortgagee shall only be liable for any breach of any provisions of this Agreement during such periods (if any) as it is a mortgagee in possession of the Site and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that it shall not in any event be liable for any breach of this Agreement arising prior to its becoming a mortgagee in possession of the Site regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the site.
8. If the Planning Permission has not been implemented by the carrying out of a material operation in accordance with the provisions of sections 56 and 91-93 of the Act within the five years from the date thereof this Agreement shall forthwith determine and cease to have effect and the Council shall thereupon cancel all related entries in the Register of Local Land Charges

- 9.1 For the purpose of such parts of this Agreement as may be subject to the law against perpetuities this Agreement shall remain in force for the period of eighty years from the date hereof or (if sooner) as long as any of the covenants conditions stipulations and agreements herein may not have been performed
- 9.2 In this Agreement the expressions "the Council" and "the Developer" and "the Mortgagee" shall where the context so admits be deemed to include their respective successors in title
- 9.3 The Developer shall not be liable for the breach of a covenant or obligation contained in this Agreement after having parted with all interest in that part of the Site on which the breach has occurred but without prejudice to liability for any subsisting breach of covenant or obligation prior to parting with such interest
- 9.4 Where the consent or approval of the Council is required under this Agreement the Council confirms that such consent or approval shall not be unreasonably withheld or delayed provided that this shall not fetter the proper discretion of the Council acting as local planning authority
- 9.5 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 one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Agreement
- 9.6 The Developer shall bear the Council's reasonable costs and the costs of the Mortgagee in relation to the preparation and execution of this Agreement
- 9.7 The planning obligations hereby created shall be registered as a Local Land Charge

#### SCHEDULE 1

1. The Developer shall
  - 1.1 Pay the Contribution to the Council towards the costs to be incurred by the Council in the upgrading of facilities at Loveclough Park and the payment of the Contribution

shall be made by the Developer upon the first occupation of a dwellinghouse to have been erected under the Planning Permission or any renewal thereof

- 1.2 Carry out the Works to the reasonable satisfaction of the Council
- 1.3 After completion of the Works serve the Works Completion Notice on the Council and upon expiry of any defects liability or Maintenance Period give notice of the completion of the Works to the Council
- 1.4 Upon receipt of any notice under sub-paragraph 2.1.2 and subject to the provisions of clause 6 remedy any defect specified in such notice served by the Council
- 1.5 Upon completion of the works referred to in a notice served under sub-paragraph 2.1.2 give to the Council a further Works Completion Notice
- 1.6 Upon the expiry of the Maintenance Period and provided that the Orange Land is in a state of maintenance which is approved of by the Council (such approval not to be unreasonably withheld or delayed) then the Orange Land shall on a date twenty working days after the expiry of the Maintenance Period be transferred to the Council for the consideration of one pound and such transfer document shall contain a restrictive covenant on the part of the Council for itself and its successors in title and assigns and so as to bind the Orange Land and each and every part thereof and so as to benefit the Developer and its successors in title and assigns and the Property and each and every part thereof that the Orange Land shall not be used for any purpose other than that of a public open space within the meaning of the Open Spaces Act 1906 and a further covenant by the Council that from the date of the said transfer the Council shall be responsible for maintaining the Orange Land
- 1.7 Upon completion of the transfer of the Orange Land to the Council pay the Commuted Maintenance Sum



2. Without fourteen days of the service of a Works Completion Notice the Council shall inspect the Works and the Council shall within seven days of such inspection give notice in writing to the Developer that:-

2.1.1 the Works have been completed to its reasonable satisfaction; or

2.1.2 the Works have not been completed to its reasonable satisfaction and such notice shall specify and give full parties of the reason why the Works had not been completed to its reasonable satisfaction

PROVIDED ALWAYS that if the Council shall fail to serve a notice in accordance with the provisions of this paragraph the Council shall be deemed to have served a notice under sub-clause 2.1.1 on the Developer on the twenty-second day after the receipt by the Council of the Works Completion Notice

SCHEDULE 2

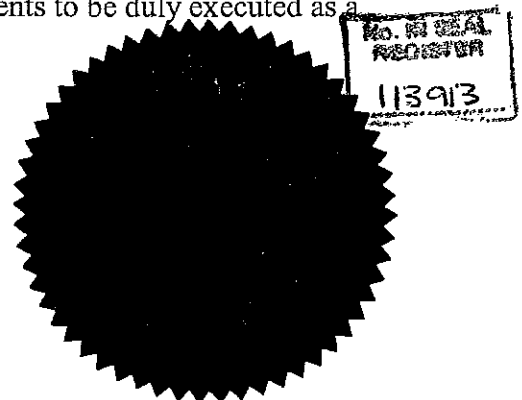
1.1 The Commuted Maintenance Sum relating to the Works shall be such a sum as shall be reasonably agreed by the parties before commencement of the Development

1.2 The Commuted Maintenance Sum shall be calculated in the case of the Works by reference to the annual estimated maintenance sum multiplied by ten with allowance for inflation and advance payment on a discounted cash flow basis

IN WITNESS whereof the parties hereto have caused these presents to be duly executed as a deed the day and year first above written

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

MAYOR



# Rossendale Borough Council

## Town and Country Planning Act 1990 Planning Permission

PLA7523

**Applicants Name :** Elite Homes (North) Ltd

**Name & Address of Applicant / Agent :** Elite Homes (North) Ltd  
Monton Lodge  
3 Parrin Lane  
Monton  
Eccles  
Manchester  
M30 8AN

### Part 1 - Particulars of Application

**Date Received :** 23 September 2002      **Application No:** 2002/500  
**Proposed works :** Erection of 52 no dwellings and associated garages  
**Location :** LAND AT COMMERCIAL STREET LOVECLOUGH ROSSENDALE  
**Grid Reference :** n/a

### Part 2 - Particulars of Decision

The Rossendale Borough Council hereby give notice that **planning permission has been granted** for the execution of works referred to in Part 1 hereof in accordance with the application and plans submitted **subject to the following conditions:**

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.  
**Reason:** Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.
- 2 No development shall take place until samples of the proposed natural stone, and roof slate have been submitted to and approved by the Local Planning Authority and the outer face of the building shall not be constructed other than with the approved materials.  
**Reason:** In the interests of visual amenity and in order to ensure a satisfactory degree of harmony within the development, as details in this respect have not been submitted with this proposal.
- 3 Before any development is commenced a fully detailed scheme of landscaping (as such including tree and shrub planting, the provision of any grassed areas, hard landscaping features and the erection of any screen or boundary walls, fences or other means of enclosure) shall be submitted to and approved by the Local Planning Authority, and such scheme shall thereafter be fully implemented before any building hereby permitted is first occupied for the purpose hereof, or at such other time as may subsequently be agreed in writing with that authority. Any trees or shrubs dying/becoming diseased or otherwise being removed within two years of planting shall be replaced by the applicant/developer by species of a similar type and size.

**Reason :** In order to assist in the provision of a satisfactory standard of visual amenity within the locality and to screen the development.

- 4 Before the development hereby approved is first commenced a scheme of landscaping of the identified public open space and programme/timetable for its implementation shall be submitted to and approved by the Local Planning Authority and thereafter the scheme shall be implemented in accordance with the approved timetable.

**Reason :** In the interests of securing an appropriate treatment of public open space within the development.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 no material change of elevation, change of use or alteration to form a habitable room of any integral or other garage constructed concurrently with or subsequent to the original dwelling house, which would otherwise be permitted by virtue of the provisions of Class A of Part 1 of Schedule 2 of the Order, shall be carried out anywhere within the application site without the grant of formal express planning permission in that behalf by the Local Planning Authority.

**Reason :** In order to ensure that the subsisting standard of garage accommodation is not materially affected to the detriment of both visual amenity and more particularly with a view to retaining the existing standard of car parking provision within the site.

- 6 The new estate road/access between the site and Commercial Street shall be constructed in accordance with the Lancashire County Council Specification for the Construction of Estate Roads to at least base course level before any development takes place with the site.

**Reason :** To ensure that satisfactory access is provided to the site before the development hereby permitted becomes operative.

- 7 No part of the development shall be commenced until all the highway works have been constructed in accordance with a scheme which shall be submitted to and approved by the Local Planning Authority in consultation with the Highway Authority.

**Reason :** To enable all construction traffic to enter and leave the premises in a safe manner without causing a hazard to other road users.

- 8 Before any development is commenced, details of a scheme for the diversion of the culvert shall be submitted to and approved by the Local Planning Authority. Such details shall include the route, size, materials, depth, levels and method of construction. The works shall be constructed and completed in accordance with the approved plans.

**Reason :** To ensure a satisfactory form of development and in the interests of land drainage.

- 9 Before the development is commenced a detailed site investigation shall be carried out to establish if the site contains contaminants, to assess the degree and nature of the contaminants present, and to determine its potential for the pollution of the water environment. The method and extent of this investigation shall be agreed in writing with the Planning Authority prior to the commencement of the work. Details of appropriate measures to prevent pollution of groundwater and surface water, including provisions for monitoring, shall then be submitted to and approved in writing by the Planning Authority before the development commences. The development shall then proceed in strict accordance with the measures approved.

**Reason :** To prevent and enhance the habitat and amenity value of Limy Water of this watercourse.

**Application No :2002/500 (continued...)**

- 10** No development shall take place until a scheme for the boundary treatment adjacent to the watercourse has been approved by the Local Planning Authority. Such a scheme shall be completed in accordance with the approved plans.

**Reason :** To protect and enhance the habitat and amenity value of Limy Water of this watercourse.

- 11** No development shall be commenced until a remediation strategy has been approved in writing by the Local Planning Authority. Thereafter, the development shall not be implemented other than in accordance with the agreed measures and details of the approved remediation strategy.

**Reason :** The application site has the potential to be contaminated and should be remediated in the interests of the health and safety of future occupiers of the approved development.

**Date:**

Stubbylee Hall, Bacup  
Lancs OL13 0DE

J.B. Haines  
Development Services Manager

**DRAFT**

Notes

N.B. This permission refers only to that required under the Town and Country Planning Acts and does not include any consent or approval under any other enactment, byelaw, order or regulation, but under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 it will operate as listed building consent in respect of any work described in the permission for the alteration or extension of a listed building.

**A) Appeals to the Secretary of State**

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he or she may appeal to the Secretary of State for Transport, Local Government and the Regions in accordance with sections 78 and 79 of the Town and Country Planning Act 1990 within six months of the date of this notice. (Appeals must be made on a form which is obtainable from The Planning Inspectorate, 3/02 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements.

**B) Purchase Notices**

If either the Local Planning Authority or the Secretary of State for Transport, Local Government and the Regions refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

THE COMMON SEAL of ELITE HOMES )  
(NORTH) LIMITED was hereunto affixed )  
in the presence of:- )

SIGNED as a Deed by )  
 )  
of The Co-operative Bank Plc )  
in the presence of:- )

SIGNED AS A DEED by  
THE CO-OPERATIVE BANK p.l.c.  
acting by its duly appointed attorney  
PATRICK MARTIN pursuant to a power of  
attorney dated 17th Oct in the presence of

Witness Signature

Witness Name

Address

THE CO-OPERATIVE BANK p.l.c.  
SECURITIES CENTRE  
53-59 BLANDFORD SQUARE  
NEWCASTLE UPON TYNE  
NE3 1AN