

Dated

24<sup>th</sup> February

2010

- (1) Rossendale Borough Council
- (2) Mangrove Estates Limited
- (3) Co-Operative Bank plc.

**AGREEMENT**

Pursuant to Section 106 of the Town &  
Country Planning Act 1990

Relating to the site formerly occupied by  
St. Josephs Church, Huttock End Lane,  
Bacup, Lancashire

**LPA Reference: 2009/262**

**THIS PLANNING OBLIGATION** is made the            day of                                2010

**BETWEEN:**

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Kingfisher Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB (the "Council"); and
- (2) **MANGROVE ESTATES LIMITED** whose company registration number is 05752067 and whose registered office is at Monaghan House, Clarendon Street, Hyde, Cheshire SK14 2EP (the "Owner")
- (3) **CO-OPERATIVE BANK PLC** whose company registration number is 990937 and whose registered office is at No. 2 Cathedral Square, The Cloth Market, Newcastle-upon-Tyne NE1 1EE (the "Mortgagee")

(Together: the "Parties")

**WHEREAS:**

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.
- (B) The Owner is the registered proprietor with title absolute of the freehold interest in the Site which is registered at HM Land Registry under title numbers LAN64066 save for a Registered Charge over the Site in favour of the Mortgagee.
- (C) A Registered Provider has, by the Application to the Council, applied for Planning Permission for the Development on the Site. The Application was a full application and was given reference number 2009/262 by the Council.
- (D) The Council granted Planning Permission pursuant to the Application on 10<sup>th</sup> September 2009. The Planning Permission is subject to a condition not to commence development on the Site unless and until a Section 106 Obligation has been entered into. The Council confirms that the execution and completion of this Agreement shall satisfy the planning condition referred to above.

**NOW THIS DEED WITNESSETH** as follows:

**1        Definitions**

- 1.1 In this Agreement unless the context otherwise requires the following words, expressions and phrases shall have the meanings hereby ascribed to them:

**"Act"**

the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004;

**"Application"**

the application for planning permission under the Council reference 2009/262 seeking Planning Permission on the Site for the erection of 10 houses, with the provision of a new access road and associated external works;

**"Commencement"**

the carrying out of a material operation as defined by section 56(4) of the Act (excluding any act of demolition remediation or clearance of the Site) in accordance with the Planning Permission and "Commencement" shall be construed accordingly;

**"Amenity Open Space"**

the area as appropriately identified edged green in the plan shown on Drawing No. 9470/01 - E annexed hereto;

**"Development"**

the development of the Site in accordance with the Planning Permission;

**"Plan"**

the area edged red on the plan annexed hereto;

**"Planning Permission"**

the planning permission to be granted pursuant to the Application and the completion of this Agreement;

**"Registered Provider"**

a Registered Provider registered with the registered with the Office for Tenants and Social Landlords pursuant to the Housing and Regeneration Act 2008

**"Scheme"**

the scheme to be approved by the Council pursuant to paragraph 3 of the Schedule;

**"Site"**

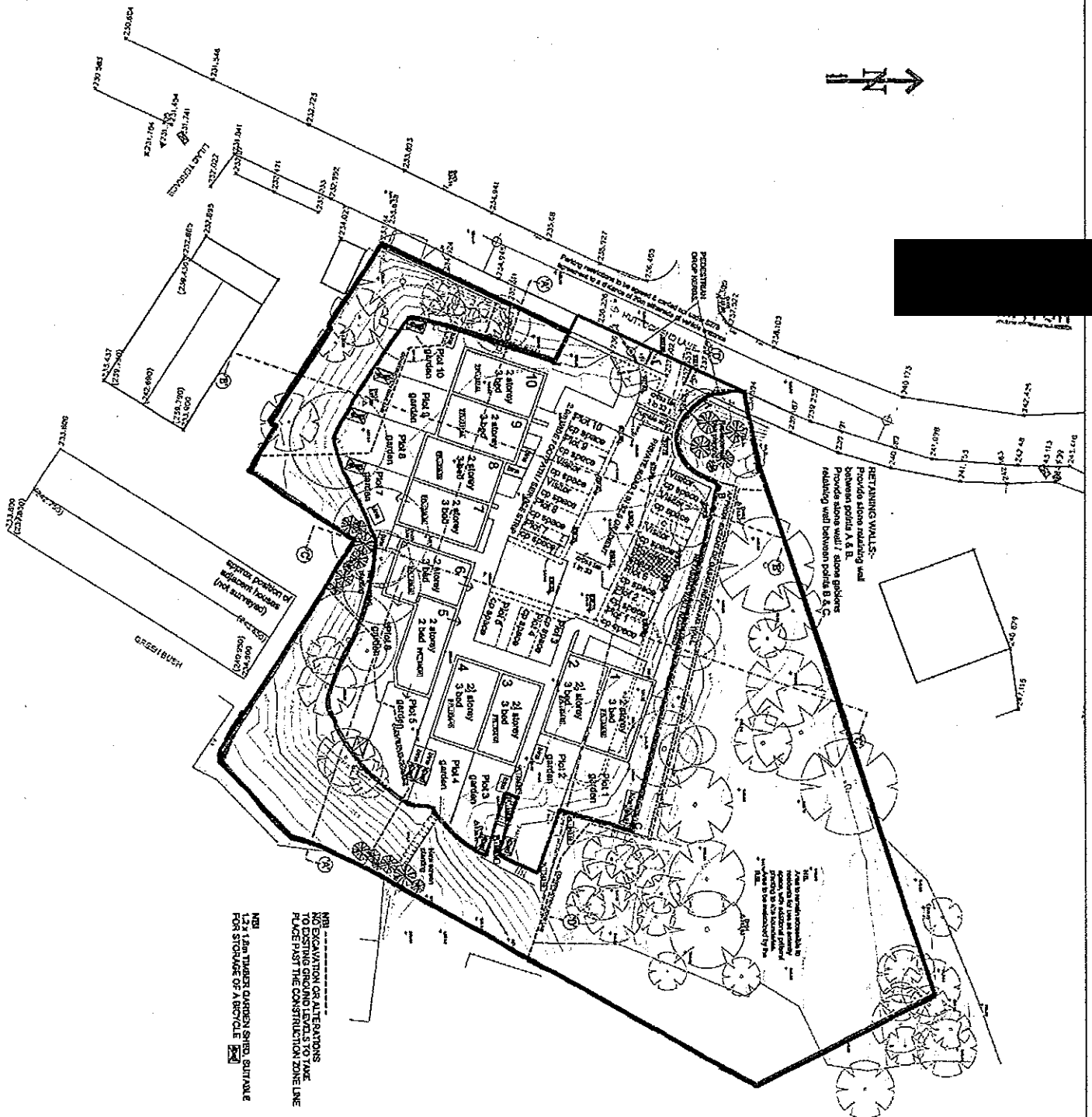
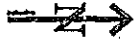
the land formerly occupied by St. Josephs Church, Huttock End Lane, Bacup which is shown edged red on the Plan.

**"Mortgagee"**

Includes the proprietor of any registered charge in respect of the Site or any part BUT excluding any in respect of the houses to be constructed pursuant to the Planning Permission.

**2 Operative provisions**

- 2.1 This Agreement is entered into pursuant to Section 106 of the Act with the intention that the obligations contained herein are planning obligations for the purposes of that section in respect of the Site which may be enforced by the Council against the Owner or any person deriving title under the Owner.
- 2.2 Save for the provisions of Clause 2.17 the provisions of this Agreement shall come into effect only on the Commencement of the Development.
- 2.3 The Owner shall be considered to be liable for the obligations and covenants contained herein until such time as the Owner disposes of its legal interest in the Site or any part thereof to any other person persons or organisation in accordance with paragraph (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest)



NB: RECONSTRUCTION OF ALTERNATIONS TO EXISTING GROUND LEVELS TO TAKE PLACE PAST THE CONSTRUCTION ZONE LINE  
 NB: 1.37 15m TRADER GARDEN SHED, SUITABLE FOR STORAGE OF A BICYCLE

THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND SERVICES AND FOR THE PROTECTION OF ALL ADJACENT PROPERTIES. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.

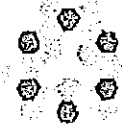
<b>PROPOSED RESIDENTIAL DEVELOPMENT</b> ST JOSEPH'S HUTTUCK END LANE BACUP ST VINCENT'S HOUSING ASSOC	
PRELIMINARY SITE PLAN	DATE: 26 JANUARY 2008 DRAWN BY: W. WINTERBURN CHECKED BY: W. WINTERBURN
<b>HOWARD &amp; SEDON ARCHITECTS</b> 115 WINDING WOOD ROAD SALEM CHESHIRE ST3 7TE TEL: 01454 811500 FAX: 01454 811502 EMAIL: h.s@hwsa.co.uk WWW: www.howardandsedon.co.uk	
PROJECT NO: B470	DRAWING NO: 01 E

PRELIMINARY  
 subject to  
 LA approval

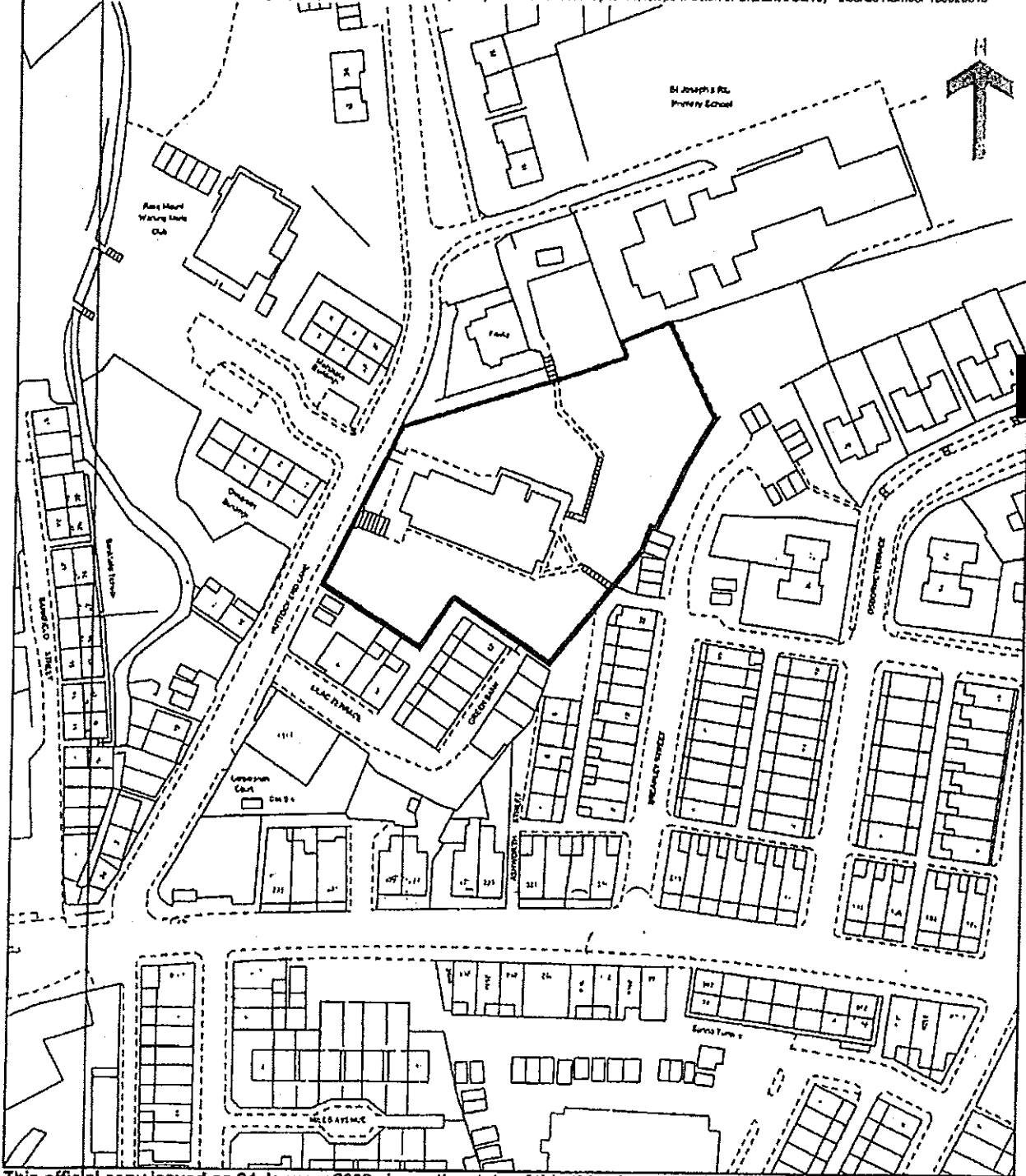
*Melnyne Estates Ltd*

Land Registry  
Official copy of  
title plan

Title number LAN64066  
Ordnance Survey map reference SD8521NE  
Scale 1:1250  
Administrative area Lancashire: Rossendale



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This official copy issued on 24 January 2008 shows the state of this title plan on 24 January 2008 at 15:18:13. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries. This title is dealt with by Land Registry, Lancashire Office.

12 JUN 2008

The Co-operative Bank plc

2009/262

Mangrove Estates Ltd.

- 2.4 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after it shall have parted with its 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 parting with such interest).
- 2.5 This Agreement shall cease to have effect if:
- 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn;
  - 2.5.2 the Planning Permission shall expire prior to the Commencement of the Development;
  - 2.5.3 development of the Site shall be commenced (here meaning the carrying out of "material operation" as defined by Section 56(4) of the Act) pursuant to any other planning permission granted with respect to the Site.
- 2.6 This Agreement is a local land charge and shall be registered as such on its completion by the Parties
- 2.7 For the purposes of the Contracts (Rights of Third Parties) Act 1999) nothing in this Agreement shall confer on any third party any right to enforce any benefit or any terms of this Agreement.
- 2.8 The Owner hereby covenants with the Council to perform the obligations specified in the Schedule to this Agreement so far as they shall derive legal title to the Site or any part thereof.
- 2.9 The Owner hereby covenants with the Council to observe the covenants
- 2.10 Wherever 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.
- 2.11 The Mortgagee hereby consents to the completion of this Agreement and acknowledges that from the date hereof the Site shall be bound by the restrictions and obligations contained herein
- 2.12 Notwithstanding the terms contained herein the Parties agree that the Mortgagee shall only be liable for any breach of any of the 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 the Agreement arising prior to it becoming a mortgagee in possession of the Site regardless of whether or not any such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the Site and in the event that any mortgagee of the Site exercises its power of sale under any mortgage or charge following default thereunder by the mortgagor then this Agreement shall cease to bind or affect the Site (or the part disposed of by the mortgagee).
- 2.13 Where any dispute or difference arises between the Owner and the Council or any such person or organisation deriving a legal title to the Site and the Council in respect of this Agreement either party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert ("the

Appointed Expert") having not less than 10 years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors. The identity of such person in default of agreement being an appointment made on the application of either party at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors provided in that in the absence of a direction by the Appointed Expert in accordance with this clause as to how costs of the reference to the Appointed Expert should be borne as between the parties to the dispute the parties shall bear their own costs and shall share equally the costs and charges of the Appointed Expert.

2.14 The Appointed Expert shall:

- 2.14.1 Afford to each of the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs submissions upon one another's representations;
- 2.14.2 Be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;
- 2.14.3 Be bound to have regard to such representations;
- 2.14.4 Have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the cost and charges of the Appointed Expert) to be met by any party behaving unreasonably;
- 2.14.5 In the making of his/her award not to be liable save to the extent in law as provided in relation to discussions of an Expert;
- 2.14.6 Make awards which are final and conclusive as between the parties to the dispute (except that such award shall not remove the parties' right of appeal on matters of law and any manifest material error); and
- 2.14.7 Be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause.

2.15 Any notice or other communication given or made in accordance with this Agreement shall be in writing, shall be sent by recorded delivery, shall be deemed to have been properly served on the date following the date on which such notice or communication was posted, and shall unless otherwise notified to all the Parties in writing be sent to:

2.15.1 In the case of the Council:

The Director of Business  
The Kingfisher Business Centre, Futures Park, Bacup, Lancashire, OL13  
0BB

2.15.2 In the case of the Owner:

Danielle Keenan at the registered office of the Owner

- 2.16 In this Agreement the expressions "the Owner" "the Council" and "the Mortgagee" shall include their respective successors in title and assigns. In addition, the expression "the Mortgagee" shall include any subsequent proprietors of a registered charge in respect of the Site.
- 2.17 The Owner shall pay the Council's legal fees and disbursements incurred in relation to this Agreement on the date of this Agreement, being a sum of £750.00 and shall reimburse the Council any fees paid to HM Land Registry and other searches including company search fees in connection herewith.
- 2.18 In this Agreement unless the context otherwise requires words importing the neuter gender only include the masculine and feminine genders and the masculine shall include the feminine and vice versa and words importing the singular number only include the plural number.
- 2.19 The parties agree that the terms of this Agreement shall not apply to the owners (here meaning freeholders and leaseholders) tenants and occupiers and mortgagees of any of the houses and/or flats to be constructed from time to time on the Site pursuant to Planning Permission nor against those deriving title from them.



## Schedule

### Owner's obligations

The Owner covenants with the Council as follows:

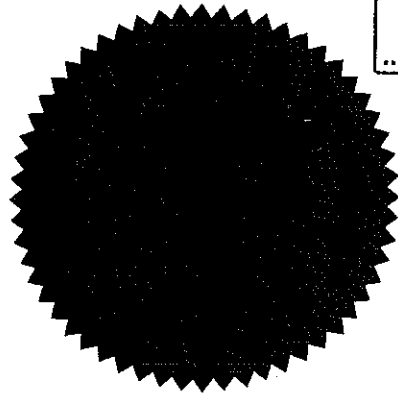
- 1 To notify the Council in writing of the Commencement of the Development, such notice to be served on the Council within 7 days of the Commencement of the Development.
- 2 To build and complete the Development in accordance with the Planning Permission.
- 3 To provide the Amenity Open Space in accordance with the requirements of the Planning Permission and thereafter manage and maintain it in a satisfactory condition and keep it freely available to use as an amenity for residents of the Development.
- 4 Subject to paragraph 5 below to ensure that the Development and each of the houses in the Development are constructed in accordance with the Planning Permission and are thereafter retained by a Registered Provider.
- 5 Not to transfer or grant a lease for more than 21 years of the Site or any part or parts thereof unless to a Registered Provider, SAVE THAT this obligation shall not apply to the grant of any lease or transfer of the freehold in any part of the Site pursuant to the exercise of any statutory rights or to the grant of any tenancies by the Registered Provider in the course of its business as a provider of housing.
- 6 To give the Council immediate written notice of any changes in ownership of any of its interests in the Site, such notice to give full details of the transferee's full name and registered office together with the area of the Site transferred by reference to a plan.

**IN WITNESS** whereof the Parties have executed this Agreement the day and year first before written.

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



Mayor/Chief Executive



No. OF SEAL  
REGISTER  
114911

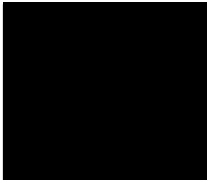
**EXECUTED** as a Deed  
by **Mangrove Estates Limited**  
acting by:



Director

Director/Secretary

**EXECUTED** as a Deed )  
by **Co-Operative Bank plc** )  
acting by: )



Director

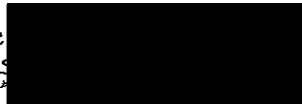
SIGNED AS A DEED by  
THE CO-OPERATIVE BANK p.l.c.  
acting by its duly appointed attorney  
PATRICK MARTIN pursuant to a power of  
attorney dated 21/8/2007 in the presence of

Director/Secretary

Witness Signature

Witness Name .....

22/8/09



THE CO-OPERATIVE BANK p.l.c.  
SECURITIES CENTRE  
LEVEL 2  
No 2 CATHEDRAL SQUARE  
THE CLOTH MARKET  
NEWCASTLE UPON TYNE NE1 1EE