

2011/637  
Rockcliffe Farm

DATED 27 June 2012

- (1) ROSSENDALE BOROUGH COUNCIL
- (2) BARNFIELD CONSTRUCTION LIMITED

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SECTION 106 OBLIGATION  
Relating to  
Land at Rockcliffe Farm  
Bacup =  
Lancashire

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PENNINGTONS  
.....  
da Vinci House  
Basing View  
Basingstoke  
Hampshire  
RG21 4EQ

Ref: TJD/3200641

This Agreement is dated 27 June 2012 between:

- (1) ROSSENDALE BOROUGH COUNCIL whose registered office is at The Business Centre, Futures Park, Bacup, Lancashire OL13 0BB ("the Council")
- (2) BARNFIELD CONSTRUCTION LIMITED whose registered office is at Mentor House, Ainsworth Street, Blackburn, Lancashire BB1 6AY (CRN. 02365913) ("Barnfield")

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) Barnfield is the registered proprietor with title absolute of the freehold interest in the Site which is registered at the Land Registry under title number LA582474
- (C) Barnfield by the submission of the Application has applied for Planning Permission for the Development of the Site
- (D) The Council has resolved to grant a Planning Permission pursuant to the Application subject to the making of this Agreement, without which the Planning Permission will not be granted

1. Definitions

In this agreement unless the context otherwise requires the following terms have the meanings given:

|                     |   |
|---------------------|---|
| <b>Act</b>          | the Town and Country Planning Act 1990 as amended   |
| <b>Application</b>  | the application for planning permission under the Council reference 2011/637 seeking Planning Permission on the Site for the construction of 82 residential units on the site   |
| <b>Commencement</b> | 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 |

|                                |  |
|--------------------------------|--|
| <b>Contribution</b>            | One Hundred and Forty Seven Thousand Pounds (£147,000.00)  |
| <b>Development</b>             | the development of the Site in accordance with the Planning Permission   |
| <b>Dwelling</b>                | the 57 dwellings to be constructed on the Site being the dwellings permitted by the Planning Permission excluding the 25 dwellings comprised within Phase 1  |
| <b>Index</b>                   | all items Index of Retail Prices issued by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or any such other index as may from time to time be published in substitution therefore |
| <b>Interest</b>                | interest at the base lending rate for the time being of the Bank of England compounded annually  |
| <b>Occupation and Occupied</b> | occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations                                |
| <b>Phase 1</b>                 | that part of the Site edged in blue on the Plan  |
| <b>Phase 2</b>                 | that part of the Site edged in red on the Plan   |
| <b>Phase 3</b>                 | that part of the Site edged in yellow on the Plan  |
| <b>Phase 4</b>                 | that part of the Site edged in brown on the Plan   |
| <b>Phase 5</b>                 | that part of the Site edged in green on the Plan   |
| <b>Plan</b>                    | the plan annexed to this Agreement   |
| <b>Planning Permission</b>     | the planning permission to be granted pursuant to the Application following completion of this Agreement   |

**Site** the land at Rockcliffe Farm, Bacup, Lancashire registered at the Land Registry under title number LA582474

**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 Barnfield or any person deriving title from it
- 2.2 Save for the provisions of Clause 2.12 the provisions of this Agreement shall come into effect only on the Commencement of the Development
- 2.3 Barnfield shall be considered to be liable for the obligations and covenants contained herein until such time as it 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)
- 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;
- 2.6 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 Where any dispute or difference arises between Barnfield 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

2.9 The Appointed Expert shall:-

2.9.1 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;

2.9.2 Be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;

2.9.3 Be bound to have regard to such representations;

2.9.4 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;

2.9.5 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;

2.9.6 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

2.9.7 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.

2.10 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

2.10.1 In the case of the Council to:-

The Director of Business

The Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB

2.10.2 In the case of Barnfield to:-

Kenyon Road Lomeshaye Industrial Estate Nelson Lancashire BB9 5SP

2.11 In this Agreement the expressions "Barnfield" and "the Council" shall include their respective successors in title and assigns.

2.12 Barnfield shall pay the Council's legal fees and disbursements of £750.00 incurred in relation to this Agreement on the date of this Agreement

2.13 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

2.14 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 dwellings constructed from time to time on the Site pursuant to the Planning Permission

### **3. Barnfield's Obligations**

Barnfield covenants with the Council as follows:-

3.1 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

3.2 To notify the Council in writing of an unconditional exchange of contracts on the sale of the residential dwellings on the Site necessary to calculate the timing for payment of the Contribution in accordance with clause 3.3 of this Agreement

3.3 To pay the Contribution to the Council in instalments as follows:-

3.3.1 Twenty Five Thousand Pounds (£25,000.00) prior to commencing works to construct any Dwelling

- 3.3.2 Forty Thousand Six Hundred and Sixty Seven Pounds (£40,667.00) prior to Occupation of 24 Dwellings
  - 3.3.3 Forty Thousand Six Hundred and Sixty Seven Pounds (£40,667.00) prior to Occupation of 36 Dwellings
  - 3.3.4 Forty Thousand Six Hundred and Sixty Six Pounds (£40,666.00) prior to Occupation of 48 Dwellings
- 3.4 The sums payable in accordance with Clause 3.3 shall be increased by an amount equivalent to the increase in the Index from the date on which the sum is payable until the date of payment
- 3.5 If any payment due under this Deed is paid late then Interest will be payable from the date payment is due to the date of payment
- 3.6 For the avoidance of doubt the obligations of Barnfield relating to the payment of the Contribution do not relate to and are not calculated by reference to any Development of Phase 1

#### **4. The Council's Obligations**

- 4.1 The Council will use the Contribution as funding towards the following:-
- 4.1.1 the provision and enhancement and maintenance of public open space and play facilities in the vicinity of the Site
  - 4.1.2 the provision and enhancement of primary school facilities in the vicinity of the Site
  - 4.1.3 the provision and enhancement of youth and community facilities and services in the vicinity of the Site
  - 4.1.4 The provision of pedestrian and cycleway links together with payment towards bus shelters and bus services in the vicinity of the Site
- 4.2 The Council covenants that if it has not used the whole of the Contribution within 5 years of receipt of the full amount of the Contribution for the purposes specified in clause 4.1 it will repay to Barnfield the unused balance of the Contribution within 14 days of the expiry of the five year period

#### **5. Execution Clause**

This agreement has been signed by the parties as an agreement and is delivered

and takes effect on the date stated at the beginning of it.

115014

The Common Seal of Rossendale Borough Council )  
was hereunto affixed in the presence of: )



[Redacted signature]

Director of Business/Mayor/Chief Executive

Executed as a deed by Barnfield Construction )  
Limited acting by two directors /a director and )  
its secretary: )

[Redacted signature]

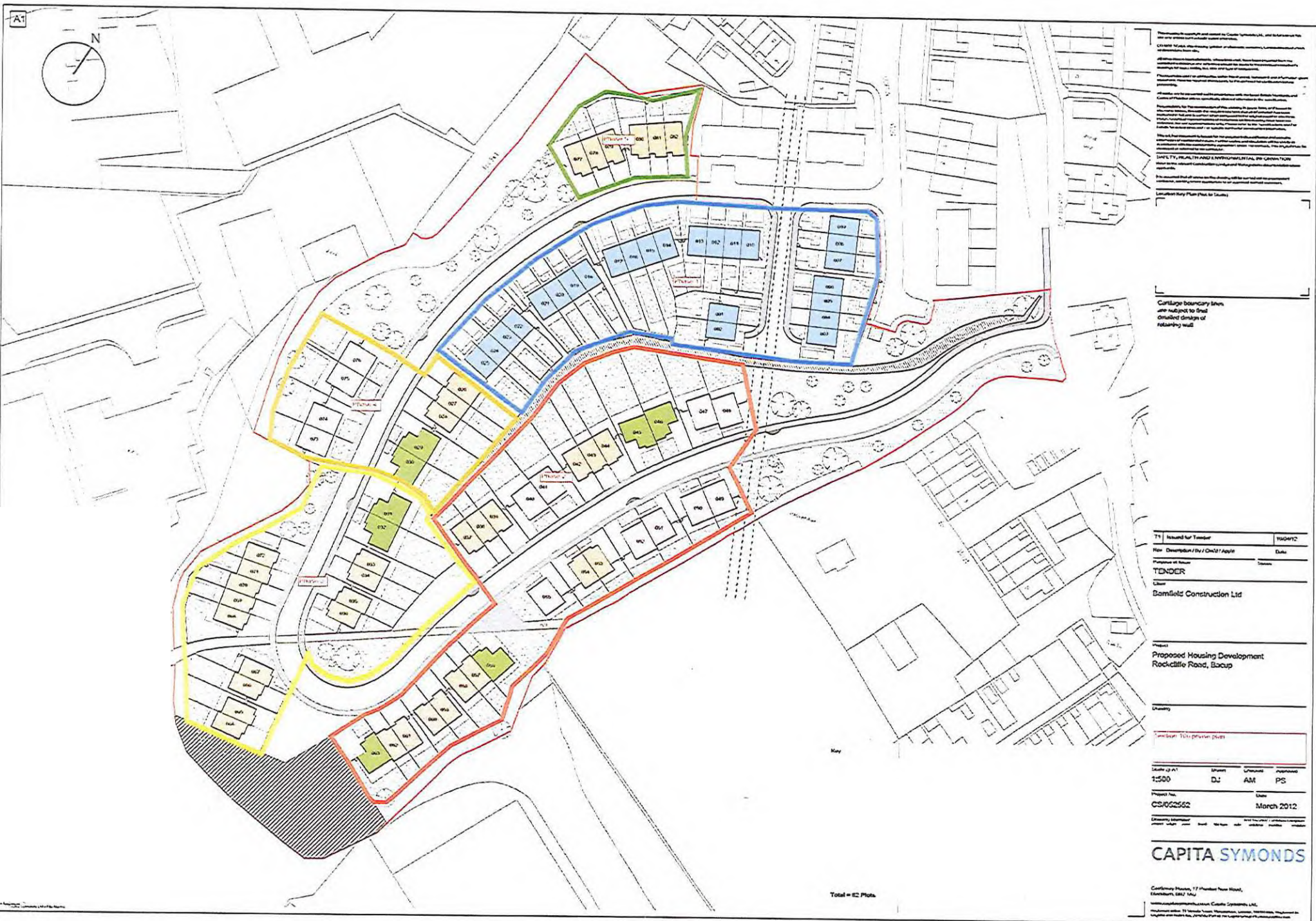
Director

[Redacted signature]

Director/Secretary



2011/637



This plan is to be used in conjunction with the Planning Permission and the relevant sections of the Local Planning Authority's Local Development Order. It is not to be used for any other purpose without the written consent of the Local Planning Authority. The Local Planning Authority is not responsible for any errors or omissions in this plan. The Local Planning Authority is not responsible for any errors or omissions in this plan. The Local Planning Authority is not responsible for any errors or omissions in this plan.

Carriage boundary lines are subject to final detailed design of retaining wall

|                            |                                  |          |
|----------------------------|----------------------------------|----------|
| T1                         | Issued for Tender                | 11/03/12 |
| Rev                        | Designation / By / Check / App'd | Date     |
| TENDER                     |                                  |          |
| Client                     |                                  |          |
| Barnfield Construction Ltd |                                  |          |

Project  
Proposed Housing Development  
Rockcliffe Road, Bacup

Drawing  
Tender 1:500 (partial plots)

| Scale of Plot | Shown      | Checked | Approved |
|---------------|------------|---------|----------|
| 1:500         | DJ         | AM      | PS       |
| Project No.   | Date       |         |          |
| CS/062562     | March 2012 |         |          |

**CAPITA SYMONDS**

Capita Symonds, 17 Market Tower Road, Manchester, M14 6TP  
 Registered office: 17 Market Tower, Manchester, Greater Manchester, M14 6TP  
 Registered in England and Wales No. 02048474. Registered for VAT No. 258454747

Total = 62 Plots