

DATED 18th June 2008

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

AGREEMENT

under section 106 of the Town and Country Planning Act 1990  
re: residential development at Whinberry View, Bacup Road, Rawtenstall  
(Planning Permission No. 2003/497)

LF/SS/Z.12/211

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



**THIS AGREEMENT** is made the                      day of                      Two thousand and eight  
**BETWEEN**

- (1) **ROSSENDALE BOROUGH COUNCIL** of P. O. Box 74 Kingfisher Business Centre Futures Park Bacup Lancashire OL13 0WU ("the Council") and
- (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 02849693 of P. O. Box 76 1<sup>st</sup> Floor 1-3 Market Street Blackburn Lancashire BB1 7EB ("the Mortgagee")
- (4) **LANCASHIRE COUNTY COUNCIL** of P.O. Box 78, County Hall, Preston, PR1 8XJ ("the County Council")

**WHEREAS:**

- (1) The Council is the Local Planning Authority for the purposes of this Agreement and the Act for the area within which the Application Land (as hereinafter defined) is situated
- (2) The Owner is the registered proprietor of the Owner's Land
- (3) The County Council originally submitted the Planning Application (as hereinafter defined) for permission to develop the Application Land which they owned at that time and which included both the County Council Land and the Owner's Land , in the manner and for the uses set out in the Planning Application and the plans specifications and particulars deposited with the Council and forming part of the Planning Application
- (4) The Council is minded to grant planning permission for the Development in accordance with the Planning Application but requires the Owner to enter into this Agreement

- (5) As the County Council remain the owner of the County Council Land which forms part of the Application Land , they are required to enter into this Agreement to give consent to its terms
- (6) The Council has agreed to grant the Planning Permission on the completion of this Agreement
- (7) The Mortgagee consents to the covenants contained in this Agreement

**NOW THIS DEED WITNESSETH** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement (including the recitals) unless the context requires otherwise the following words and expressions have the respective meanings set out below:

1.1.1 "the Act" means the Town and Country Planning Act 1990

1.1.2 "the Application Land" means the land shown edged red on the plan annexed to the Planning Application

1.1.3 "the Commencement Date" means the date specified by the Owner in a written notice served upon the Council as the date upon which the Development is to be commenced or if no such notice is served the actual date upon which the Development was begun within the meaning of Section 56 of the Act

1.1.4 "the County Council's Land" means that part of the Application Land as is not included in the Owner's Land

1.1.5 "the Development" means the development of the Owner's Land in accordance with the Planning Application or carried out substantially in accordance with such Planning Application

1.1.6 "the Owner's Land" means the freehold land described in the First Schedule hereto

1.1.7 "the Planning Application" means the application for planning permission for the development of the Application Land received by the Council on 1<sup>st</sup>

August 2003 under reference number 2003/497 a copy of which is annexed hereto

- 1.18 "the Planning Permission" means the conditional planning permission to be granted in pursuance of the Planning Application in the form of the draft annexed hereto
- 1.1.9 "the POS Commuted Sum" means the sum calculated in accordance with Clause 3.5.2 for every dwelling which is authorised to be constructed (whether or not it has then been constructed) pursuant to the Planning Permission or any renewal thereof and pursuant to a reserved matters approval relating thereto such payment to be paid in lieu of provision of open space within the Application Land and associated with the Development
- 1.2 The expressions "the Council", "the Owner" and "the County Council" shall include their respective successors in title and assigns unless the context otherwise requires
- 1.3 Words importing the singular number only include the plural number and vice versa and words importing the masculine gender only include the feminine and neuter genders and vice versa
- 1.4 References to a clause are (unless the context otherwise requires) to a clause of this Agreement
- 1.5 The clause and paragraph headings in this Agreement and the Schedules hereto are for convenience only and do not affect their interpretation
- 1.6 References to a statute or provision of a statute include any statute or provision of a statute amending consolidating or replacing it for the time being in force

## 2. ENABLING POWERS

- 2.1 This Agreement is made in pursuance of Section 106 of the Act to the intent that it shall bind all interest in the Application Land into whosoever hands

the same may come and includes the Owner and its successors in title and assigns and all persons claiming under or through it

### 3. OWNER'S COVENANTS

- 3.1 The Owner hereby covenants with the Council that (subject to Clause 5.3) it will pay the POS Commuted Sum to the Council within seven days of the Commencement Date
- 3.2 The Mortgagee hereby consents to the execution of this Agreement and in so far as their charge affects the Land shall be bound by the restrictions and obligations contained in this Agreement
- 3.3 The County Council hereby consents to the execution of this Agreement and, subject to the indemnity at clause 3.6 below and insofar as this Agreement affects the County Council Land , shall be bound by the restrictions and obligations contained in this Agreement
- 3.4 The Owner hereby covenants to give notice in writing to the Council of the Commencement Date
- 3.5 The Owner for itself and its successors in title and assigns hereby covenants with the Council that:-

3.5.1 in the event of late payment of the POS Commuted Sum interest will be paid on any sum outstanding at a rate of 3% per annum above the base rate of the National Westminster Bank Plc and accrue from the date payment should have been made to the Council to the date of payment thereof to the Council

3.5.2 the POS Commuted Sum shall be calculated by adopting the following formula :  $A = £1000 \times B/C$  where:

3.5.2.1 A is the POS Commuted Sum;

3.5.2.2 B is the General Index of Retail Prices (all items) for the month two months before the date due for payment in accordance with Clause 3.1; and

3.5.2.3 C is the General Index of Retail Prices (all items) for the month two months before the date of this Agreement

**PROVIDED ALWAYS** that A shall never be less than One Thousand Pounds (£1,000) and for the avoidance of doubt the POS Commuted Sum is payable in respect of every dwelling which is authorised to be constructed (whether or not it has been constructed) pursuant to the Planning Permission or any renewal thereof and pursuant to a reserved matters approval relating thereto.

3.6 The Owner for itself and its successors in title and assigns hereby covenants with the County Council to observe and perform the restrictions and obligations contained in this Agreement including, without limitation, the obligations to pay the POS Commuted Sum, and will indemnify and keep the County Council indemnified against all actions, proceedings, damages, costs, claims and expenses which may be suffered or incurred by the County Council in respect of any breach or non-observance of those restrictions and obligations.

#### 4. COUNCIL'S COVENANTS

4.1 The Council hereby covenants with the Owner and the Owner's successors in title and assigns to use the POS Commuted Sum and any addition towards the maintenance/improvement of the recreational area to the east of the Health Centre Bacup Road

4.2 On execution and dating of this Agreement by the parties hereto the Council shall grant the Planning Permission

#### 5. AGREEMENTS AND DECLARATIONS

- 5.1 If the Planning Permission shall expire before the Commencement Date or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect
- 5.2 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
- 5.3 For the purposes of Clauses 1.1.7 and 3.1 where more than one such reserved matters approval applies to any part of the Application Land the number of dwellings authorised to be constructed thereon shall be deemed to be the greatest number which might be constructed thereon if only one of such reserved matters approvals were implemented in full on that part
- 5.4 This Agreement is a local land charge and shall be registered as such
- 5.5 Where any certificate consent permission or approval is required to be given by the Council under this Agreement such certificate consent permission or approval shall be in writing and shall not be unreasonably withheld or delayed
- 5.6 Save in relation to the obligations to grant the Planning Permission which shall take effect on the date of this Agreement the remaining provisions of this Agreement shall take effect upon the Commencement Date
- 5.7 The obligations contained herein on the part of the Owner are planning obligations for the purposes of the said Section 106 and the Council is the Local Planning Authority by whom they are enforceable
- 5.8 No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all interest in the Land or in the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 5.9 The Owner acknowledges to the County Council that it has no authority to develop any part of the County Council Land.



## 6. NOTICES

- 6.1 Any notice to be given or made pursuant to this Agreement shall be given or made by pre-paid special or recorded delivery post or by hand delivery addressed and sent or delivered to the party to be served at its address given at the beginning of this Agreement or such other address as the party changing its address may from time to time notify to the other party. Any such notice given or made by pre-paid special or recorded delivery post shall be deemed to have been duly given or made two (2) Working Days after the same was posted (and in proving such it shall be sufficient to prove that the envelope containing the same was posted) and if delivered by hand shall be deemed to have been duly given at the time of delivery

## 7. LEGAL COSTS

- 7.1 The Owner will pay the Council's legal costs in relation to this Agreement amounting to Nine hundred and fifty pounds (£950.00) forthwith upon the completion of this Agreement

## 8. EXPERT

- 8.1 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

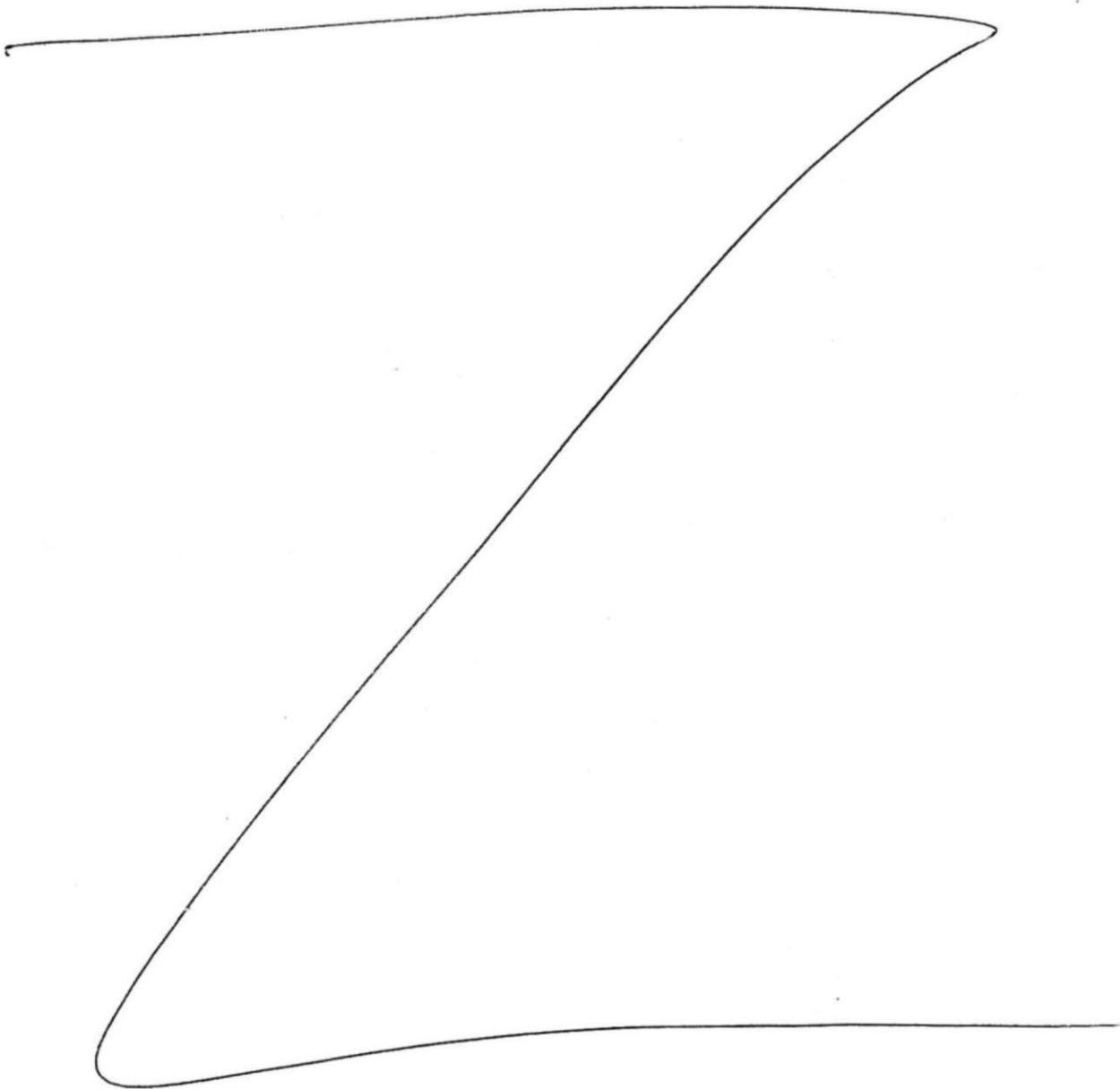
If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

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

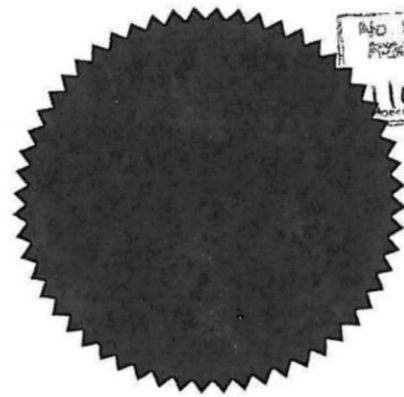
recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

IN WITNESS whereof the parties have hereunto affixed their respective Common Seals the day and year first before written



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

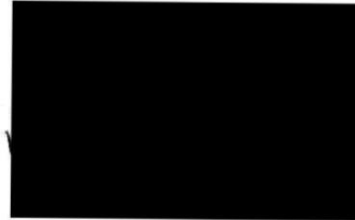
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114838  
REGISTERED  
11/11/08

EXECUTED AS A DEED (but not delivered  
until the date hereof) by the said **BROTHER  
DEVELOPMENTS LIMITED** acting by two  
Directors or a director and company secretary

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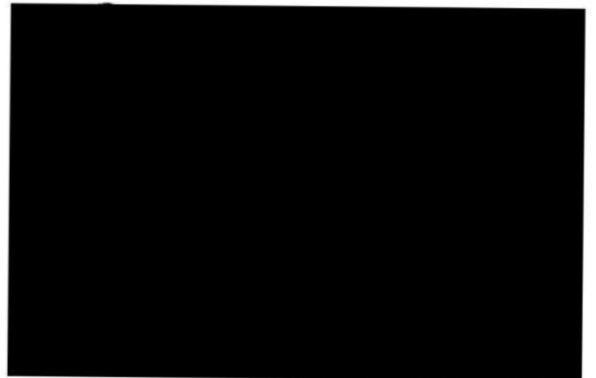


SIGNED AND DELIVERED AS A DEED  
for and on behalf of **NATIONAL  
WESTMINSTER BANK PLC** by a duly  
authorised officer of:

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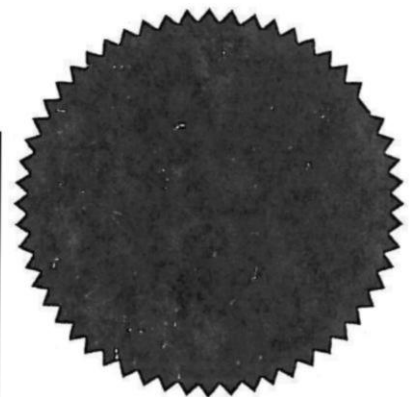
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THE COMMON SEAL of the LANCASHIRE  
COUNTY COUNCIL was hereunto affixed  
pursuant to the Scheme of Delegation to Chief Officers in  
the presence of:

)

Authorised Signatory



18056

## FIRST SCHEDULE

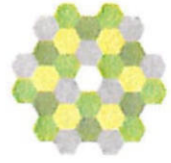
### The Owners Land

All that freehold land and premises known as Whinberry View, Bacup Road, Rawtenstall, Rossendale BB4 7PA and which is registered at H. M. Land Registry with title absolute under title number LAN26508 and more particularly shown edged red on the Plan annexed hereto



Land Registry  
Official copy of  
title plan

Title number LAN26508  
Ordnance Survey map reference SD8122NE  
Scale 1:1250  
Administrative area LANCASHIRE:  
ROSSENDALE



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