

DATED

5th March

2008

- (1) CALDERDALE METROPOLITAN BOROUGH COUNCIL
- (2) CITY SERVICES LIMITED
- (3) ~~THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND~~
BANK OF SCOTLAND PLC



AGREEMENT

under Section 106 of the Town and Country
Planning Act 1990

relating to

Marshfield Mills (to be known as the Silk Mill)

Dewsbury Road Elland West Yorkshire

Calderdale Metropolitan Borough Council

Westgate House

Westgate

Halifax

HX1 1PS

Ref JBR/150268

AN AGREEMENT made on

5th March

2008

BETWEEN:-

- (1) **THE BOROUGH COUNCIL OF CALDERDALE** of the Town Hall Crossley Street
Halifax HX1 1PS ("the Council")
- (2) **CITY SERVICES LIMITED** (trading as Clayton Homes) (Company Registration
number 01679672) whose registered office is ~~41 Fenay Lane Almondbury~~
^{CLAYTON HOUSE PARK ROAD}
^{ELLAND} ^{HX5 9HP} Huddersfield West Yorkshire ~~HD6 8UN~~ ("the Landowner")
- (3) ~~THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND~~ ^{BANK OF SCOTLAND PLC (company number SC327000)} incorporated
^{having its registered}
~~by Act of Parliament and having its head office at The Mound Edinburgh EH1 1YZ~~
("The Chargee")
- (4)

1. RECITALS

- 1.1 The Council is the local planning authority for the purposes of the Act for the area within which the Site is located
- 1.2 The Landowner is the freehold owner of the Site
- 1.3 The Chargee is the owner of a charge over the Site dated [[10 August 2007]]
- 1.4 The Landowner has submitted the Application to the Council and on 15 August 2006 the Council resolved under delegated powers to grant planning permission subject (inter alia) to the completion of this Agreement

2 DEFINITIONS AND INTERPRETATION

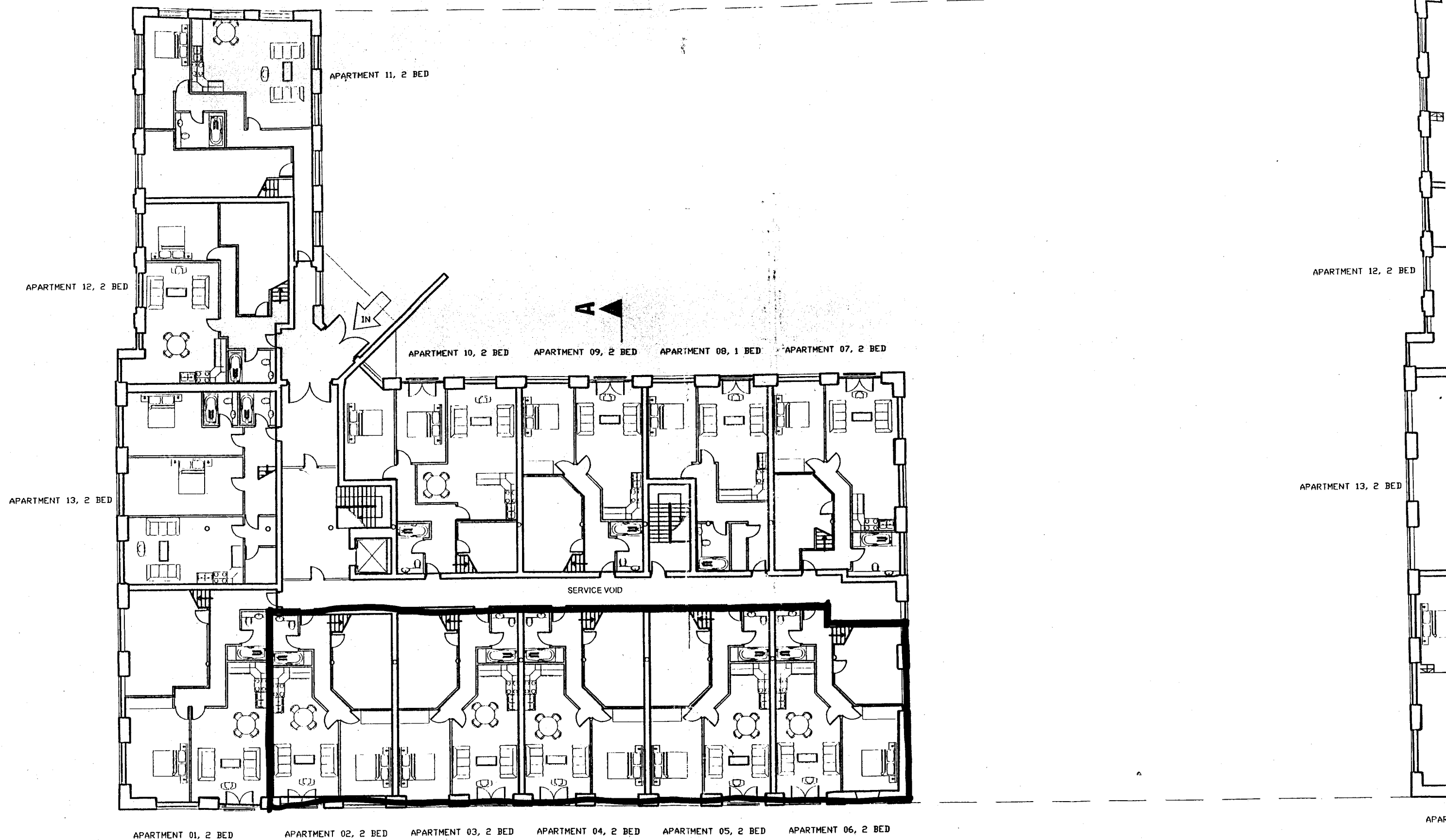
2.1 In this Agreement unless the context requires otherwise the following words and expressions have the respective meanings as set out opposite to them:-

"Act"	The Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	Subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
Affordable Housing Council Contribution	£237,724 (two hundred and thirty seven thousand seven hundred and twenty four pounds)
"Affordable Housing Commuted Sum"	£723,637 (seven hundred and twenty three thousand six hundred and thirty seven pounds)
"Affordable Housing Units"	The five flats edged red on Plan A (ref 1755-310 (dated Jun 2006)) attached hereto and numbered 2 to 6 on the ground floor (lower and upper levels) and within the Site
"Application"	An application for planning permission for residential development made by the Landowner carrying the reference 05/02126/CON
"Development"	The development of the Site in accordance with the Planning Permission.
"Economic Development Contribution"	£100,000 (one hundred thousand pounds)
"Public Open Space Contribution"	£91,000 (ninety one thousand pounds)

<p>“Implementation”</p>	<p>The date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56 of the Act</p>
<p>“Index Link”</p>	<p>Such increases to the Public Open Space Contribution and the Economic Development Contribution on an annual basis from the date hereto to the date of payment of the Public Open Space Contribution and/or Economic Development Contribution based upon changes to the Retail Price Index between those dates as shall be notified by the Council to the Landowner</p>
<p>“Leasehold Interest”</p>	<p>An unencumbered long leasehold interest at a ground rent of two hundred and fifty pounds (£250) per annum with title absolute of at least 125 years in the Affordable Units at the Price but otherwise in the same terms applicable to the Open Market Dwellings subject to amendments required by the RSL</p>
<p>“Open Market Dwellings”</p>	<p>The dwellings to be constructed on the Site pursuant to the Planning Permission and which are not Affordable Housing Units</p>
<p>“The Interest Rate”</p>	<p>Four per cent per annum above the base rate from time to time of any bank that is a member of the British Banking Association and that the Council specifies at any time or, if those base rates cease to exist, such other equivalent rate of interest as the Council reasonably specifies at any time both before and after any judgement and in every case compounded on the first day of June and December</p>

	in each year.
"Plan A"	The plan marked Plan A attached to this Agreement.
"Plan B"	The plan marked Plan B attached to this Agreement.
"Practical Completion"	Issue of a certificate of practical completion by the Landowner's architect or in the event that the Development is constructed by a party other than the Landowner the issue of a certificate of practical completion by that other party's architect
"Price"	£250,000 (two hundred and fifty thousand pounds)
"Planning Permission"	The planning permission that may be granted in pursuance of the Application.
"Registered Social Landlord"	Jephson Housing Limited (or one of its group companies) or such other housing association within the meaning of section 2 of the Housing Act 1996 and registered with the Housing Corporation and to which the Leasehold Interest shall (subject to the obligations contained in this Agreement) be transferred
"Site"	The freehold land described in the First Schedule hereto

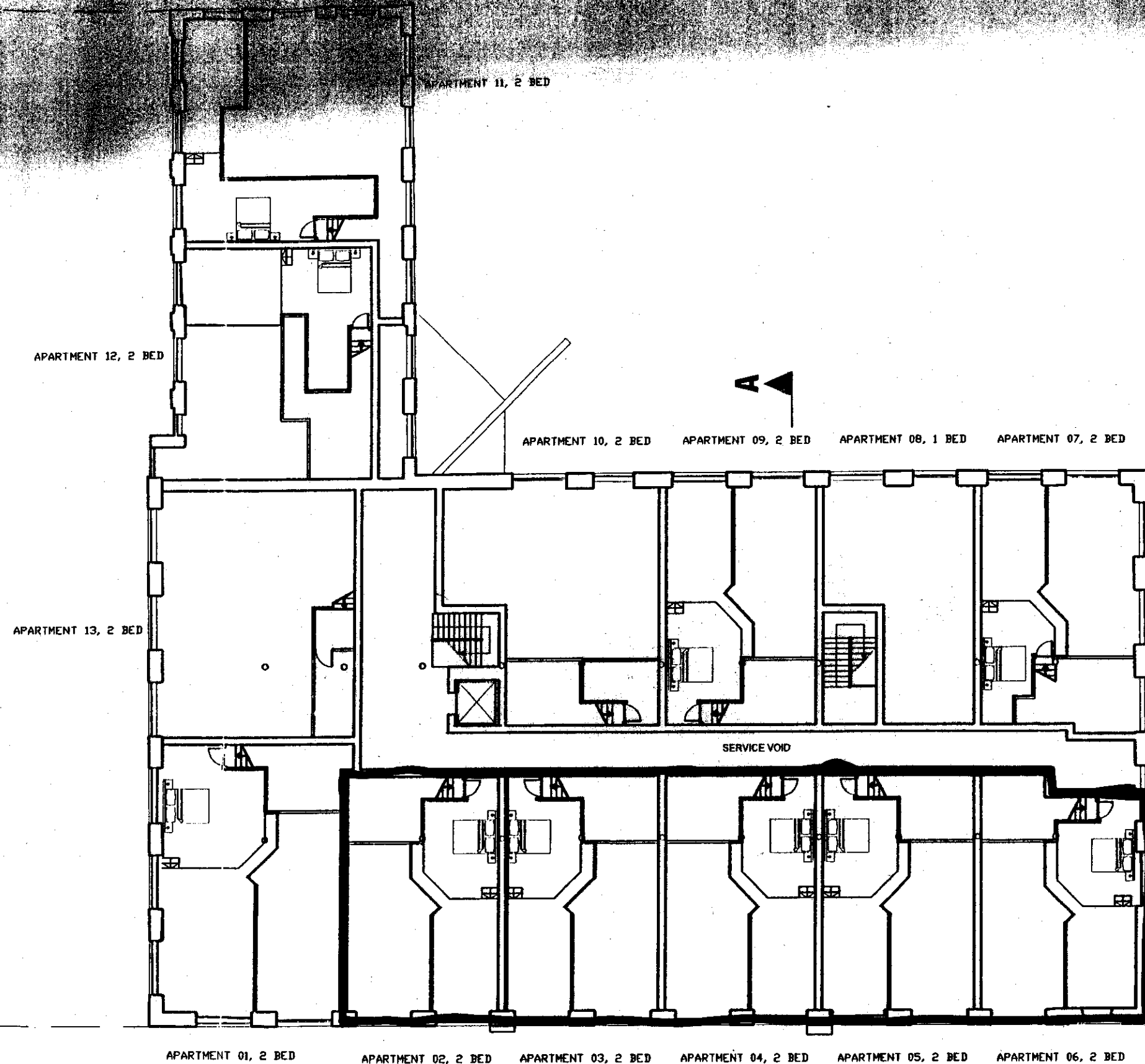
- 2.2 The masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa



GROUND FLOOR PLAN

LOWER LEVEL

GI
UP

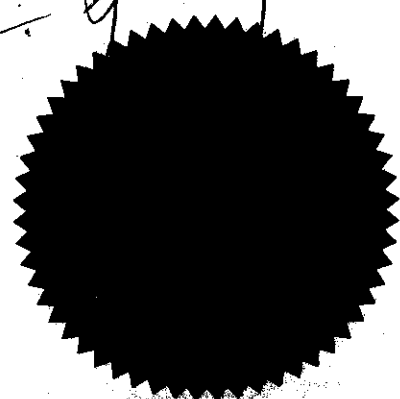


GROUND FLOOR PLAN

UPPER LEVEL

Plan A
Received 15/6/06

[Handwritten signature]



Revision

acumen 
designers & architects

Acumen Designers & Architects Ltd
Headrow House Old Leeds Road Huddersfield HD1 1SG
T: 01484 546000 info@acumenarchitects.co.uk
F: 01484 542205 www.acumenarchitects.co.uk

Client CLAYTON HOMES

Job title REDEVELOPMENT OF,
MARSHFIELD MILL,
DEVSBURY ROAD,
ELLAND

Drawing title PROPOSED FLOOR
PLANS
(Ground, First & Second)

Drawn: SF	Date: JUN 2006
Checked: JC	Scale: 1 : 200
Drawing number:	1735 - 310

- 2.3 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement
- 2.4 A reference to a clause or schedule is a reference to a clause or schedule contained in this Agreement
- 2.5 References to any party in this Agreement shall include the successors in title of that party and in the case of the Council includes any successor local planning authority exercising planning powers under the Act

3 OPERATIVE PROVISIONS

- 3.1 This Agreement is made pursuant to Section 106 of the Act and the obligations contained in this Agreement are planning obligations for the purposes of that section insofar as they fall within the terms of sub-section 106(1)
- 3.2 Insofar as any of the covenants contained in this Agreement are not planning obligations within the meaning of Section 106(1) of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.3 The Council is the local planning authority by which the planning obligations contained in this Agreement are enforceable
- 3.4 Subject to clause 3.14 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 Landowner the First Chargee and the Second Chargee or any person or persons deriving title from them
- 3.5 Unless otherwise stated the covenants contained in this Agreement shall come into effect upon date of this Agreement

- 3.6 The Landowner covenants with the Council to observe and perform the covenants set out in the Second Schedule in relation to the Development
- 3.7 The Council covenants with the Landowner and the Chargee to observe and perform the covenants set out in the Third Schedule in relation to the Development
- 3.8 This Agreement shall be capable of being registered as a local land charge
- 3.9 Upon completion of this Agreement the Landowner is to pay to the Council a sum being not less than £1000 plus disbursements representing its reasonable and proper costs in connection with the preparation and negotiation and completion of this Agreement
- 3.10 Any notice notification or application for any approval consent or other authorisation required to be made by the Landowner under the terms of this Agreement shall be in writing and served on the Council's Head of Planning and Regeneration at Planning Services Northgate House Northgate Halifax HX1 1UN or such other Chief Officer of the Council as the Council in writing specify by notice served on the other parties to this Agreement (or their successors in title for the time being at the date of such notice) and any notice approval or other consent or other authorisation by the Council shall be in writing and served on the Landowner at his respective address herein before described or at such new addresses in the UK as he shall by notice from time to time specify to the Council and no other purported notice approval consent or authorisation shall be binding to the Council for the purposes of this Agreement
- 3.11 Nothing in this Agreement shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Site or otherwise
- 3.12 No person shall be liable for a breach of covenant contained in this Agreement after he shall have parted with all interest in the Site or 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

- 3.13 If the Planning Permission shall expire before the Development is Implemented or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect
- 3.14 For the purposes 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 the covenants herein may not have been performed.
- 3.15 The Chargee acknowledges and declares that this Deed has been entered into by the Landowner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the charges over the Site shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Landowner .
- 3.16 If the Council does not receive payment of the Affordable Housing Council Contribution, Public Open Space Contribution or the Economic Development Contribution on the due date whether formally demanded or not or any other money due under this Agreement within seven days of the due date the Landowner will pay interest on the money concerned to the Council at the Interest Rate from the due date until date of actual receipt by the Council provided that this sub-clause shall not prejudice any other right or remedy of the Council for the recovery of any money due

THE FIRST SCHEDULE
Description of the Site

Marshfield Mills (to be known as the Silk Mill) Dewsbury Road Elland West Yorkshire which is freehold and registered at the Land Registry with title absolute under title number WYK778659 and which land is for the purpose of identification only shown hatched blue on Plan B

- 1 To notify the Council in writing of the date of Implementation no later than 7 days after Implementation
- 2 To notify the Council in writing of the date of completion of the sale of the first the twenty first , the forty first the sixty first and the eighty first Open Market Dwellings within 7 days of completion of the sale of each of them together with evidence of the date of such completion of sale
- 3 Subject to paragraph 4 below to pay the Affordable Housing, Council Contribution, the Public Open Space Contribution and Economic Development Contribution in equal instalments within 20 working days of the date of completion of the sale of each of the first the twenty first , the forty first the sixty first and the eighty first Open Market Dwelling together with any applicable Index Link sum due to the Council
- 4 In any event and notwithstanding paragraph 3 above, after twenty four months from the date of completion of the sale of the first apartment to pay the Affordable Housing Council Contribution, the Public Open Space Contribution and Economic Development Contribution plus any Index Link sum due minus any sums paid under paragraph 3 of this Schedule

5 To submit a scheme of environmental improvements to the Canker Dyke which is shown edged green on Plan B to the Council for approval within three months of the grant of Planning Permission and if approved implement that scheme within eighteen months of such approval.

6 The scheme referred to in paragraph 5 must include

6.1a landscaping plan which specifies appropriate timescales, species, location, maintenance and replacement measures

6.2 a long term management plan

- 7 If the scheme under paragraph 5 is not approved to submit further schemes within a reasonable period of time that take account of the reasons for refusal given by the council until such approval is granted and implement the approved scheme within eighteen months of such approval being granted

AFFORDABLE HOUSING

- 7 To construct the Affordable Housing Units in accordance with the Planning Permission and the current Housing Corporation Design and Quality Standards unless otherwise agreed in writing with the Council's Housing and Community Support Service and to provide each and every Affordable Housing Unit with all the necessary rights of access and egress from the same together with all the essential water, sewerage and electricity supplies without the imposition of any financial cost or the creation of any ransom element.
- 8 Not to dispose of the Affordable Housing Units other than in accordance with the provisions of this Schedule
- 9 Not without the written consent of the Council to occupy or permit the occupation of more than 50% (fifty per cent) of the Open Market Dwellings until the following events set out hereafter in this Schedule have occurred:-
- 10.1 The Landowner and/or Developer shall construct the Affordable Housing Units in accordance with paragraph 1 above and notify the Council in writing of the date of Practical Completion within 14 days of Practical Completion and offer within 14 days of Practical Completion to grant to the Registered Social Landlord nominated by the Council the Leasehold Interest at the Price and the Registered Social Landlord shall

have four calendar months from receipt of that offer by the Landowner and/or Developer to accept the offer.

10.2 In the event that an offer pursuant to paragraph 10.1 is accepted by any Registered Social Landlord the Landowner and/or Developer shall use reasonable endeavours to complete the grant of the Leasehold Interest at the Price within two calendar months of such acceptance

10.3 If the offer by the Landowner and/or Developer to grant the Leasehold Interest at the Price pursuant to paragraph 10.1 is not accepted by the Registered Social Landlord or if once accepted the Registered Social Landlord decides not to proceed or the grant is not completed within the time period specified in paragraph 10.2 the Landowner and/or Developer shall notify the Council no later than one calendar month after receipt of such notification or expiry of the time period within which to complete (as the case may be) and shall provide written evidence of such non acceptance of an offer or refusal to proceed with the grant or the reasonable endeavours undertaken to complete the grant and obtain the Council's written acknowledgement (to be provided as soon as reasonably practicable) accepting such evidence

10.4 The Landowner and/or Developer shall as soon as reasonably practicable after giving notice pursuant to paragraph 10.3 offer to grant the Leasehold Interest at the Price to any other Registered Social Landlords nominated by the Council (such nomination not to be unreasonably delayed) and the Registered Social Landlords so nominated shall have four calendar months from receipt of an offer by the Landowner and/or Developer to accept the offer.

10.5 In the event that an offer pursuant to paragraph 10.4 is accepted the Landowner and/or Developer shall use reasonable endeavours to complete the grant of the Leasehold Interest within two calendar months of such acceptance.

10.6 If any offer pursuant to paragraph 10.4 is not accepted or if once accepted the Registered Social Landlord then decides not to proceed or the grant is not completed within the time period specified in paragraph 10.5 the Landowner and/or Developer shall notify the Council as soon as reasonably practicable and shall provide written evidence of such non acceptance of an offer or refusal to proceed or the best endeavours undertaken to complete within the time period in paragraph 10.5 and upon written acceptance by the Council of such evidence the Landowner and/or Developer will thereafter continue to use its reasonable endeavours to grant the Leasehold Interest at the Price to any Registered Social Landlords nominated by the Council

10.7 After the expiration of two years from the date of Practical Completion without any grant occurring the Landowner and/or Developer may pay to the Council or the Council may require the Landowner and/or the Developer to pay the Affordable Housing Commuted Sum (less any element of the Affordable Housing Council Contribution paid to the Council in accordance with the provisions of Clause 4 of this Second Schedule) and any Index Link applicable and thereafter the Landowner and/or Developer may dispose of the Affordable Housing Units free of the obligations contained in this Schedule

11 Not to depart from the current Housing Corporation Design and Quality Standards
unless agreed in writing by the Council's Housing and Community Support Service

12 Subject to clauses 10.6 and 10.7 above, not to use the Affordable Housing Units for anything other than Affordable Housing

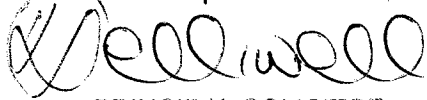
THE THIRD SCHEDULE**Council's Covenants**

1. The Council hereby covenants with the Landowner and the Chargee to use all sums received from the Landowner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.
2. The Council with the Landowner and the Chargee that it will pay to the Landowner such amount of any payment made by the Landowner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within [five] years and one month of the date of receipt by the Council of all such payments to be made under this Agreement.
3. The Council shall provide to the Landowner such written evidence as the Landowner or the Chargee shall reasonably require in order to confirm the expenditure of the sums paid by the Landowner under this Agreement.

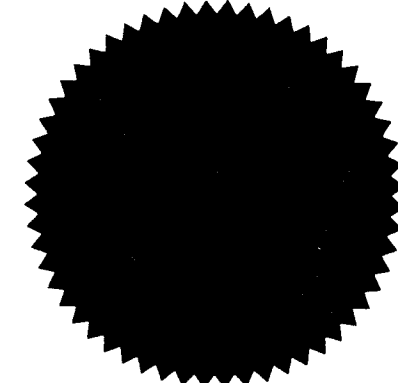
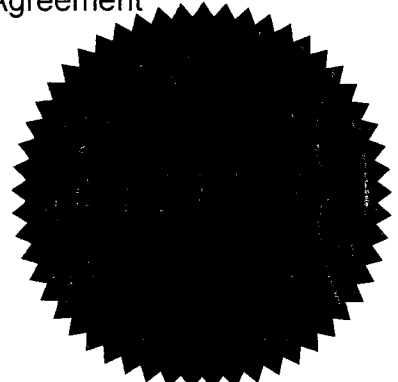
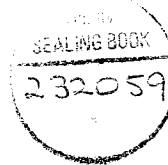
Executed as a Deed on the date specified at the commencement of this Agreement

**THE CORPORATE SEAL of
THE BOROUGH COUNCIL OF
CALDERDALE**

was affixed in the presence of:-

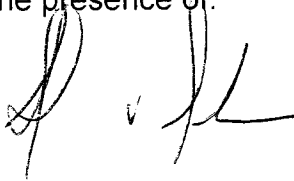


PRINCIPAL SOLICITOR

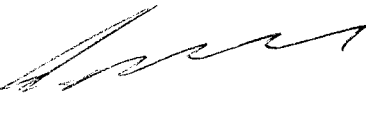


EXECUTED AS A DEED by the affixing of
the Common Seal of **CITY SERVICES
LIMITED** in the presence of:

Director



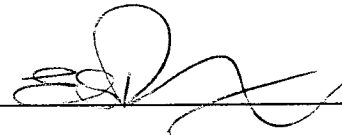
Secretary



EXECUTED by the ~~Governor and Company~~
of the **BANK OF SCOTLAND** by its duly
authorised signatory in the presence of:

Authorised Signatory

Witness



Name EDWINATHSON

Address SHULMAN'S

100 WELLINGTON ST. LEEDS.

