3201008 38P

DATED 24th March 2010

RIBBLE VALLEY BOROUGH COUNCIL
and
BECK DEVELOPMENTS LIMITED
and
JOHN BARRIE SYKES
and PAULINE SYKES
and
DAVID HOWARD EVENTHALL
and
THE TRUSTEES OF THE STALWART COMMISSION TUFTERS (SELF ADMINISTERED) PENSION FUND
and
HAYDOCK FINANCE LIMITED

AGREEMENT under Section 106 Town and Country Planning Act 1990 relating to Land at Primrose Mill Woone Lane Clitheroe

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Field Cunningham
St Johns Court
70 Quay Street
Manchester M3 3EJ
Ref: DS.9346.100

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THIS AGREEMENT is made the 24th March 2010

BETWEEN:

RIBBLE VALLEY BOROUGH COUNCIL of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ("the Council") of the first part and **BECK DEVELOPMENTS LIMITED** (Company Registration Number 3183243) whose registered office is at Challenge House Challenge Way Blackburn BB1 5QB (the Company") of the second part and **JOHN BARRIE SYKES** and **PAULINE SYKES** of 23 Moorland Crescent Clitheroe BB7 4PY ("the First Owner) of the third part and **DAVID HOWARD EVENTHALL** of Earlscliffe Lodge Groby Road Altrincham Cheshire WA14 2AS ("the SecondOwner") of the fourth part and **HELENA BALMFORTH** of Windmill Cottage Honey Lane Rowhook West Sussex RH12 3QA and **TOR PENSION TRUSTEES LIMITED** (Company Registration Number 5026390) whose registered office is at The Old Coach House Dunsford Farm Royden Lane Boldre Hampshire SO41 8PE the Trustees of the Stalwart Commission Tufters (Self Administered) Pension Fund ("the Third Owner") of the fifth part and **HAYDOCK FINANCE LIMITED** (Company Registration Number 01526882) whose registered office is at Challenge House Challenge Way Blackburn BB1 5QB ("the Mortgagee") of the sixth part

WHEREAS:

1 **Definitions and Interpretation**

1.1 In this Deed the following words and phrases shall where the context so admits have the following meanings:

"Act" means The Town and Country Planning Act 1990 (as amended)

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent housing generally available on the open market

"Affordable Housing Units" means the Units to be constructed on the Development which are allocated for Affordable Housing

"Affordable Rents" means rents within the levels prescribed by the Department for Communities and Local Government or other the body from time to time which sets rent levels for Social Rented Housing Units

"Agreed Highways Works" means the widening of the footpath on Primrose Road together with works to the highway so as to provide priority to east bound traffic in accordance with the Working Arrangement Plan Reference 207709-024 attached to this Agreement

"Application" means either the application for outline planning permission for the Development registered by the Council on 20 June 2008 under Reference Number 3/2008/0526/P or any of the applications for full consent registered by the Council on 5 February 2010 under Reference Numbers 3/2010/0054 or 3/2010/0055 and **"Applications"** mean all of them

"Approved Persons" shall have the meaning ascribed to such expression in paragraph 4.8 of the Schedule

"Charges" means two several Legal Charges dated relating to the parts of the Site owned by the Company 8 May 2008 and 1 December 2009 and made between the Company (1) and the Mortgagee (2)

"Commenced and **Commencement"** shall be construed in accordance with Section 56 of the Act save that for the purposes of this Agreement the following shall be disregarded:

(a) the performance of any pre-Commencement obligations
(b) site clearance and demolition works
(c) archaeological investigations
(d) investigations for the purposes of assessing contamination
(e) other ground investigations and site survey works
(f) remediation works in respect of contamination or other adverse ground conditions

(g) the carrying out of the agreed Highway Works

(h) the diversion and laying of services

(i) the erection of temporary means of enclosure for the purposes of site security

(j) the provision of temporary accommodation for contractors

(k) the display of site notices and advertisements

"Design and Quality Standards" means standards which are in accordance with the "Design and Quality Standards" published by the Homes and Communities Agency in April 2007

"Development" means the regeneration of the Site for residential development

"Highways Contribution" means the sums to be paid to the Local Highway Authority in accordance with the provisions of paragraph 3 of the Schedule

"Local Highway Authority" means Lancashire County Council

"Market Housing Units" means the Units to be built pursuant to the Planning Permission which are not Affordable Housing Units

"Occupation" means where the context so admits the date of first physical occupation of a Unit for its intended use as evidenced by council tax records and **"Occupy"** and **"Occupied"** shall be construed accordingly provided that for the purposes of this Agreement occupation by or for the following shall be disregarded:

(a) occupation by personnel engaged in the construction fitting out or decoration of the Development

(b) occupation for the purposes of sales marketing or display associated solely with the Development

(c) occupation connected with the security to the Development

(d) use as temporary offices or for the storage of plant and materials associated with the Development

(e) provision of services to the Development by statutory undertakers

"Owners" means collectively the Company and the First Owner the Second Owner and the Third Owner

"Plan" means the attached plan Reference Number 6371/L(0)01 Rev A3

"Planning Permission" means the planning permission to be granted pursuant to the Applications substantially in the forms attached hereto or any of them

"Primrose Lodge" means such part of the area of land shown edged blue on the Plan as will be utilised for public open space recreation and nature conservation purposes

"Public Open Space Contribution" means the sum of £250,000.00 to be paid by the Company to the Council in accordance with the provisions of paragraph 2 of the Schedule

"RSL" means a Registered Social Landlord within the meaning of Part I of the Housing Act 1996 selected from the Council's panel of approved registered social landlords or such other RSL as may be approved by the Council in writing (such approval not to be unreasonably withheld or delayed) and which is recognised either by the Homes and Communities Agency or the Council for the purposes of providing Affordable Housing

"S278 Agreement" means an agreement or agreements entered into with the Local Highway Authority in connection with the Agreed Highway Works pursuant to Section 278 of the Highways Act 1980

"Site" means the freehold property situated at or adjoining Primrose Mill Woone Lane Clitheroe which is shown edged red on the Plan

"Social Housing Grant" means a Social Housing Grant within the meaning of Section 18 of the Housing Act 1996 or any equivalent grant from time to time payable to or by (as appropriate) the Homes and Communities Agency or any other relevant body or person or

[redacted]

Primrose Village - Site Location Plan

beck developments



Drawing No. : 6371/L(0)01 Rev A3

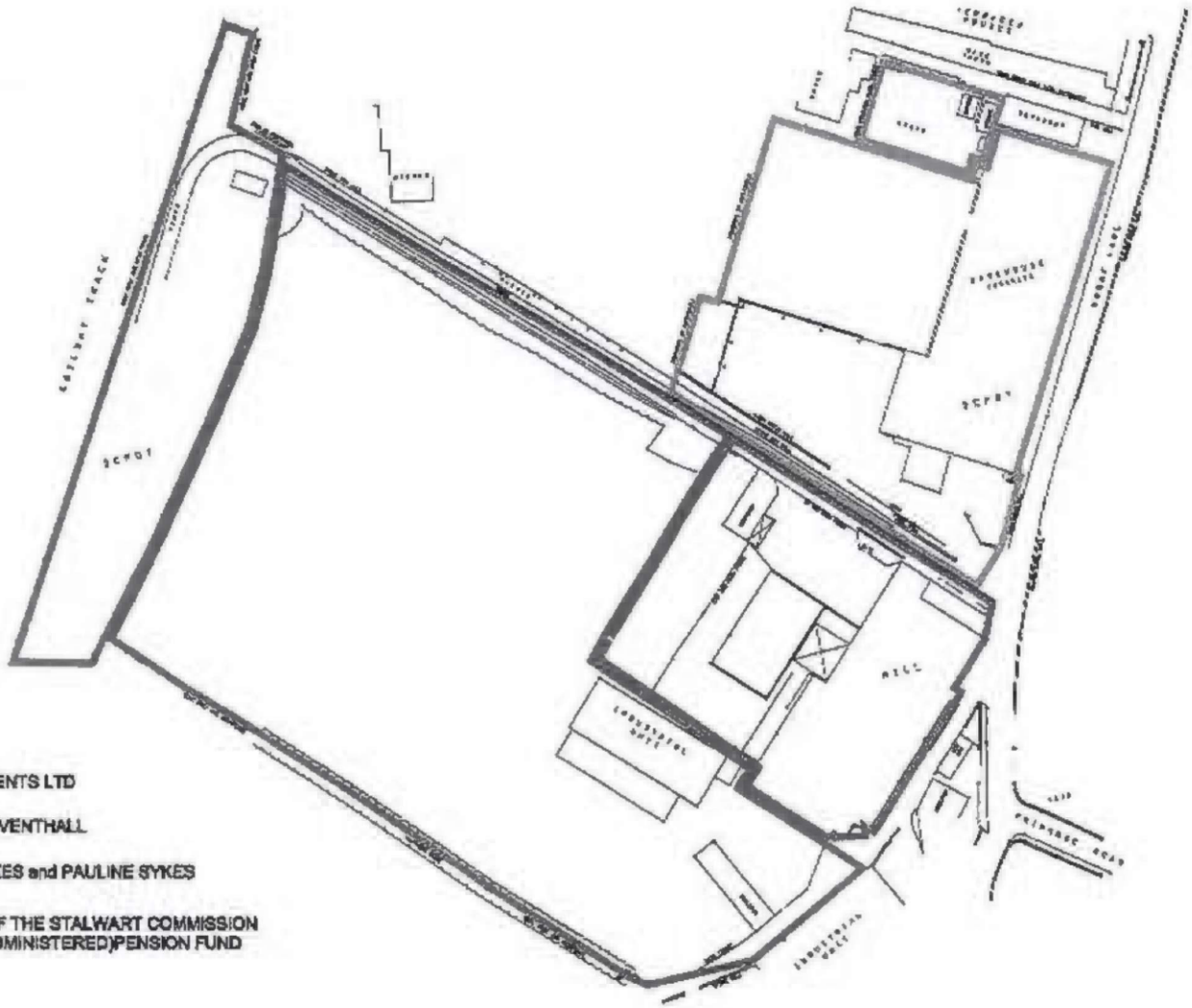
Date : May 2008

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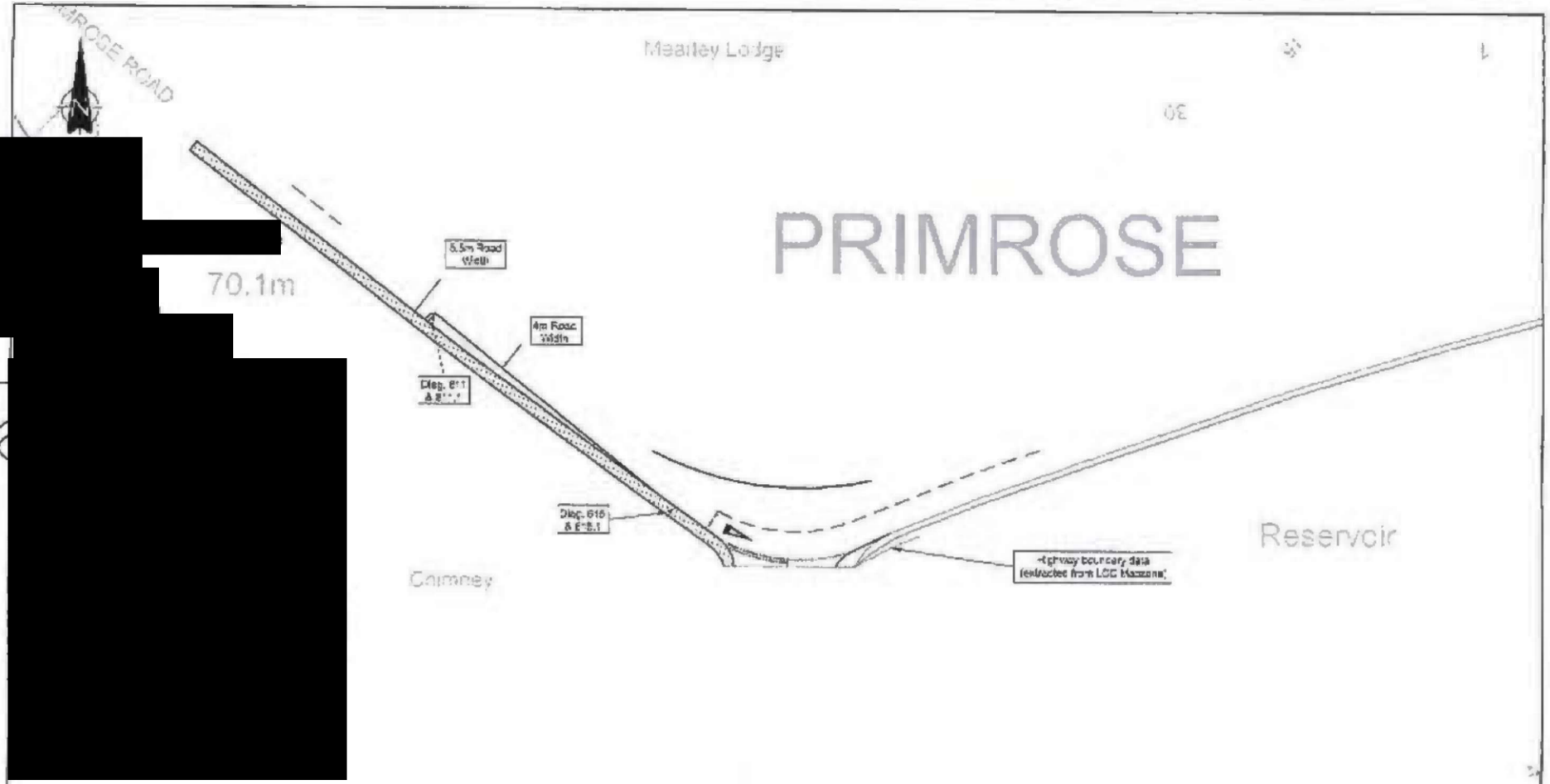
[redacted]

Land @ Primrose Mill - off Woone Lane Clitheroe Erection of 162 dwellings App no 3/2008/0526/P			
S106 Plan	1:1000 @ A3	Jan 10	PI/9346/001

Beck Developments Ltd
Challenge House, Challenge Way, Greenbank Business Park,
BLACKBURN, Lancashire. BB1 5QB
telephone 01254 685787 fax 01254 685742
www.beckhomesdevelopments.co.uk

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[redacted]

Key:

Proposed Buildout

Proposed Footway 1.5m Wide

Diag. 811

Priority over oncoming vehicles

Diag. 811.1

Diag. 815

Give way to oncoming vehicles

Diag. 815.1

Client: Beck Developments	Project: Primrose Road, Clitheroe	Title: Potential Footway Widening on Primrose Road, Priority for Eastbound Traffic	Team: J	Drawn: SH	Checked: BD	Authorised: DC	
			Scale @ A3: 1:500		Date: 24-Feb-09		

Waterman Boreham Transport Planning

Project No: 207709 | Drawing No: 024 | Rev: -

Purpose of Issue: ☑ Preliminary ☐ For Tender ☐ For Construction ☐ For Information ☐ For Approval ☐ As Built

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such other monies which may become available to subsidise the provision of the Affordable Housing Units

"Social Rented Housing Units" means the Affordable Housing Units which are available to be let to Approved Persons at Affordable Rents

"Stalwart Lodge" means the area of land shown edged green on the Plan

"Title Plan" means the attached plan Reference Number P1/9346/001

"Unit" means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

2 **Recitals**

2.1 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated

2.2 The Company is the freehold owner of that part of the Site shown edged red on the Title Plan which is as to part registered at the Land Registry under title numbers LA820688 and LA935228 and is subject to the Charge and as to the remainder more particularly described in a Conveyance dated 10 May 1967 and made between British Railways Board (1) Lancashire River Authority (2)

2.3 The First Owner is the freehold owner of that part of the Site which is shown edged green on the Title Plan which land is registered at the Land Registry as to part under title number LA817039 and as to the remainder under title number LAN97789 (together "the First Property")

2.4 The Second Owner is the freehold owner of that part of the Site which is shown edged light blue on the Title Plan and is more particularly described in a Conveyance dated 8 March

1985 and made between TGB Motors Limited (1) and W.F. Ratford and P.T. Masterton (2) the Third Owner (3) ("the Second Property")

2.5 The Third Owner is the freehold owner of that part of the Site which is shown edged dark blue on the title Plan which is registered at the Land Registry under title number LA835961 ("the Third Property")

2.6 The Mortgagee has the benefit of the Charge

2.7 The Company has made the Applications to the Council.

2.8 The Council is satisfied that the Development is such as may be approved by it under the Act but subject to the Owners and the Mortgagee entering into this Agreement with the Council under the provisions of Section 106 of the Act

3 **Interpretation**

In this Agreement

3.1 words importing one gender shall be construed as importing any other gender

3.2 words importing the singular shall be construed as importing the plural and vice versa

3.3 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa

3.4 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons

3.5 the clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation

3.6 any reference to a clause or a paragraph or a schedule is to one in this Agreement so numbered

3.7 any reference to a colour or letter is to one on the Plan

3.8 in the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it and any and every order instrument regulation direction or plan made or issued under the statute or deriving validity from it

3.9 references to any party to this Agreement shall include the successors in title to that party and to any one deriving title through or under that party and in the case of the Council the successors to its functions as local planning authority and local housing authority as appropriate

4 Operative Provisions

4.1 This Agreement is made as a Deed under the provisions of 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 once such obligations have arisen and become effective on Commencement be enforced by the Council against the Owners or any person deriving title under them

4.2 This Agreement is conditional upon the grant of the Planning Permission and the implementation of the same in whole or in part

4.3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his 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)

4.4 This Agreement shall cease to have effect if:-

4.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

4.4.2 the Planning Permission shall expire prior to the Commencement of the Development

4.5 This Agreement is a local land charge and shall be registered as such

4.6 It is not intended that any person(s) who (but for the provisions of the Contract (Rights of Third Parties) Act 1999) would not acquire any interest hereunder should do so by virtue of such Act

4.7 The Company hereby covenants with the Council to perform the obligations specified in the Schedule to this Agreement

4.8 The Council will within fourteen days of this Agreement grant the Planning Permission for the Development in the form annexed hereto

4.9 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

4.10 Any disputes between the parties as to any matter the subject of this Agreement shall be referred to an appropriate independent expert (who shall either be agreed between the parties or failing agreement appointed on the application of any of the parties by the President for the time being of the Royal Institution of Chartered Surveyors (or any person acting with his authority) and the decision of the expert shall be final and binding (save in case of manifest error) and his costs shall be borne as he shall direct

4.11 If any sum due under this Agreement shall remain unpaid after the same has become due interest shall be paid thereon from the date the sum becomes due to the date of payment at the rate 2% above the base lending rate for the time being of National Westminster Bank Plc

4.12 The Owner shall pay the Council's legal fees incurred in relation to this Agreement on the date of this Agreement in the sum of £330 (Three Hundred and Thirty Pounds)

4.13 Any notice or other communication given or made in accordance with this Agreement shall be in writing and may (in addition to any other effective mode of service) be sent by recorded delivery or registered post to the Director of Development for the time being of the Council at the address of the Council shown on the first page of this Agreement or at such other address as may from time to time have been notified to the sender as being the address for service of the relevant party for the purposes of this Agreement

5 **Mortgagee's Consent**

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Company with its consent and that the parts of the Site which are subject to the Charge shall be bound by the obligations contained in this Agreement and that the security of the Charge over the parts of the Site affected by it shall take effect subject to the provisions of this Agreement **Provided That** the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the parts of the Site in question in which case it too will be bound by the obligations as if it were a person deriving title from the Company

6 **Indemnity**

The Company has or intends to enter into agreements with the First Owner, the Second Owner and the Third Owner (collectively the "Other Owners") under which it will acquire the parts of the Site within their respective ownerships as set out in clauses 2.3 to 2.5 Inclusive and therefore it hereby irrevocably agrees and covenants to indemnify the Other Owners jointly and severally against liability costs and expenses arising from or caused by the performance of the obligations and covenants herein and against any claim loss damages and other liabilities whatsoever contained in or arising out of this Agreement

including without limitation the failure by the Company to observe and perform the obligations and restrictions imposed upon it by this Agreement.

SCHEDULE

Company's Obligation

1 **Notification of Commencement**

The Company shall give notice in writing to the Council of Commencement of the Development within seven days of the Commencement

2 **Public Open Space Contribution**

2.1 The Company has agreed to pay the Public Open Space Contribution in lieu of providing public open space on the Site but not so as to absolve the Company or successors in title from liabilities as Owner of the Public Open Space

2.2 It is the intention of the Council and the Company that so far as possible the Public Open Space Contribution be used towards the cost of future restoration remediation and regeneration of Primrose Lodge and the parties agree that they will use their respective best endeavours to agree upon a detailed scheme and management plan (**"the Management Plan"**) for the restoration of Primrose Lodge.

2.3 In the event that the parties are unable to reach agreement upon a Management Plan the Council undertakes that it will use the Public Open Space Contribution towards the provision of alternative recreation and public open space provision for the benefit of the residents of the Development within three years of the date upon which the final contribution is paid.

2.4 Payment of the Public Open Space Contribution shall be made by the following instalments:

2.4.1 £25,000.00 on the date hereof which sum shall be used to inform and finalise an investigation and option appraisal exercise into the feasibility of developing the Management Plan;

2.4.2 £75,000.00 on the earlier of the legal completion of sale of the 40th Housing Unit be it Market Housing Unit or Affordable Housing Unit or the date of agreement of the Management Plan;

2.4.3 £100,000.00 on the earlier of the legal completion of sale of the 80th Housing Unit be it Market Housing Unit or Affordable Housing Unit or commencement of works pursuant to the Management Plan; and

2.4.4 £50,000.00 on the earlier of the legal completion of sale of the 120th Housing Unit be it Market Housing Unit or Affordable Housing Unit or completion of works undertaken pursuant to the Management Plan

2.5 If by agreement between the Company and the Council the Company undertakes works which form part of the agreed Management Plan in advance of their otherwise programmed date the agreed cost of so doing will be offset against the next trigger payment(s) due from the Company under paragraph 2.4

2.6 The Public Open Space Contribution shall not be used for ongoing maintenance costs of Primrose Lodge.

2.7 If the Public Open Space Contribution is not utilised within three years of the date of the final payment the said sum or the unutilised part of the same will be repaid to the Company by the Council

3 **Highways Contribution**

3.1 The Company agrees that if and when requested to do so it will enter into a S278 Agreement in order to secure the carrying out of the Agreed Highway Works and will agree the timing thereof

3.2 The Highways Contribution shall be paid by the Company to the Local Highway Authority at the times and in the manner following:

3.2.1 the sum of £20,000.00 will be paid for footpath widening works on Primrose Road on the grant of the first planning approval granted by the Council for the development of Stalwart Lodge

3.2.2 If the Agreed Highway Works have not previously been carried out the sum of £40,000.00 to secure the carrying out of the Agreed Highway Works in respect of works to give priority to eastbound traffic will be paid on the date of legal completion of sale of the 40th Housing Unit be it Market Housing Unit or Affordable Housing Unit

3.2.3 Not to allow occupation or legal completion of the sale of the 51st Housing Unit on the Site until the Agreed Highway Works have been carried out and the Highways Contribution payment at 3.2.2 above has been paid

3.3 If the Highways Contribution is not utilised within three years of the date of payment the said sum or the unutilised part of the same will be repaid to the Company by the Local Highway Authority

4 Affordable Housing

4.1 As part of the Development the Company will provide the Affordable Housing Units which shall be provided as Social Rented Housing Units

4.2 The Company shall work with an RSL to secure sufficient Social Housing Grant to enable the Affordable Housing Units to be delivered as Social Rented Housing Units and if Social Housing Grant is obtained the Company will construct the Affordable Housing Units in accordance with the Design and Quality Standards

4.3 If Social Housing Grant or Kickstart funding of £1,550,000.00 is obtained the Company will provide or procure the provision of by its RSL partner of 25 Affordable Housing Units comprising 4 two bedroom flats 13 two bedroom houses and 8 three bedroom houses

4.4 If no Social Housing Grant or Kickstart funding is obtained within 2 years of the date of this Agreement then the Company's obligation shall be to provide 13 Affordable Housing Units comprising 3 two bedroom flats; 6 two bedroom houses and 4 three bedroom houses constructed to no less a standard than the Market Housing Units

4.5 If Social Housing Grant or Kickstart funding of a lesser amount than £1,550,000.00 is obtained the number of Affordable Housing Units to be provided shall, in default of agreement between the Council and the Company, be referred for determination to the District Valuer but shall in no event be less than 13 Affordable Housing Units

4.6.1 The Company shall dispose of the Affordable Housing Units to an RSL by way of transfer or long lease in the same form and on the same terms (except price) as it intends to dispose of the Market Housing Units

4.6.2 The Company shall procure that the RSL enters into a 100% nomination agreement with the Council containing obligations to the effect that the Social Rented Housing Units will be allocated to an Approved Person nominated by the Council in accordance with the allocations policy of the Council. Such nomination shall be made within 2 weeks of receipt of a request from the RSL.

4.6.3 Tenants of Social Rented Housing Units granted an assured tenancy will have the right to acquire their Unit

4.7 The sale of the Market Housing Units shall be restricted in the following manner so as to procure the delivery of the Affordable Housing Units on a phased basis:

4.7.1 before legal completion of the sale of the 40th Housing Unit not less than 8 Affordable Housing Units or, where clause 4.4 applies, not less than 4 Affordable Housing Units shall have been built and contracts for the sale of them shall have been exchanged with an RSL

4.7.2 before legal completion of the sale of the 80th Housing Unit not less than a further 8 Affordable Housing Units or, where clause 4.4 applies, not less than a further 4 Affordable Housing Units shall have been built and contracts for the sale of them shall have been exchanged with an RSL

4.7.3 before legal completion of the sale of the 120th Housing Unit the remaining 9 Affordable Housing Units or, where clause 4.4 applies, the remaining 5 Affordable Housing Units shall have been built and contracts for the sale of them shall have been exchanged with an RSL

4.8 For the purposes of this Agreement Approved Persons shall be:

Primary Priority – Rental Units

Households on the Council's waiting list who can demonstrate a housing need requirement for the type of Unit who are either:

(i) living in Ribble Valley;

(ii) working in Ribble Valley;

(iii) have lived in Ribble Valley for any 5 of the last 10 years having left to find suitable accommodation elsewhere and who also have close family living in Ribble Valley;

4.9 **Additional Affordable Housing**

4.9.1 The Company will submit to the Council an updated development appraisal and revised Affordable Housing proposals for review at the Company's expense on the earlier of:

(a) the date of submission of the first application for approval of reserved matters occurring more than three years after the date of the grant of the Planning Permission; or

(b) the grant of full planning permission for not less than 80 Housing Units on the Site

4.9.2 The Company will pay the Council's reasonable costs for an independent financial viability report to assess market viability

4.9.3 Any additional Affordable Housing to be provided by the Company following the review or the grant of Kickstart Housing Delivery Programme funding shall not be limited to Social Rented Housing Units but shall include any other type of Affordable Housing which the Company have built or agrees to build on the Site whether or not pursuant to the review including housing for Intermediate Rent; Shared Ownership; Low Cost Discounted for Sale or provided under the Home Buy Direct Scheme or its equivalent

4.9.4 When 25 Social Rented Housing Units have been provided on the Site the Council will then accept that other types of Affordable Housing may be provided by the Company as Additional Affordable Housing. If less than 25 Social Rented Housing Units have been delivered any Additional Affordable Housing up to a maximum of 25 Units shall be in the form of Social Rented Housing Units

4.9.5 The Company shall accept the findings of the financial viability report and in the event the report identifies that the Site can sustain additional Affordable Housing Units then the Company will deliver the additional number of Affordable Housing Units

THE COMMON SEAL of RIBBLE VALLEY)
BOROUGH COUNCIL was hereunto affixed to)
This Deed in the presence of :-)

[redacted]

Mayor

Chief Executive

1038

EXECUTED AND DELIVERED as a Deed by)
BECK DEVELOPMENTS LIMITED acting by two)
Directors

Director Name [redacted]

Director Name [redacted]

Director [redacted]

Director [redacted]

[redacted]

SIGNED AS A DEED by JOHN BARRIE SYKES)
In the presence of:-)

[redacted]

SIGNED AS A DEED by PAULINE SYKES)
In the presence of :-)

[redacted]

[redacted]

320100838P

SIGNED AS A DEED by DAVID HOWARD)
EVENTHALL in the presence of:-)

[redacted]

SIGNED AS A DEED by HELENA BALMFORTH)
In the presence of :-)

[redacted]

EXECUTED AND DELIVERED as a DEED by)
TOR PENSION TRUSTEES LIMITED acting by)
Two Directors)
Director Name.....[redacted]
Director Name.....[redacted]

[redacted]

Director [redacted]

Director [redacted]

EXECUTED AND DELIVERED as a DEED by)
HAYDOCK FINANCE LIMITED acting by two)
Directors
Director Name [redacted]
Director Name

Direc[redacted]

Directo[redacted]