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DATED

2010

**TOWN AND COUNTRY PLANNING ACT 1990**

**AGREEMENT**

**BETWEEN**

**RIBBLE VALLEY BOROUGH COUNCIL**

- and -

**[REDACTED]**

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**SECTION 106 AGREEMENT**

**relating to land off Kirklands adjoining the former Village Hall,  
at Chipping, near Clitheroe, Lancashire**

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**Cobbetts LLP**

**No 1 Whitehall Riverside**

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**ISM/999999.09995**

**DIRECTOR OF  
DEVELOPMENT**

**20 MAY 2010**

**FOR THE  
ATTENTION OF**

**THIS AGREEMENT AND DEED** is made the  
Thousand and Ten **BETWEEN**

day of

Two

- 1 **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe,  
Lancashire, BB7 2RA ("the Council ")
- 2 ~~REDACTED~~  
("the Owner")

**WHEREAS**

- 1 In this Deed the following words and expressions shall have the following meanings:

"Act"	The Town and Country Planning Act 1990 (as amended from time to time).
"Affordable Dwellings"	Four two-bedroomed flats and one one-bedroomed flat as shown edged red on the Plan
Application	The planning application number ..... submitted by Chipping Parish Council to the Council.
Development	The redevelopment of the former village hall and development of the adjoining land all edged red on the Plan to create 7 newbuild flats and 4 newbuild houses.
Interest Rate	The Law Society's Interest Rate calculated on a day-to-day basis.
Intermediate Rent	A rent between Social Rent and 80% of Open Market Rent.
Land	The Land in the freehold ownership of the Owner or which the Owner has exchanged Contracts to buy edged red on the Plan.
Mortgagee	Any mortgagee or chargee of the Owner.
Open Market Rent	The rent which could be obtained on a dwelling on the Development if the Development were not subject to the restrictions in this Agreement.

<b>Open Market Value</b>	In respect of any interest in an Affordable Dwelling shall means the value that the interest would have on the open market if the price at which it could be sold or the persons who are entitled to occupy it were not subject to the restrictions in this Agreement.
<b>Owner</b>	The Brabin's Trust c/o 4 Brickhouse Gardens, Chipping, Preston, Lancashire PR3 2QG or their successors in title the owners of the land
<b>Plan</b>	The Plan annexed hereto.
<b>Purchase Mortgagee</b>	Any person who grants a Qualifying Person a mortgage to assist that person to acquire an interest in an Affordable Dwelling.
<b>Qualifying Person</b>	<p>A person or persons who meet all of the following criteria:</p> <ul style="list-style-type: none"> <li>(I) that person's household income and capital are insufficient to allow that person to afford to rent or acquire a dwelling sufficient for their needs on the open market; and</li> <li>(II) that person's household income and capital are sufficient to allow them to afford to rent or acquire a dwelling on the Development for their needs from the Owner on a rental or Shared Equity basis; and</li> <li>(III) that the size and nature of that person's household is or will be appropriate to the size of the dwelling they will occupy;</li> </ul> <p>together with members of that person's household living with him or her in the Affordable Dwelling.</p>
<b>Shared Equity</b>	Disposal by the Owner by way of declaration of trust, shared equity or share ownership lease whereby the leaseholder can purchase a share in the Affordable Dwelling between 40% and 80% of its Open Market Value but can never acquire any additional share.
<b>Social Rent</b>	The target rent for the area as fixed by the Homes and Communities Agency or any successor body from time to time.

- 1 The Owner is the proprietor of the freehold title to the Land.
- 2 Chipping Parish Council has on submitted to the Council the Application for planning consent to the Development.
- 3 The Owner and the Council are willing to enter into this Agreement to restrict occupation of certain of the dwellings comprised in the Development.
- 4 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and is entitled to exercise the powers conferred upon it by Section 106 of the Act within its area.

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

- 1 For the purposes of this Deed references to the Owner and the Council respectively include their successors in title and assigns.
- 2 This Section 106 Agreement
  - 2.1 Is entered into pursuant to the provisions of Section 106 of the Act (as substituted by Section 12 of the Planning and Compensation Act 1991) and all other powers enabling;
  - 2.2 Creates obligations which are planning obligations for the purposes of Section 106 of the Act and which are intended to bind the Land and the Owners and all persons deriving title under them;
  - 2.3 Shall be enforceable by the Council in relation to the Obligations in the Schedule as local planning authority;
  - 2.4 Shall be registered as a Local Land Charge in the register of the Local Land Charges maintained by the Council; and
  - 2.5 Is executed by the Owner and the Council as a Deed.
- 3 The Owner hereby covenants with the Council to observe and perform the obligations and restrictions set out in the Schedule.

4 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval in itself.

5 The obligations contained in this Deed are conditional upon and shall only come into force upon the later of (i) the grant of the planning permission in the form of the draft Notices of Decision appended hereto as Appendix 1 pursuant to the Application and (ii) commencement of the Development (within the meaning of Section 56 of the Act).

6 General Provisions:

6.1 No person or party shall be liable for a breach of a covenant contained in this Deed after he or it shall have parted with all of his or its interest in the Land 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.

6.2 For the avoidance of doubt the obligations herein contained shall only become binding upon the Owner following completion of the acquisition of the Land by the Owner.

6.3 If the planning permission granted pursuant to the Application shall expire before the Development is commenced within the meaning of Section 56 of the Act or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.

6.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Deed.

6.5 Subject to Clause 6 above the Owner and the Council hereby agree and undertake for the purposes of Section 106 of the Act as aforesaid to comply with the obligations in the terms set out in the Schedules hereto.

6.6 Nothing herein contained or implied shall prejudice or affect in any way the exercise by the Council of its rights powers duties and obligations in the exercise of its functions as a local planning authority or as a local authority generally.

7 Dispute Resolution

7.1 All differences and questions which arise between the parties concerning arising out of or connected with this Agreement shall:

- 7.1.1 If such difference or question relates to the rights and liabilities of either party or to the terms or conditions to be embodied in any deed or document appertaining thereto be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society of England and Wales; and
- 7.1.2 If such difference or question relates to the value of any interest in property be referred to a chartered surveyor agreed upon by the parties but in default of the agreement appointed at the request of either party or by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors
- 7.1.3 Any such reference to a solicitor, barrister, chartered civil engineer, chartered surveyor or chartered accountant shall if the parties are agreed in writing be deemed to be a reference to an expert (and not to an arbitrator) whose decision shall be final and binding but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment, variation, substitution or re-enactment thereof.
- 7.1.4 If the parties shall fail to agree as to the nature of the difference or question then it shall be referred to a solicitor or barrister agreed upon by them but in default of agreement either of them may apply to the President of the Law Society to appoint a solicitor to decide in relation to any such matter which of the preceding sub-paragraphs is applicable thereto and the decision of such solicitor or barrister acting as an expert and not as an arbitrator shall be final and binding
- 7.1.5 If any solicitor, barrister, chartered civil engineer, chartered surveyor or chartered accountant shall act as an expert pursuant to the terms of this clause then either party shall be entitled to submit to him representations and cross-examinations which such supporting evidence as they shall respectively consider necessary and he shall deliver in writing and the reference to him shall include authority to determine in what manner all the costs of the referral shall be paid.
- 7.1.6 If the parties are unable to agree as to the appointment of such arbitrator within 30 days of one party serving notice on the other calling for the appointment of an arbitrator then such arbitrator shall be appointed on the application of either party to the President for the time being of the Law Society of England and Wales or the Institution of Civil Engineers or

the Royal Institution of Chartered Surveyors or the Institute of Chartered Accountants in England and Wales.

**8 Costs**

- 8.1 The Owner shall prior to the execution hereof pay the Council's reasonable legal costs for the approval and completion of this Agreement.

**IN WITNESS** whereof the Owner and the Council have executed these presents as a Deed the day and year first above written.

**THE SCHEDULE**

**Affordable Dwellings**

**1 Ownership of Affordable Dwellings**

The Owner shall not dispose of an Affordable Dwelling to any person who is not a Qualifying Person and no person may acquire any interest in an Affordable Dwelling unless they are a Qualifying Person.

**2 Occupation by Qualifying Person**

The Owner shall not permit the Affordable Dwellings or any of them to be occupied other than by a person who is (at the time of that person's first occupation) a Qualifying Person under the provisions of a Shared Equity lease or on an assured tenancy or on an assured shorthold tenancy paying a Social Rent or an Intermediate Rent.

**3 Local Connection**

- 3.1 The Owner will not at any time permit the occupation, allocation, possession or acquisition of any of the Affordable Dwellings other than to a Qualifying Person or persons who has a Local Connection (as hereinafter defined) with any of the Parishes of Bowland-with-Leagram, Chipping or Thornley-with-Wheatley **PROVIDED ALWAYS** that such Local Connection shall be deemed to be satisfied where at least one member of the relevant household can demonstrate a Local Connection.

3.2 In order to demonstrate the Local Connection for the purposes of paragraph 3.1 above a person must either:

- 3.2.1 Have immediately prior to such acquisition or occupation been continuously resident for 5 years in the said Parishes; or
- 3.2.2 Have previously lived in the said Parishes for 5 years out of the last 10 up to the age of 16; or
- 3.2.3 Have attended a school for full time education within the said Parishes; or
- 3.2.4 Be in continuous full time or part-time employment in the said Parishes or have accepted an unconditional offer of employment in the said Parishes; or
- 3.2.5 Demonstrate a family connection to the said Parishes and for the purposes of this sub-clause a person shall be deemed to have a family connection to a parish where that person's mother, father, son or daughter has immediately prior to such acquisition or occupation been continuously resident in the said Parish for a period of 2 years.

**PROVIDED ALWAYS** that if the Owner of an Affordable Dwelling wishes to dispose of the Affordable Dwelling but is unable within 3 weeks to find a purchaser or tenant who can demonstrate such a Local Connection with any of the said Parishes then the Owner may dispose of the Affordable Dwelling to a person who has such a Local Connection with any of the surrounding and adjoining Parishes; and

**PROVIDED FURTHER ALWAYS** that if the Owner of an Affordable Dwelling is unable within a further period of 3 weeks to find a purchaser or tenant who can demonstrate such a Local Connection with any of the said surrounding and adjoining parishes then the Owner may dispose of the Dwelling to a person who has a Local Connection with the District of Ribble Valley;

**AND PROVIDED FURTHER ALWAYS** that if the Owner of an Affordable Dwelling is unable within a further period of 3 weeks to find a purchaser or tenant who can demonstrate such a Local Connection with the District of Ribble Valley then the Owner may dispose of the Affordable Dwelling to a person who has a Local Connection with the County of Lancashire

**AND PROVIDED FURTHER ALWAYS** that if the Owner of an Affordable Dwelling is unable within a further period of 2 weeks to find a purchaser or tenant who can demonstrate such a Local Connection with the County of Lancashire then the Owner may dispose of the Affordable Dwelling to a person without a Local Connection.



#### **4 Exemptions**

It is hereby further agreed that:-

- 4.1 The provisions and restrictions contained or referred to in paragraphs 1-3 of this Schedule shall not apply to any Mortgagee or any Purchase Mortgagee of the Affordable Dwellings or any of them nor to any receiver appointed by such mortgagee or chargee to the intent that any such mortgagee chargee or receiver may deal with or dispose of the Affordable Dwellings or any of them freed from the said provisions and restrictions and on the basis that any person deriving title through or under such mortgage chargee or receiver shall not be bound by the restrictions contained in paragraphs 1-3 of this Schedule.

**APPENDIX 1**  
**The Draft Planning Permission**

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

Solicitor

**EXECUTED as a Deed by** )  
**and** )  
**as Trustees of BRABIN'S TRUST** )  
**In the presence of:** )

