

Planning obligation by deed of agreement under the Town and Country Planning Act 1990 Section 106 for use in conjunction with an application for planning permission

BETWEEN

- (1) RIBBLE VALLEY BOROUGH COUNCIL of Council Offices, Church Walk, Clitheroe,
BB7 2RA ('the Council')
- (2) [REDACTED] of [REDACTED], [REDACTED]
[REDACTED] and [REDACTED] of [REDACTED]
[REDACTED] and [REDACTED] of [REDACTED]
[REDACTED] ('the Owners')
- (3) [REDACTED] (Company Reg No [REDACTED]) of [REDACTED]
[REDACTED] ('the Mortgagee')

RECITALS

- A The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.**
- B The Owners are the freehold owner of the Site as set out in Schedule 1.**
- C The Mortgagee is the registered proprietor of a registered legal charge dated 21 September 2007 over the Site**

- D The Owner has submitted the Application to the Council and the Parties have agreed to enter into it in order to secure the planning obligations contained in it.
- E The Council resolved on the 24th May 2012 to grant the Planning Permission subject to the prior completion of this deed.

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990,
- 1.1.2 'Affordable Housing' means subsidised housing that will be available to an Approved Person,
- 1.1.3 'the Affordable Housing Land' means the land that is the part of the Site designated for the construction of the Affordable Housing Units,
- 1.1.4 'the Affordable Housing Units' means the Affordable Housing Land comprising four residential units, of which one are Rented Units, three are Shared Ownership Units, and 'an Affordable Housing Unit' shall be construed accordingly,
- 1.1.5 'the Applicant' shall mean a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household,

- 1.1.6 'the Application' means the application for outline planning permission for the Development dated the 2nd February 2010 submitted to the Council and allocated reference number 3/2010/0078,
- 1.1.7 'Approved Person' means a person who meets the Qualifying Criteria,
- 1.1.8 'Borough' means the Borough of Ribble Valley.
- 1.1.9 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly,
- 1.1.10 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect,
- 1.1.11 'the Development' means the development of the Site with 17 Dwellings pursuant to the Planning Permission,
- 1.1.12 'Discounted Sale Unit' means the sale of an Affordable Housing Unit at a discount of 40% of the Open Market Value in perpetuity,
- 1.1.13 'Dispose' means each and every means by which the right of occupation of the Affordable Housing is given or transferred to another person body or company and 'Disposal' shall be construed accordingly,
- 1.1.14 'a Dwelling' means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly,

- 1.1.15 'Financial Need' means an Applicant whose means are not reasonably sufficient to enable him/her to buy or rent a suitable property in the Locality or the Neighbouring Parish which is reasonably convenient and suitable for the Applicant,
- 1.1.16 'Financial Need Criteria' means:
- (a) that the Applicant cannot afford to rent suitable accommodation on the open market in the Locality or the Neighbouring Parish; or
 - (b) no suitable alternative affordable accommodation is available in the Locality of the Neighbouring Parish on the open market,
- 1.1.17 'Homes and Communities Agency' means the Homes and Communities Agency or its statutory successors,
- 1.1.18 'the Housing Corporation' means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors,
- 1.1.19 'Independent Valuer' means an independent chartered surveyor with not less than 10 years post-qualification experience in the valuation of land and developments for use as permitted by the Planning Permission who shall be appointed by the Owner and the Council or in default of agreement within 7 working days of either party seeking the agreement of the other, to an appointment at the request of the Owner or the Council by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors,
- 1.1.20 'the Locality' means the parish of Billington and Langho,
- 1.1.21 'the Local Housing Allowance' means the Local Housing Allowance rates for the Borough of Ribble Valley from time to time or any statutory replacement thereof,
- 1.1.22 'Living' means those currently living in the Locality, Neighbouring Parish or Borough (as applicable),
- 1.1.23 'the Market Housing Units' means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing,

- 1.1.24 'Neighbouring Parish' means the parishes which have a neighbouring common boundary with the Locality,
- 1.1.25 'Next of Kin' means mother, father, brother, sister or adult dependant children,
- 1.1.26 'Nominated Officer' means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place,
- 1.1.27 'Nomination Process' means the process of nominating an Approved Person as set out in Schedule 3,
- 1.1.28 'Notice' means a written notice from the Owner to the Council confirming that the Owner intends to market for sale Shared Ownership Units and in which the Owner invites the Council to agree the Open Market Value of the Shared Ownership Units,
- 1.1.29 'Occupation' means the use of a Market Housing Unit for residential purposes,
- 1.1.30 'Open Market Value' means the best price at which the sale of the freehold interest in the Shared Ownership Unit (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which will still subsist and are capable of taking effect) would have been completed unconditionally for cash consideration by private treaty at the date of the Notice with vacant possession on completion of the sale assuming:
- 1.1.30.1 a willing seller; and
- 1.1.30.2 that prior to the date of the Notice there had been a reasonable period (having regard to the nature of the Shared Ownership Unit and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale; and

- 1.1.30.3 that the state of the market levels of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of the Notice; and
- 1.1.30.4 that no account is taken of any additional bid by a buyer with a special interest; and
- 1.1.30.5 that both parties to the transaction had acted knowledgeably prudently and without compulsion
- 1.1.31 'the Plan' means the plan attached to this deed.
- 1.1.32 'the Planning Permission' means the planning permission issued by the Council,
- 1.1.33 'Qualifying Criteria' means priority in which an Applicant will be allocated a Rental Agreement of a Rented Unit being first in priority order:
- (a) those currently Living in the Locality for more than 10 years;
 - (b) those currently Living in the Locality and have done so continually for between 5 to 10 years;
 - (c) those currently Living in the Locality and have done so continually for a minimum of 12 months or
 - (d) those currently Working in the Locality to which they have applied for accommodation;
 - (e) those Returning to the Locality;
 - (f) those currently Living in a Neighbouring Parish for more than 10 years;
 - (g) those currently Living in a Neighbouring Parish and have done so for between 5 to 10 years;
 - (h) those currently living in a Neighbouring Parish and have done so continually for a minimum of 12 months;
 - (i) those currently Working in a Neighbouring Parish to which they have applied for accommodation;
 - (j) those Returning to the Neighbouring Parish;

- (k) those currently Living in the Borough for more than 10 years;
- (l) those currently Living in the Borough and have done so continually for between 5 to 10 years;
- (m) those currently living in the Borough and have done so continually for a minimum of 12 months;
- (n) those Working in the Borough;
- (o) those Returning to the Borough; and finally
- (p) those who are able to justify a requirement for accommodation in the Borough,

1.1.34 'the RSL' means a registered social landlord as defined in Part 1 of the Housing Act 1996, who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act, and who is approved by the Council (such approval not to be unreasonably withheld or delayed),

1.1.35 'Rental Agreement' means a letting agreement for a Rented Unit granted by the RSL on its standard terms and conditions to an Approved Person in accordance with the Nomination Process as shall be appropriate for the site and subject to a rent which is accepted as affordable for the Borough by the Homes and Communities Agency provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so),

1.1.36 'Rented Units' are Units which are available for rent only,

1.1.37 'Returning' means persons who at least one of the adult Applicants have Next of Kin who currently live in the Locality, Neighbouring Parish or Borough (as applicable),

1.1.38 'Right of Pre-Emption' is a right contained in the Shared Ownership Lease for the RSL to buy back the Shared Ownership Units,

- 1.1.39 'Shared Ownership Lease' means a lease of a Shared Ownership Unit that contains with it a Right of Pre-Emption and Shared Ownership Leases shall be construed accordingly.
- 1.1.40 'a Shared Ownership Unit' means a unit of Affordable Housing in respect of which a Shared Ownership Lease is granted by the RSL to an Approved Person and Shared Ownership Unit shall be construed accordingly.
- 1.1.41 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1.
- 1.1.42 'a Social Rented Unit' means an Affordable Housing Unit which is let subject to an assured tenancy agreement with the RSL to persons identified in accordance with the nominations requirements of any funding agreement as approved by the Council in writing, at a rent not exceeding the target rent of the Housing Corporation.
- 1.1.43 'Staircase' means the exercise by the occupier pursuant to the Shared Ownership Lease of the right to acquire a greater interest in the Shared Ownership Unit by paying a percentage of the market value to the RSL after which the rent payable on the part retained by the RSL shall be reduced proportionately.
- 1.1.44 'Units' means the Affordable Housing Units and 'a Unit' shall be construed accordingly.
- 1.1.45 'Working' means a person who is permanently employed or self employed for a minimum of 18 hours per week paid or unpaid in the Locality, Neighbouring Parish or Borough (as applicable).
- 1.1.46 'Working Days' means any day of the week excluding Saturdays, Sundays and Bank Holidays.

1.2 Interpretation

- 1.2.1** Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2** Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3** Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4** Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5** Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6** References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7** Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

- 2.1** This planning obligation is made pursuant to the 1990 Act Section 106.

- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and

- 3.1.2 the Commencement of Development

save for the provisions of clause 5, Provisions of Immediate Effect, which shall come into effect immediately upon completion of this deed.

3.2 Duration

- 3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

- 3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

- 3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

3.3 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3.4 Non-enforcement

The obligations contained in this deed shall not be binding upon or enforceable against:

- 3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services,
- 3.4.2 the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations,
- 3.4.3 any mortgagee of the RSL or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver,
- 3.4.4 any person to whom the RSL grants a lease of a Unit to, or any successor in title to any such person,
- 3.4.5 any person to whom the RSL grants a Shared Ownership Lease,
- 3.4.6 any mortgagee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver,
- 3.4.7 any person who by virtue of the terms of the lease of a Shared Ownership Unit is granted a new lease of that Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any successor in title of such person or mortgagee,

3.4.8 the owners or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit,

3.4.9 any mortgagee of a Shared Ownership Unit or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or receiver;

provided that any mortgagee shall be a full member of the Council of Mortgage Lenders, unless otherwise approved in writing by the Council on a case-by-case basis.

4 Owner's covenants

4.1 The Owner covenants with the Council as set out in Schedule 3.

5 Provisions of immediate effect

5.1 On completion of this deed the Owner shall pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £330.00.

5.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

5.3 The Owner agrees with the Council to give the Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged, the notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

6 Notices

6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the

Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

6.2 The address for any notice or other written communication shall be within the United Kingdom.

6.3 A notice or communication shall be served or given:

6.3.1 on the Council at Church Walk, Clitheroe, Lancashire BB7 2RA or such other address as shall be notified in writing to the Owner from time to time, marked for the attention the Housing Strategy Officer, and

7 Local land charge

7.1 This deed shall be registered as a local land charge by the Council, and the Council shall immediately after the date of this deed register it as such.

8 Jurisdiction and legal effect

8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

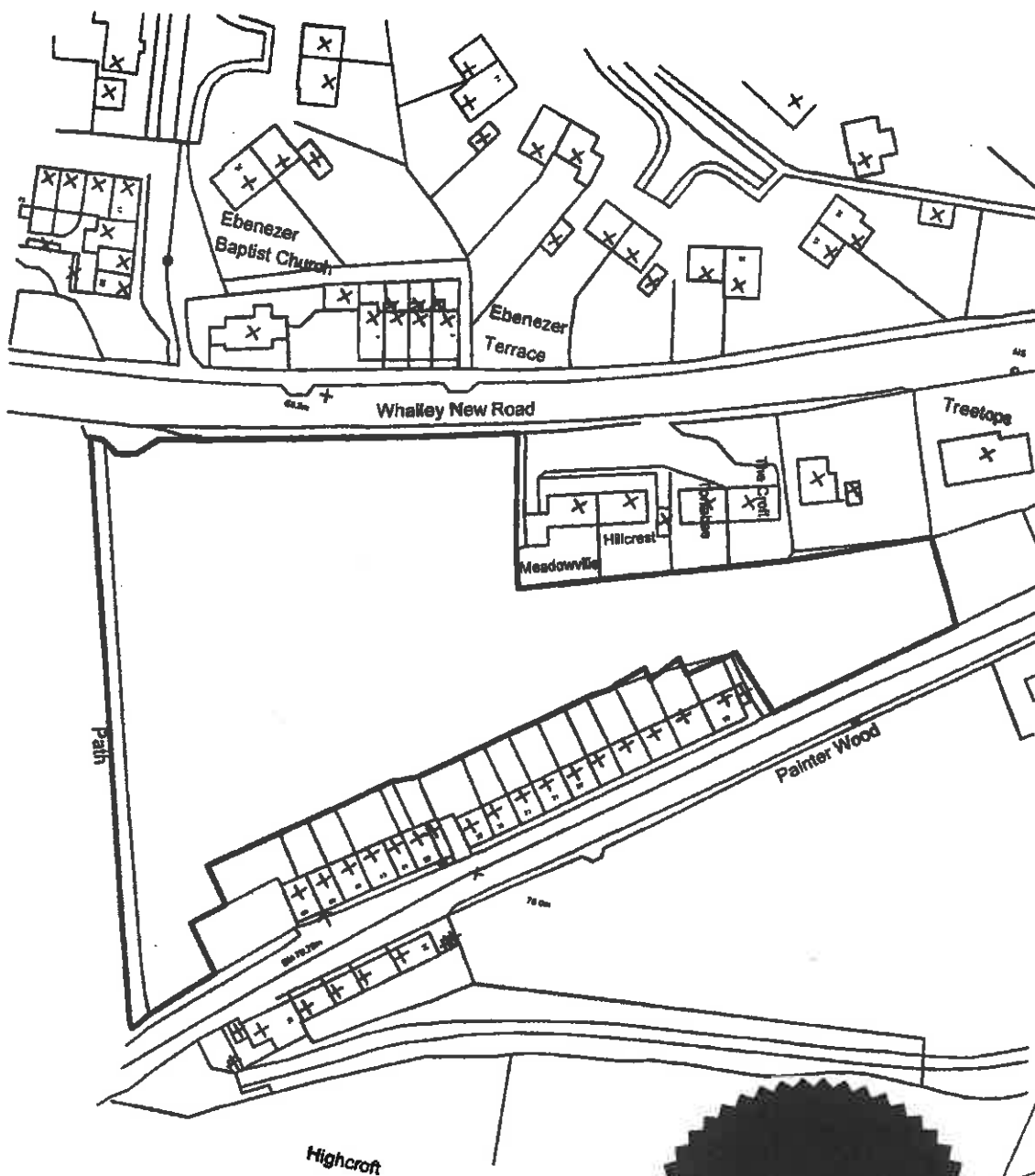
8.2 The Courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising or related to this Agreement.

8.3 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

8.4 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

- 8.5 Subject to clause 8.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 8.5 shall include the Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 8.5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.5.1 For the purposes of this clause 8.5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.5.2 Any dispute over the type of specialist appropriate to resolve the dispute may be referred to at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.5.3.
- 8.5.3 Any dispute over the identity of the Specialist is to be referred to at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange this nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 8.6 The Specialist is to act as an independent expert and:
- 8.6.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 8.6.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 8.6.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

Old Manchester Offices, Whalley New
Road, Billington, Clitheroe, BB7 9NW ~



Location Plan 1:1250



Gary Hoerty Associates

Chartered Surveyors
8 - 8 Church Street
Clitheroe
Lancashire BB7 2DG

T: 01200 442301
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Drawing No: WII/256/1172/05

Project:
Old Manchester Offices
Whalley New Road
Billington
Clitheroe
BB7 9NW

Title: Land registry compliant plan

Client: Messrs G & A Wilkinson

Drawn: AJM

Date: 21.11.12

Scale: 1:1250

Amendments:

- 8.6.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 8.6.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 8.6.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 8.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 8.8 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

IN WITNESS whereof the parties hereto have set their hands and/or seals the day and year first before written

SCHEDULE 1

The Owner's Title and Site Description

All that freehold land registered at HM Land Registry under title number LAN60176 and known as land at Old Manchester Offices, Whalley Road, Billington, Clitheroe, BB7 9NW and shown edged red on the Plan.

SCHEDULE 2

Draft Planning Permission

(where available insert details or attach a copy of the draft planning permission and any conservation area or listed building consent)

RIBBLE VALLEY BOROUGH COUNCIL

Development Department

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111

Fax: 01200 414488

Planning Fax: 01200 414487

Town and Country Planning Act 1990

OUTLINE PLANNING PERMISSION

APPLICATION NO: 3/2010/0078

DECISION DATE: DRAFT

DATE RECEIVED: 02/02/2010

APPLICANT:

AGENT:

Gary Hoerty Associates

Victoria House

34 Wellgate

Clitheroe

Lancs

BB7 2DP

PARTICULARS OF DEVELOPMENT: Planning permission is sought for the demolition of an existing commercial building and the redevelopment of the cleared site and adjoining land for residential development. The development proposed will involve the erection of 18no. dwellings together with garages and gardens. Re-submission.

AT: Old Manchester Offices Whalley New Road Billington Lancashire

Ribble Valley Borough Council hereby give notice in pursuance of provisions of the Town and Country Planning Act 1990 that outline planning permission has been granted for the carrying out of the development referred to above in accordance with the application and plans submitted subject to the following conditions:

- 1 The development must be begun no later than the expiration of three years beginning with the date of this permission.

REASON: Required to be imposed in pursuance to Section 91 of the Town and Country Planning Act 1990.

- 2 This outline planning permission shall be read in conjunction with the Section 106 Agreement dated which relates to delivery of affordable housing and any financial contributions.

REASON: For the avoidance of doubt as the permission is subject to an Agreement.

- 3 This outline permission shall relate to the proposal as shown on the amended drawing No. WIL/256/1083/01A received by the Local Planning authority on 6 May 2010.

REASON: For the avoidance of doubt and to ensure compliance with the submitted plan.

P.T.O.

**RIBBLE VALLEY BOROUGH COUNCIL
OUTLINE PLANNING PERMISSION**

APPLICATION NO: 3/2010/0078

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- 4 Prior to the commencement of development, a scheme identifying how a minimum of 10% of the energy requirements generated by the development will be achieved by renewable energy production methods shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall then be provided in accordance with the approved details prior to occupation of the development and shall be retained thereafter.

REASON: In order to encourage renewable energy and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

- 5 No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been approved by the Local Planning Authority. The scheme shall be completed in accordance with the approved plans.

REASON: To reduce the increased risk of flooding and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

- 6 Prior to the commencement of the development hereby approved in outline, (or such other date or stage in development as may be agreed in writing with the Local Planning Authority) the following components of a scheme to deal with the risks associated with contamination of this site shall each be submitted to and approved in writing by the Local Planning Authority:

(1) A preliminary risk assessment which has identified:

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors;
- potentially unacceptable risks arising from contamination at the site;

(2) A site investigation scheme based on (1) to provide information for a detailed assessment of the risks to all receptors that may be affected, including those off site.

(3) the site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation methods required and how they are to be undertaken.

(4) a verification plan providing details of the data that will be collected in order to demonstrate that the work set out in (3) are completed and identifying any requirements for longer term monitoring of pollutants linkages, maintenance and arrangements for contingency action.

REASON: To ensure that the development does not pose a risk of pollution to controlled waters and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

P.T.O.

**RIBBLE VALLEY BOROUGH COUNCIL
OUTLINE PLANNING PERMISSION**

APPLICATION NO: 3/2010/0078

DECISION DATE: DRAFT

- 7 The development hereby permitted in outline shall not be commenced until details of the landscaping of the site, including wherever possible the retention of existing trees, have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall indicate, as appropriate, the types and numbers of trees and shrubs, their distribution on site, those areas to be seeded, turfed, paved or hard landscaped, including details of any changes of level or landform and the types and details of all fencing and screening.

The approved landscaping scheme shall be implemented in the first planting season following occupation or use of the development, whether in whole or part and shall be maintained thereafter for a period of not less than 5 years to the satisfaction of the Local Planning Authority. This maintenance shall include the replacement of any tree or shrub which is removed, or dies, or is seriously damaged, or becomes seriously diseased, by a species of similar size to those originally planted.

REASON: In the interests of the amenity of the area and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

- 8 No site works, including any demolition works of buildings or boundary walls, shall be commenced until a further protected species/ecological survey has been carried out during the optimum time of May to September. The updated survey shall be submitted to the Local Planning Authority for approval in writing prior to any works commencing on site. If roosting bats are detected or suspected a further survey and mitigation methods will be required for submission to and approval in writing by the Local Planning Authority prior to the demolition of any buildings or boundary walls on site, with the works to be carried out in strict accordance with any mitigation methods identified.

REASON: To comply with Policies G1 and ENV7 of the Ribble Valley Districtwide Local Plan ensuring that no species/habitat affected by the Wildlife and Countryside Act 1981 are destroyed; and due to the passage of time since the original survey was carried out in November 2008.

Policy G1 - Development Control.

Policy G2 - Settlement Strategy.

Policy EMP11 - Loss of Employment Land.

Policy L4 of the Regional Spatial Strategy.

PPS3 - Housing.

Affordable Housing Memorandum of Understanding (AHMU).

SUMMARY OF REASONS FOR APPROVAL

The proposed development would provide 18 dwellings including an appropriate element of "affordable" housing without any seriously detrimental effects upon visual amenity, the amenities of nearby residents or highway safety.

Note(s)

- 1 For rights of appeal in respect of any condition(s)/or reason(s) attached to the consent see the attached notes.
- 2 The applicant is advised that should there be any deviation from the approved plan the Local Planning Authority must be informed. It is therefore vital that any future Building Regulation application must comply with the approved planning application.

P.T.O.

**RIBBLE VALLEY BOROUGH COUNCIL
OUTLINE PLANNING PERMISSION**

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- 3 Surface water run-off can be managed through the use of sustainable drainage systems (SUDS), and we advocate their use. SUDS are a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, ponds and wetlands that attenuate the rate and quantity of surface water run-off from a site, and contribute to a reduced risk of flooding. SUDS offer other benefits in terms of promoting groundwater recharge, water quality improvement and amenity enhancements. Approved Document Part H of the Building Regulations 2000 sets out a hierarchy for surface water disposal, which encourages a SUDS approach.

Further information on SUDS can be found in the following documents:

- Planning Policy Statement 25: Development & Flood Risk (DCLG);
- C522: Sustainable Urban Drainage Systems - Design Manual for England and Wales (CIRIA);
- Interim Code of Practice for Sustainable Drainage Systems (SUDS Working Group).

The Interim Code of Practice provides advice on design, adoption and maintenance issues and a full overview of other technical guidance on SUDS, and is available on both the Environment Agency's website (www.environment-agency.gov.uk) and CIRIA's website (www.ciria.org.uk).

We also recommend that the developer considers the following, as part of the scheme:

- Water management in the development, including, dealing with grey waters;
- Use of sustainable forms of construction including recycling of materials;
- Energy efficient buildings.

**JOHN HEAP
DIRECTOR OF COMMUNITY SERVICES**

SCHEDULE 3

The Owner's Covenants with the Council

The Owner hereby covenants and undertakes to the Council and the County Council that in the event of the Planning Permission being granted and upon commencement of Development it will comply with the following obligations:

1 Progress of development

To give written notice to the Council (via the Nominated Officer) within 15 Working Days of:

- 1.1 the Commencement of Development; and
- 1.2 the first Occupation of a Dwelling

2 Affordable Housing

- 2.1 To build the Units in accordance with the Planning Permission
 - 2.2 To use its best endeavours to Dispose of the Units to a RSL
 - 2.3 Not to Dispose of:
 - 2.3.1 more than 50% of the Market Housing Units until 100% of the Units have reached the Date of Practical Completion and have been transferred to a RSL
 - 2.4 To give notice in writing to the Council within 15 Working Days after the completion of the disposal of the Units to a RSL
- ##### **3 Obligations of an RSL upon taking an interest in the Affordable Housing**

- 3.1 Upon the Disposal of the Units the RSL shall:-
- 3.1.1 Not Dispose of any interest in the Units or any part thereof prior to the grant of a Rental Agreement or a Shared Ownership Lease save to another RSL who has been approved in writing by the Council (such consent not to be unreasonably withheld or delayed)
 - 3.1.2 Ensure that one Unit is available to rent by an Approved Person unless otherwise agreed in writing by the Council
 - 3.1.3 Not permit any occupier of a Rented Unit to acquire the freehold interest of that unit and to ensure that every Rental Agreement granted contains suitable provisions to secure compliance with this covenant
 - 3.1.4 Ensure that the rental levels to be charged in relation to each Rented Unit shall be approved by the Council and shall not exceed those accepted by the Homes and Communities Agency as being affordable for the Borough by the Homes and Communities Agency provided that the rental levels shall not exceed the Local Housing Allowance
 - 3.1.5 Ensure that three of the Units which are available to occupy are Shared Ownership Units made available to an Approved Person where each Shared Ownership Unit is occupied by someone who is part renting and part purchasing the property and where the share initially purchased by each occupier shall not be less than 30% of the interest in the Shared Ownership Unit unless otherwise agreed in writing by the Council
 - 3.1.6 Permit any occupier of a Shared Ownership Unit to Staircase to 80% by increments of no less than 10% and to ensure that every Shared Ownership Lease granted contains suitable provisions to secure compliance with this covenant
 - 3.1.7 Ensure that the annual rent on the non-purchased share of each Shared Ownership Unit shall be in line with the prevailing normal rental levels for an RSL or such other figure as shall be approved in writing by the Council
 - 3.1.8 Ensure that the Disposal by the RSL (and any subsequent owners) of the Units shall be subject to the nomination rights and qualifications set out in this Schedule
 - 3.1.9 Within 1 month of the transfer to a RSL of the Units the RSL shall invite in writing and permit the Council to nominate potential occupiers of the Rented Units as they become available. If the Council shall fail to nominate an Approved Person within

28 Working Days of the invitation from the RSL then the RSL shall be free to grant a Rental Agreement to an Approved Person provided always that the Council and the RSL shall in any event cooperate in the nomination process and the RSL shall consider sympathetically the Council's suggested nominations even if put forward after the aforesaid date

3.1.10 That the RSL shall only transfer a Shared Ownership Unit to an Approved Person

3.1.11 That the RSL shall serve notice in writing on the Council within 21 Working Days of the Disposal of a Rental Unit or a Shared Ownership Unit so that the Council is kept fully informed of tenancies and ownerships on the Site

3.1.12 If the RSL is minded to Dispose of the whole or any part of the Units to any other RSL then it shall serve written notice of its intention on the Council and shall obtain the prior written consent of the Council to any Disposal, such consent not to be unreasonably withheld or delayed

4 Obligations of the Owner if the Affordable Housing Units are not transferred to an RSL

4.1 In relation to the Market Housing Units the obligation in paragraphs 2.3 and 2.4 of this Schedule to convey the Units to a RSL shall at the Owner's discretion cease to have effect upon the expiry of a period of one year from the Date of Practical Completion of the relevant Market Housing Units PROVIDED THAT:

4.1.1 it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with a RSL; and

4.1.2 The Owner shall undertake with the Council that it will comply with the obligations in clause 3.1 of this Schedule as if they were their own so far as the same relates to the Rented Units; and

4.1.3 in relation to the Shared Ownership Units, the following shall apply:-

(a) they shall be offered for sale for to an Approved Person for a maximum of 60% of the Open Market Value as a Discounted Sale Unit;

(b) immediately upon service of the Notice the Owner and the Council shall consult together and attempt in good faith to agree the Open Market Value of the Shared Ownership Unit(s); and

(c) if the Owner and the Council have not agreed the Open Market Value within 5 working days of the service of the Notice each party shall be entitled to refer the matter for determination by the Independent Valuer who shall act as an expert (and not as an arbitrator).

5 Additional Affordable Provision

- 5.1 The transfer or letting of the Units to any RSL shall be subject to the following provisions:
- 5.1.1 a covenant providing that the Units shall only be occupied by an Approved Person meeting the Qualifying Criteria and nominated in accordance with the Nomination Process
 - 5.1.2 a Restriction on the title of the Affordable Housing Unit in favour of the Council that no disposition of the registered estate of the property (other than a charge) is to be registered at the Land Registry without a certificate signed by the solicitor or Conveyancer of the Council that the requirements of this Agreement made the **10th** day of **January** **2013** between the Council (1) the Owners (2) and the Mortgagee (3) pursuant to Section 106 of the Act have been fully complied with
- 5.2 Any Chargee or Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than [2] months' prior notice to the Council of its intention to dispose and:
- (a) in the event that the Council responds within [1] months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee or Mortgagee shall co-operate with such arrangements and use its best endeavours¹ to secure such transfer
 - (b) if the Council does not serve its response to the notice served under paragraph 5.2 (a) within the [1] months then the Chargee or Mortgagee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 3
 - (c) if the Council or any other person cannot within [2] months of the date of service of its response under paragraph 5.2 (a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 5.2 (a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 3

PROVIDED THAT at all times the rights and obligations in this Clause 5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

~~_____~~

Authorized Signatory

Signed and Delivered as a deed
in and to the presence of
me, a Notary Public for the State of
California, and in the presence of the
above named witnesses, on this 11th day of
February, 2011.

Witness Signature Bank employee

DOCUMENTS
CREDIT DOCUMENTATION
REF 1950325/MD6

3 2 0 1 0 0 0 7 8 P

DATED

2010

RIBBLE VALLEY BOROUGH COUNCIL

-and-

ORIGINAL/DUPLICATE

AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to property known as

Land at Old Manchester Offices
Whalley New Road
Billington
Clitheroe
BB7 9NW

Director of Legal Service
Ribble Valley Borough Council
CLITHEROE

9870001053

THIS AGREEMENT is made the xxxxxxxxxxxx day of xxxxx Two thousand and ten **BETWEEN RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire (hereinafter called "the Council") of the one part and ~~MANCHESTER CITY COUNCIL~~ of ~~Old Manchester~~ ~~Offices Whalley New Road~~ ~~Billington Clitheroe Lancashire~~ (hereinafter called "the Owners") of the other part

WHEREAS:-

- (1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which certain property known as Land at Old Manchester Offices Whalley New Road Billington Clitheroe Lancashire (hereinafter called "the Property") is situated and shown edged red on the plan (hereinafter called "the Plan") annexed to this Agreement.
- (2) The Owners are the owners in fee simple in possession free from incumbrances of the land
- (3) The Owners on the ***** day of ***** Two thousand and ten applied to the Council for planning permission for the erection of ⁵ ~~six~~ affordable homes (or the number identified by the viability assessment) as more fully shown as plot numbers 13 to ¹⁷ ~~48~~ in the application form together with the accompanying plans all deposited under the Council's reference *****
- (4) The Council is satisfied that the development is such as may be approved by it under the said Act of 1990 (as amended) but subject to the Owner entering into an Agreement with the Council under the provisions of Section

106 of the said Act of 1990 (as amended) and extended by Section 33 of the Local Government (Miscellaneous Provisions) Act 1982.

(5) The affordable housing units to be built on the land and mentioned in recital (3) shall be referred to in this Agreement as "the units".

NOW THIS DEED WITNESSETH as follows:-

1. **THIS** Agreement is made under the provisions of Section 106 of the said Act of 1990 as extended by Section 33 of the said Act of 1982.

2. **THIS** Agreement is conditional upon the grant of planning permission for application number ***** and the implementation of the same in whole or in part.

3. **THE** Owners hereby covenant with the Council that the relevant part of the Property shall be permanently subject to the restrictions regulating the development thereof as hereafter contained and the purpose and intent of such covenants shall be registered upon the Owner's title relating to the Property.

4. **THE** said restrictions referred to in the preceding clause are as follows:-

(1) that on completion of the affordable units or as soon as possible thereafter the Owners shall convey or rent each and every one of the units at low cost to an approved person.

(2) that the first of each and every conveyance of the units shall provide (by way of a covenant in favour of the Owners) that each and every disposal of the units shall be at low cost to an approved person in accordance with the provisions of this Agreement.

(3) (a) "low cost" in Clauses 4(1) and 4(2) hereof shall mean in respect of sale that on each and every disposal the sale price of the units shall be 40 per cent below the open market value at the time of completion of construction of the units in the first instance and at the time of sale in other cases and details of the open market value and the proposed sale price shall be submitted to the Council for approval prior to any sale taking place and such approval shall not be unreasonably withheld or delayed.

(b) where any house is to be let the rent to be charged shall be the Local Housing Allowance applicable for East Lancashire area as set by the Department of Works and Pensions at the time of allocation of the tenancy this rent to be approved in writing by the Council

(4) "open market value" in Clause 4(3)(a) hereof shall mean the best price at which the interest in the unit might reasonably be expected to be sold by Private Treaty at the date of valuation assuming a willing seller and a reasonable period within which to negotiate the sale and shall be established in accordance with Clause 4(7).

(5) "approved person" in Clauses 4(1) and 4(2) hereof shall mean those persons being:-

(a) first time buyers currently resident in the parish of Billington or an adjacent parish.

- (b) people aged over 55 and resident in the parish of Billington or an adjoining parish.
- (c) those employed within a five mile radius of Billington but living more than five miles from their place of employment.
- (d) those who have lived in Billington for any five of the last ten years having left to find suitable accommodation elsewhere and also with close family living in the village.
- (e) those who are about to take up employment within a five mile radius of Billington.
- (f) those over the age of 55 moving to Billington to be cared for supported and/or near to family and/or relatives.
- (g) other special circumstances in addition to those outlined above may exist and these will be considered on their merits in conjunction with Ribble Valley Borough Council's Housing Manager and details of the proposed occupier shall be submitted to the Council for approval whenever the occupier is to change and such approval not to be unreasonably withheld or delayed **PROVIDED THAT**
- (h) in the event that the Council shall fail to give a decision in response to an application for approval of a person within fifteen working days from the receipt by the Council of the application for approval then such application shall be deemed to be approved and the person the subject of that application is deemed to be an approved person.

(i) In the event that in respect of each and every disposal three independent persons making application to the Council for approved person status and the Council has refused to give approved person status to any and each of those applicants or the Owners have not found a person with approved person status within six months of the first effort to find such person and the Owners or any subsequent owner of a unit shall have used all reasonable efforts to produce to the Council for approval a person then the Owners or any subsequent owner of a unit shall be entitled on giving fifteen working days notice to the Council to convey the same to any person (not being an approved person) but subject to such unit being disposed of at low cost.

(6) "disposal" in Clause 4 (2) 4(3) 4(5) hereof shall mean a sale of a unit at the discretion of the Owners or subsequent owner and includes any subsequent resale.

(7) where any dispute or difference arises with regard to the construction and evaluation of "open market value" in connection with this Agreement then such dispute or difference shall be and is hereby referred to an independent expert for the final decision such expert to be agreed between the parties in dispute and failing agreement within fourteen days after either party has given to the other a written request to concur in the appointment of an expert a person to be appointed on the request of either party by the President for the

time being of the Royal Institution of Chartered Surveyors whose award shall be final and binding.

(8) 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 Housing Manager 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.

(9) to supply to the Council (within two weeks of the Council's written request to do so) such information as the Council may reasonably require in order to determine whether the Owners covenants are being observed.

5. **THE** Owners further agree that no compensation shall be payable by the Council as a result of the covenants contained in this Agreement.

6. **THE** expressions "the Council" and "the Owners" shall include their respective successors in title and assigns **PROVIDED THAT** no such person (including the parties hereto) shall be liable for any breaches occurring after they have disposed of their interest in the Property or the relevant part or parts thereof.

7. **THE** Council will within fourteen days of this Agreement grant the planning consent for the development referred to in the form annexed hereto.

IN WITNESS whereof the Council have hereunto caused its Common Seal to be hereunto affixed and the Owners have signed as a Deed the day and year first before written.