

DATED

26th August

2011

[REDACTED]
- and -

[REDACTED]
- and -

[REDACTED]
- and -

RIBBLE VALLEY BOROUGH COUNCIL

**SECTION 106 PLANNING AGREEMENT
TOWN AND COUNTRY PLANNING ACT 1990**

RELATING TO LAND KNOWN AS
FORMER BARKERS GARDEN CENTRE, WHALLEY ROAD, CLITHEROE

THIS AGREEMENT is made the 26th day of August 2011

BETWEEN

1. [REDACTED] of
[REDACTED] (hereinafter called "the
Company")

and

2. [REDACTED]
[REDACTED] of [REDACTED] (hereinafter
called "the Owner")

and

3. [REDACTED] and [REDACTED] of [REDACTED]
[REDACTED] (hereinafter called "the
Mortgagee")

and

4. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk
Clitheroe Lancashire BB7 2RA (hereinafter called "the Council")

WHEREAS

- (1) The Owner is the freehold owner of land at the Former Barkers Garden Centre, Whalley Road, Clitheroe the title of which land is registered at HM Land Registry under number LA720134 and shown edged red on Plan attached hereto ("the Property")
- (2) The Property is subject to a Legal Charge dated the 4th day of June Two thousand and Three made between the Owner and the Mortgagee
- (3) 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 the Property is situated and by whom the obligations contain in this Agreement are enforceable

(4) The Company on the twenty fifth day of June Two thousand and ten applied to the Council for outline planning permission for a mixed use development comprising 30 apartments, 2 houses and a 40 bed nursing home on the Property as detailed in the plans and particulars deposited with Council under reference 3/2010/0550

(5) The Council is satisfied that the development is such as may be approved by it under the Act of 1990 (as amended) but subject to the Owner entering into this Planning Obligation Agreement in accordance with Section 106 of the Town and Country Planning Act 1990 ("the 1990 Act")

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires:

Affordable Housing

"Affordable Housing" means housing that is affordable to local persons who cannot afford to purchase accommodation generally available on the open market on readily available terms who have need of local housing

Affordable Housing Scheme

"Affordable Housing Scheme" means a scheme submitted pursuant to Schedule 1 of this Agreement for the provision of Affordable Housing which secures the provision of Affordable Housing either by discounted sale or through a Registered Provider in accordance with the provisions of Schedule 1 such scheme to identify:

- (a) by reference to a plan the location and layout of the Affordable Housing
- (b) the mix of each of the Affordable Housing Units (rounded down to the nearest whole number) providing the type of Affordable Housing Units having regard to local need and to the types of Units to be provided as part of the Market Dwelling

- (c) the forecast date for commencement and completion of each phase of the housing element of the development
- (d) whether Social Housing Grant from the Homes & Communities Agency or any other source of financial assistance has been obtained towards to the cost of providing Affordable Housing as part of the Development

Affordable Housing Unit

"Affordable Housing Unit" means each unit of Affordable Housing to be constructed on the property pursuant to the Planning Permission

Application

"Application" means the application for Planning Permission submitted to the Council reference number 3/2010/0550 for mixed residential and nursing home use together with associated amenities on the Property

Development

"Development" means such development as may be authorised by the Planning Permission

Dispose

"Dispose" means in relation to the transfer of an interest in property the transfer of a freehold interest or of a Leasehold interest of 99 years or more

Highway Contribution

"Highway Contribution" means the payment by the Owner to the Council the sum of £22,000 (twenty two thousand pounds) for the replacement and/or upgrading of two bus stops adjacent to the Property

Implementation

"Implementation" means the carrying out of any of the material operations listed in Section 56 of the 1990 Act pursuant to the Planning Permission provided that for the purposes of determining whether or not the material operation has been carried out there shall be disregarded property surveys and investigations and tests (including drilling bore holes, digging trial pits and taking soil samples)

environmental assessments and similar studies (including geological, archaeological and ecological surveys and landscape assessments). Site investigations preparatory works including ground, modelling and contamination remediation works and "implement" and "implemented" shall be construed accordingly

Low Cost Market Units

"Low Cost Market Units" means the Affordable Units that are built by the Owner or the Company and sold to the Council's Approved Purchasers at a 35% discount to the Open Market Value and subject to a restrictive covenant placed upon the title of such Units to ensure that they are available to subsequent occupiers on the same basis at a 35% discount to Open Market Value.

Market Dwellings

"Market Dwellings" means Residential Units excluding any Affordable Housing Units

Occupation

"Occupation" shall have the same meaning as defined in the Local Government Finance Act 1988 but for the avoidance of doubt shall not include occupation for the purposes of works carried out prior to or during construction, fitting out, commissioning, advertising, marketing, security or management of land for parking

Open Market Value

"Open Market Value" means the market value of the relevant Affordable Unit assessed in accordance with the Appraisal and Valuation Manual of the Royal Institution of Chartered Surveyors (the Red Book) current for the time being

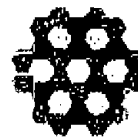
Plan

"Plan " means the Property location plan annexed hereto

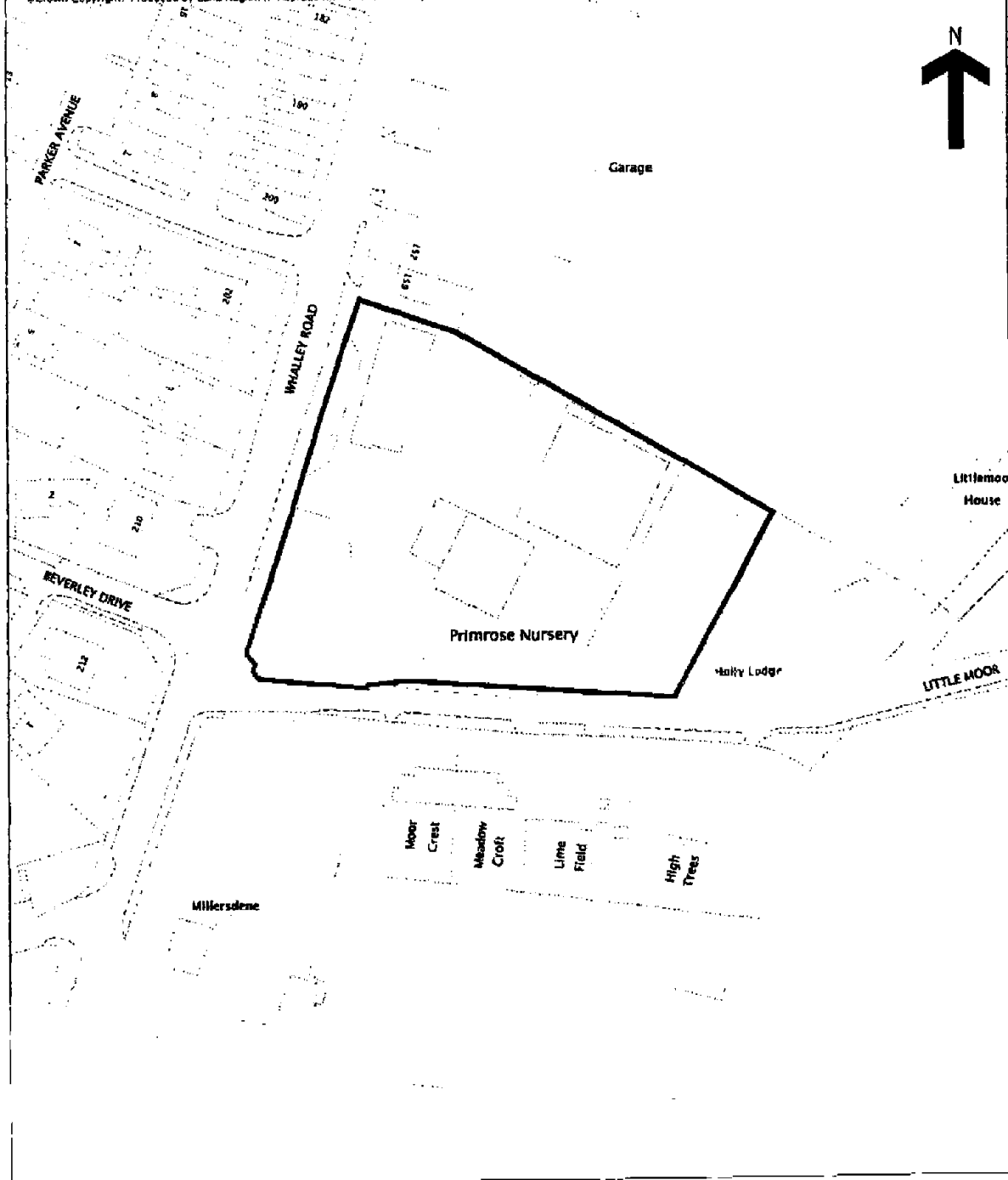
Planning Permission

Land Registry
Current title plan

Title number LA720134
Ordnance Survey map reference SD7440NW
Scale 1:1250
Administrative area LANCASHIRE : RIBBLE
VALLEY



© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026318.



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 01 March 2011 at 11:53:52. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

This title is dealt with by Land Registry, Fylde Office.

"Planning Permission" means the Planning Permission granted pursuant to the Application

Registered Provider

"Registered Provider" means a Registered Provider within the meaning of the Housing and Regeneration Act 2008

Residential Unit

"Residential Unit" means any unit including house, apartment or maisonette to be constructed on the Property pursuant to the Planning Permission primarily for the purpose of residential occupation

Shared Ownership

"Shared Ownership" means a method of acquiring part ownership of an Affordable Unit by purchasing a share of the freehold or long leasehold then paying rent on the non-purchased share to a Registered Provider where occupiers can purchase additional shares

Scheme Development Standard

"Scheme Development Standard" means the essential requirements of the Homes and Communities Agency for quality of housing, probity and procurement and procedural compliance current at the date of the contract with the Registered Provider for the disposal of the Affordable Housing Units (or the equivalent replacement of such standards)

Social Housing Grant

"Social Housing Grant" means sources of grant or other funding as defined in Part 1, Section 1 of the Housing Act 1988 and Section 18 of the Housing Act 1985 or any other similar sources from time to time of grant of funding

Interpretation

- 1.2 The headings in this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever
- 1.3 Unless the context requires otherwise reference to this Agreement to a clause schedule or paragraph are references respectively to a clause schedule of paragraph of this Agreement
- 1.4 Where any part to this Agreement comprises two or more persons any obligation on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of these persons and references to that party shall include reference to each or any of those persons
- 1.5 A reference to any statute or statutory section shall be taken to include a reference to any statutory, amendment, modification or re-enactment of it for the time being in force
- 1.6 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

2 Enforceability

- 2.1 This Agreement is a Planning Obligation with the intent to bind the Property and the Owner and Successors in Title to observe and perform the covenants herein
- 2.2 The obligations of this Agreement shall take effect on the implementation of the development pursuant to the Planning Permission
- 2.3 No persons shall be liable for a breach of covenant contained in this Agreement after he shall have parted with his interest in the Property or the part in respect of which such a breach occurs but without prejudice to liability for any existing breach of covenant prior to parting with such interest

2.4 A person who is not a party to this Agreement shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement

3 Expiry Modification Variation or Amendments of Planning Permission

3.1 If the Planning Permission shall expire before implementation of Development or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect

3.2 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement and this Agreement shall not apply to development carried out under any planning permission other than the Planning Permission

4 Registration

This Agreement is a Local Land Charge and shall be registered as such by the Council on the Local Land Charges Register

5 Service of Notices

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered delivery post to the party to be delivered to the address herein specified or to such other address as may from time to time be notified for the purposes of notice in writing

6 Reasonableness

Where any agreement, certificate, consent, permission expression of satisfaction or other approval is to be given by any party or any person

on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed

7 Covenants

7.1 The Owner hereby covenants to perform the obligations as specified in Schedule 1

7.2 The Council hereby covenants to perform the obligations as specified in Schedule 2

8 Miscellaneous

8.1 Nothing in this Agreement is intended to restrict the exercise by the Council of any of its powers

8.2 If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

8.3 This Agreement is a Deed and is enforceable by the Council

8.4 The Council will upon written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof

8.5 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in anyway arising out or connected with this Agreement shall except as otherwise expressly provided be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the

Arbitration Act 1996 or any statutory modification or enactment for the time being in force

- 8.6 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 £330.00 (Three Hundred and Thirty pounds)

SCHEDULE 1

The Owner covenants with the Council as follows:

1. **Affordable Housing**
 - 1.1 To submit an Affordable Housing Scheme to the Council which provides for nine Affordable Housing Units which shall be delivered as either Shared Ownership Units (which shall be the preferred tenure of the Council) or in the event that Social Housing Grant is not obtained Low Cost Market Units as shown hatched black on the Plan; or for an alternative mix of Affordable Housing Units to be agreed with the Council
 - 1.2.1 To provide the Council or its agents with such information concerning negotiation between the Owner and a Registered Provider in respect of the Affordable Housing proposed to be transferred to a Registered Provider as the Council or its agents may reasonably request
 - 1.2.2 To dispose of the Affordable Units (unless they are Low Cost Market Units) to a Registered Provider approved by the Council (such approval not to be unreasonably withheld or delayed) on or before completion of the construction of the Affordable Units and to notify the Council in writing accordingly.
- 1.3 Notwithstanding the grant of the Planning Permission not to allow the use of any Affordable Housing Unit as a dwelling (other than as a show house or similar or a sales office) other than by a person and his household determined as both being in need of affordable housing at the time of determination because of financial circumstances of the person

and their household and being a person who has met the criteria for Affordable Housing as agreed with the Council

- 1.4 To construct the Affordable Housing in accordance with the approved Affordable Housing Scheme and the Scheme Development Standards (if applicable) and to provide satisfactory evidence of the same to the Council
- 1.5 That not more than 50% of the Market Dwellings shall be occupied (unless otherwise agreed in writing by the Council) until the Affordable Units have been built ready for immediate occupation and are capable of being transferred
- 1.6 That from the date on which the Council approved the Affordable Housing Scheme that the land upon which the Affordable Housing is to be provided shall not be used for any other purpose other than Affordable Housing
- 1.7 **Low Cost Market Units**
 - 1.7.1 that the Low Cost Market Units are offered for sale at a discount of 35% (thirty five per cent) to the Open Market Value in accordance with the provisions set out herein
 - 1.7.2 that where a Low Cost Market Unit has been bona fide marketed at a discount market price for a period of 3 months and no person who has a Local Connection within the meaning of clauses 1.9.2 and 1.9.3 has offered in writing to purchase that Low Cost Market Unit then the unit may be made available for sale to purchasers outside the definition of Approved Persons but still at a discount market price. The Owner shall provide to the Council evidence of marketing in the form of Estate Agent Particulars
 - 1.7.3 that the Low Cost Market Units are to be sold on the basis that they remain affordable at the initial discount rate in perpetuity, the price at which the property is marketed and sold being subject to approval by the

Council. Such discount is to be applied to any improvements made by the Vendor during their period of ownership. The Vendor is to obtain an independent valuation at their own expense to form the basis for the figure to be approved. The vendor will have the option of arbitration if the figure is not approved by the Council

1.8 Shared Ownership Affordable Housing Units

1.8.1 that following transfer of the Affordable Housing Units (for Shared Ownership) or as soon as possible thereafter the Registered Provider shall dispose of the Affordable Units intended for Shared Ownership

(a) at Open Market Value on a Shared Ownership Lease with the rental element being discounted by the Registered Provider

(b) to an Approved person who shall purchase the Affordable Housing Unit for occupation by the Approved person and in accordance with the requirements of this Agreement

(c) in consultation with the Council and having first obtained the Council's consent to the Disposal to the Approved person

(d) that the Shared Ownership Lease shall contain a covenant in favour of the Registered Provider that upon a sale where 100% of the shares in the Unit has been achieved the Registered Provider shall have first option to repurchase the Affordable Housing Unit

1.8.2 the Approved person shall be required to purchase a minimum share of the Affordable Housing Unit which share shall be as follows:

2 bedroom apartments - minimum 50%

1.8.3 the approved person shall be allowed to purchase additional shares in increments of not less than 10% up to a maximum of 100% provided that at the point of purchase of each additional share they continue to occupy the Affordable Unit in compliance with the requirements of this Agreement

1.9 That each and every Affordable Housing Unit shall not be occupied or purchased by any person except an Approved Person (subject to the

provisions of clause 1.7.2) who shall be approved in writing by the Council

1.9.1 Approved Persons for the purposes of the Affordable Housing Scheme and in order of priority are detailed below:

1.9.2 First time buyers who can demonstrate a housing need requirement for the property type they are purchasing where none of the family own or have ever owned a property (whether residential or otherwise) and who were either in order of priority

- currently living in the Borough of Ribble Valley for more than 10 years or
- currently living in the Borough of Ribble Valley and have done so continually for between 5 to 10 years or
- currently living in the Borough of Ribble Valley and have done so continually for a minimum of 12 months or
- currently permanently employed in the Borough of Ribble Valley for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or
- Persons who at least one of the adult applicants have next of kin who have lived in the Borough of Ribble Valley continually for a minimum of five years. Next of Kin for the purposes of this clause shall be defined as mother, father, brother, sister or adult dependant children
- Persons who are former residents of the Borough of Ribble Valley who have moved from the Borough of Ribble Valley because of a lack of affordable housing in the Borough

1.9.3 Secondly people who are not first time buyers who can meet one or other of the local connections detailed in 1.9.2 above and can demonstrate a housing needs requirement for the property type they are purchasing

1.9.4 Eligibility criteria: financial

The Owner (or Registered Provider if applicable) will ensure purchasers of all Affordable Housing Units demonstrate that they have:

- sufficient income to purchase the property but that they could not afford to purchase on the open market
- a satisfactory credit history
- sufficient funds to cover the legal costs involved in purchase

1.9.5 Eligibility criteria: income

The Owner (or Registered Provider if applicable) will ensure that the Affordable Housing Units are allocated to those who meet the requirements of this Agreement and will

- impose upper income brackets for purchasers of each Affordable Housing Unit type
- ensure income levels are verified via wage slips/P60s
- ensure local connection is established by reference to the electoral roll at a specific date in time. The onus will be on the approved person to provide proof of residence eg utility bills if they are not on the electoral roll

1.9.6 Eligibility criteria: local connection

- verify local connection based on employment by way of references/confirmation of employment history confirmation of permanence of employment will be required from employer
- verify five out of last ten years connection by placing the onus on the approved person to provide suitable supporting evidence eg council tax records, electoral roll records

2. Chargee Provisions

Any Chargee exercising a power of sale as mortgagee in possession or otherwise 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 two months prior notice to the Council of its intention to dispose and;

(a) in the event that the Council responds within two 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 shall co-operate with such arrangements and use its best endeavours to secure such transfer;

(b) if the Council does not serve its response to the notice served under clause 2(a) within the two months then the Chargee shall be entitled to dispose free of the restriction that the disposal shall be to an Approved Person only;

(c) if the Council or any other person cannot within two months of the date of service of its response under clause 2 (a) secure such transfer then provided that the Chargee shall have complied with its obligations under clause 2(a) the Chargee shall be entitled to dispose to a person who does not meet the criteria of Approved Person as set out in this Agreement

PROVIDED THAT at all times the rights and obligations in this clause 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

3. The Owner covenants with the Council not to allow occupation of the Affordable Housing Units by any persons other than in accordance with this Agreement.

4. Highway Contribution

4.1. The Owner shall pay to the Council the Highway Contribution in the sum of £22,000 (twenty two thousand pounds) for the purposes of bus stop improvements which shall include the replacement and/or upgrading of two bus stops adjacent to the Property

4.2. Not to occupy or allow occupation of more than 50% of the Market Dwellings until the Highway Contribution at 4.1 has been paid to the Council

5. Notification of Commencement of Implementation of the Planning Consent

5.1 The Owner shall give notice in writing to the Council of Commencement of the Implementation of the Planning Consent within seven days of the Commencement date

6. Application for Social Housing Grant

6.1 The Registered Provider shall make application to the Homes & Communities Agency for Social Housing Grant and in the event that the bid for grant is unsuccessful and no grant is approved the Affordable Housing Units shall be delivered as Low Cost Market Units at 35% discount from Open Market Value

SCHEDULE 2

1. The Council covenants with the Owner as follows:

1.1. To grant the Planning Permission not more than 14 days from the date of completion of this Agreement

1.2 Not to use the Highway Contribution for any purpose other than the replacement and/or upgrading of two bus stops adjacent to the Property and that in the event that the Highway Contribution is not used within 2 years of the date of payment thereof the Owner shall be entitled to

reimbursement of any part of the Highway Contribution sum remaining unspent.

- 1.3 When requested in writing the Council shall provide written confirmation of compliance with the obligations contained in this Agreement when satisfied that such obligations have been performed

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written

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

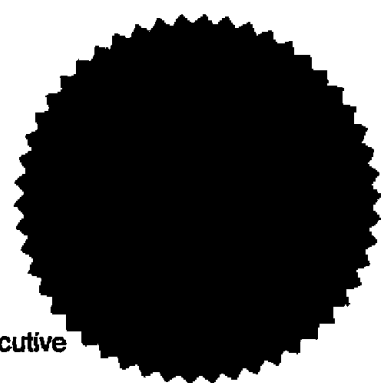
)

)

)

Mayor

Chief Executive



EXECUTED AND DELIVERED AS A DEED

)

BY [REDACTED] acting by two

)

Directors or one Director and The Company

)

Secretary

)

Director

Director/Secretary

EXECUTED AND DELIVERED AS A DEED

BY  acting by
two Directors or one Director and The Company
Secretary

)

)

)

)

Director

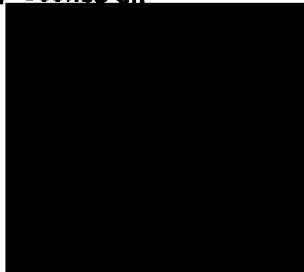
Director/Secretary

SIGNED AS A DEED by 

)

in the presence of:

)



SIGNED AS A DEED by 

)

in the presence of:

)

