

DATED

22nd October

2010

RIBBLE VALLEY BOROUGH COUNCIL

- and -

BECK DEVELOPMENTS LIMITED

- and -

THE TRUSTEES OF THE STALWART COMMISSION
TUFTERS (SELF ADMINISTERED) PENSION FUND

- and -

HAYDOCK FINANCE LIMITED

-and-

CONTOUR HOMES LIMITED

SUPPLEMENTAL AGREEMENT

Made pursuant to Section 106 Town and Country Planning Act 1990

relating to property known as

Land at Primrose Mill, Woone Lane, Clitheroe

DIANE RICE

Legal Services Manager
Ribble Valley Borough Council
CLITHEROE

THIS SUPPLEMENTAL AGREEMENT is made as a Deed the 22nd day of October

Two thousand and ten **BETWEEN**

- 1) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (hereinafter called "the Council") and
- 2) **BECK DEVELOPMENTS LIMITED** (Company Registration No.3183243) whose registered office is at Challenge House Challenge Way Blackburn BB1 5QB (hereinafter called "the Company") and
- 3) **HELENA BALMFORTH** of Windmill Cottage Honey Lane Rowhook West Sussex RH12 3QA and **TOR PENSION TRUSTEES LIMITED** (Company Reg No. 5026390) whose registered office is at The Old Coach House Dunsford Farm Royden Lane Boldre Hampshire SO41 8PE the Trustees of the Stalwart Commission Tufters (Self Administered) Pension Fund (hereinafter called "the Trustees ") and
- 4) **HAYDOCK FINANCE LIMITED** (Company Reg No 01526882) whose registered office is at Challenge House Challenge Way Blackburn BB1 5QB (hereinafter called "the Mortgagee") and
- 5) **CONTOUR HOMES LIMITED** (a charitable Industrial and Provident Society No. IP23607R) whose registered office is at Quay Plaza 2, 1st Floor- Lowry Mall, Salford Quays, Salford, Manchester, M50 3AH (hereinafter called "the Association")

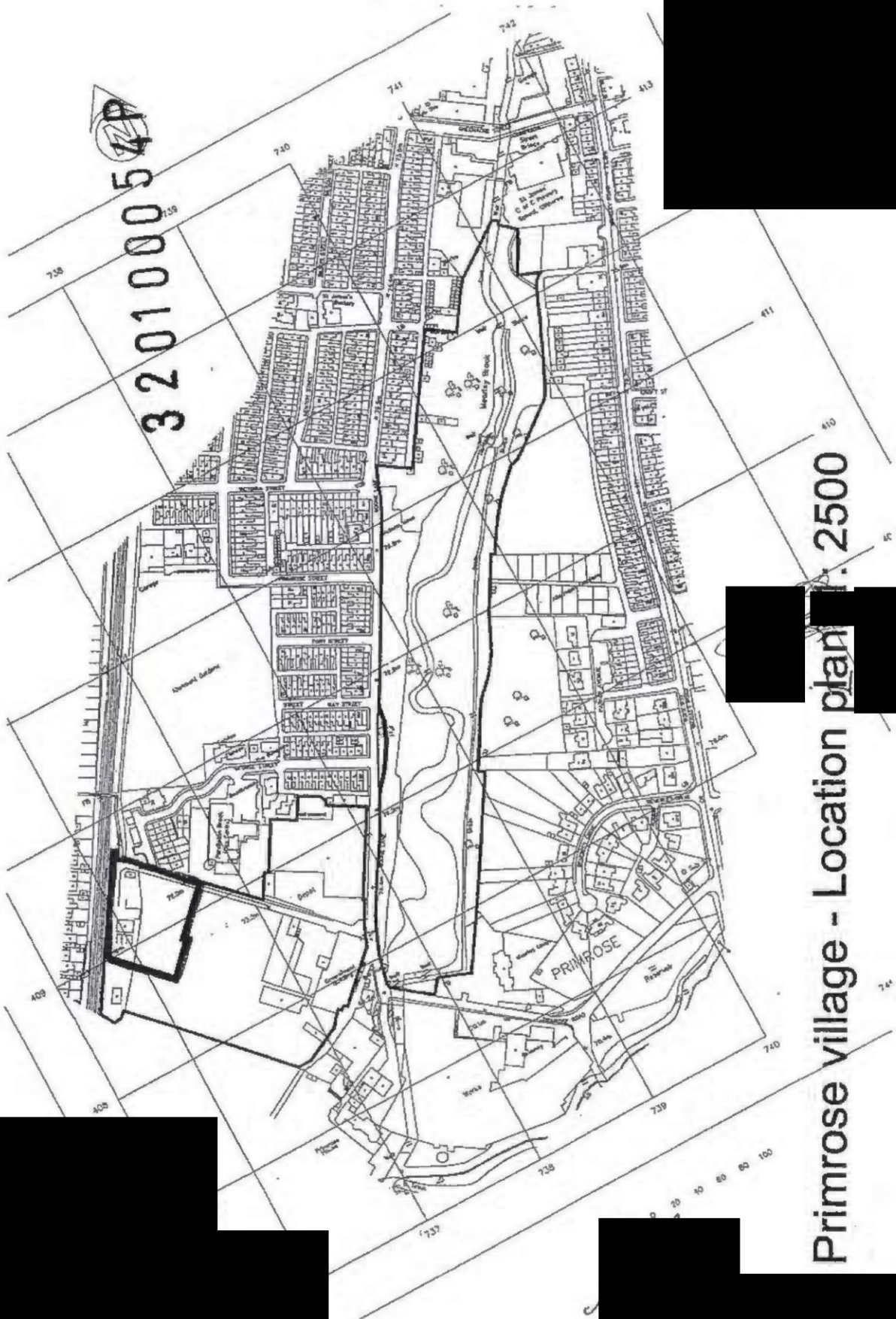
WHEREAS:-

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area within which certain land and property known as Land at Primrose Mill Woone Lane Clitheroe Lancashire (hereinafter called "the Property") shown edged red on the plan attached hereto (" the Plan") is situated_____
- (B) The Company is seized in fee simple absolute in possession of the Property which is registered at HM Land Registry with Absolute Title under Title Number LAN99434 and Title Number LA835961 respectively_____
- (C) The Property within Title Number LAN99434 is subject to a Legal Charge dated the

1st day of December 2009 made between the Company of the one part and the Mortgagee of the other part_____

- (D) The Property within Title Number LA835961 excluding the part thereof forming part of The Affordable Housing Land is subject to a Legal Charge dated the 8th day of October 2010 made between the Company of the one part and the Trustees of the other part
- (E) On the twenty fourth day of March 2010 the Company, the Trustees and the Mortgagee entered into a Section 106 Agreement with the Council ("the Section 106 Agreement") together with other parties who are not owners of the Property the subject of this Supplemental Agreement_____
- (F) The Council granted Planning Permission by a Decision Notice dated the Twenty Fourth day of March 2010 for permission to develop the Property and other land as detailed in the plans and particulars deposited with the Council under reference 3/2010/0054/P and subject to the Section 106 Agreement_____
- (G) The Company and the Association applied to the Homes and Communities Agency ("the HCA") for grant funding to carry out the development of the Property. The HCA have approved the grant Funding in the sum of one million one hundred and twenty thousand pounds (£1,120,000) for development of the Affordable Housing Units (as hereinafter defined) ("the Grant Funding")
- (H) The Company has applied to the Council by application dated the 7th day of October 2010 to modify the Section 106 Agreement under Section 106A of the Act ("the Application") under reference 3/2010/0838/P
- (I) The Council in consideration of the Grant Funding granted to the Association by the HCA have agreed and is satisfied that the development disclosed by the Application is such as may be approved by the Council under the said Act subject to this Supplemental Agreement and the Section 106 Agreement_____
- (J) The Association have been approved by the Council as RSL for the purposes of the

32010054P



Primrose village - Location plan 1: 2500

Section 106 Agreement

- (K) This Supplemental Agreement ("this Deed") is in addition to and shall be read in conjunction with and where necessary as a variation of the Section 106 Agreement
- (L) The Definitions and Interpretation in this Deed shall be the same as in the Section 106 Agreement except as varied by this Deed

NOW THIS DEED WITNESSETH as follows:-

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:-

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

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

"Affordable Housing Units" means the dwellings at the Affordable Housing Land comprising the Social Rented Housing Units and the IRHU

"Affordable Housing Land" means the land forming part of the Property upon which the Affordable Housing Units are to be built and which is shown edged red on the Plan

"Social Rented Housing Units" means thirteen (13) dwellings comprising of

Two (2) three bedroomed five person houses

Eight (8) two bedroomed four person houses

Three (3) two bedroomed four person apartments

"IRHU" means twelve (12) intermediate rent to home buy dwellings comprising of

Six (6) three bedroomed five person houses

Six (6) two bedroomed four person houses

"Nomination Agreement" means a nomination agreement between the Council and the Association in respect of the Affordable Housing Units in the form of the agreement annexed hereto at Appendix 1

"Rights" means a right for a tenant who

- (i) exercises the right to acquire pursuant to the Housing Act 1996 or any statutory provisions for the time being in force (or any equivalent contractual right) in respect of a particular Social Rented Housing Unit
- (ii) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Social Rented Housing Unit

"Approved Person" means a person within the following criteria in the following order of priority:-

- (a) First time buyers who can demonstrate a need for Affordable Sale Housing who are either
 - (i) living in Ribble Valley; or
 - (ii) working in Ribble Valley; or
 - (iii) who have lived in Ribble Valley for any 5 of the last 10 years having left to find suitable accommodation elsewhere and who also have close family living in Ribble Valley; or
 - (iv) persons moving to the Ribble Valley to offer support or receive support from a close family member who is living in the Ribble Valley; or
- (b) Non first time buyers who can meet one of the qualification provisions set out in (i) to (iv) above

"Intermediate Rent to Homebuy Scheme" means a scheme whereby a person is granted a tenancy of a dwelling which includes provisions for the tenant to purchase the dwelling

"Shared Ownership Lease" means a lease of a dwelling whereby the lessee acquires a leasehold interest in a specified percentage of the equity a dwelling (with the remaining equity being retained by the Association) and pays rent to the Association on the remaining part of the equity and the lessee has the right to acquire further percentages of equity of the dwelling from the Association up to 100%

"Eligibility Criteria" means all of the following financial criteria and local

connections:-

(i) does not have sufficient income to purchase the same type of dwelling on the open market and has a satisfactory credit history containing no County Court Judgements or bankruptcy proceedings within a credit history report for the 6 years prior to the date of the proposed acquisition and who has sufficient funds to cover the legal costs and disbursements involved in the acquisition;

(ii) whose income per household (as verified by wageslips/P60s) is below the upper income brackets per household imposed by the Association in accordance with the Homes and Communities Agency regulations and guidance from time to time; and

(iii) has a verified a local connection based on employment by way of references by way of confirmation of employment history from an employer and can verify 5 from the preceeding 10 years connection by way of council records and electoral roll records

"Chargee" any mortgagee or charge of the Association or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

2. **THIS** Deed is made in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) and is a planning obligation enforceable by the Council for the purposes of that Section with the intent to bind each and every part of the Property and the parties hereto to observe and perform the covenants restrictions and obligations set out in the Schedule hereto_____
3. **IN** consideration of the Council hereby having agreed to enter into this Deed the said development for the purposes of the said Act the parties hereto hereby covenant with the Council as set out in the Schedule hereto_____
4. **THE** expressions "the Council" and "the Company " and " the Trustees" and "the Mortgagee" and "the Association" shall include their respective successors in title and assigns_____

5. NO person shall be liable for breach of a covenant in this Deed after they shall have parted with all interest in the Property or the part thereof in respect of which such breach occurs but such release shall be without prejudice to liability for any subsisting breach of covenant arising prior to the parting with such interest_____
6. THIS Deed is a local land charge and shall be registered as such for the purposes of the Local Land Charges Act 1975_____
7. NOTHING in this Deed either express or implied shall prejudice or affect the Council's rights powers duties and obligations in the exercise of its functions as a Local Authority and the rights powers duties and obligations of the Council under all public and private statutes directives bye-laws and regulations may be fully and effectively exercised as if the Council had not entered this Deed_____
- 8.1 THE Mortgagee and the Trustees respectively each acknowledge and declare that this Deed has been entered into by the Company with its consent and that the Property shall be bound by the obligations contained in this Deed and that its respective security shall take effect subject to this Deed_____
- 8.2 NOTWITHSTANDING the terms contained herein each of the Mortgagee and the Trustees shall only be liable for any breach of any provision of this Deed during such period (if any) as it is a mortgagee in possession of the Property and then only if it shall have caused such breaches or breaches to have been occasioned_____

IN WITNESS whereof the Parties hereto have executed as a Deed the day and year first before written_____

THE SCHEDULE

- 1 THE covenants restrictions and obligations referred to in the preceding clauses are as follows:_____

Affordable Housing Units

- 1.1.1 Paragraph 4.1 of the Schedule to the Section 106 Agreement shall be amended to read as follows:- "As part of the Development the Company will provide the Affordable Housing Units"
- 1.1.2 Paragraph 4.2 of the Schedule to the Section 106 Agreement shall be amended by the deletion of the words "Social Rented Housing Units" and the insertion in lieu thereof "Affordable Housing Units"
- 1.1.3 The nomination agreement referred to in paragraph 4.6.2 of the Schedule to the Section 106 Agreement and the provisions contained in such paragraph 4.6.2 shall be superceded by the Nomination Agreement annexed hereto at Appendix 1.
- 1.1.4 The assured tenancy referred to in paragraph 4.6.3 of the Schedule to the Section 106 Agreement shall also include introductory tenancy agreements
- 1.1.5 Paragraph 4.4 of the Schedule to the Section 106 Agreement shall be deleted and substituted as follows "the Company and the Association shall provide the Affordable Housing Units at the Affordable Housing Land. In the event that no Grant Funding is obtained the Company shall provide 13 Social Rented Housing Units".
- 1.1.6 Paragraph 4.3 of the Schedule to the Section 106 Agreement contained an error "comprising 4 two bedroom flats 13 two bedroom houses and 8 three bedroom houses". shall be deleted and substituted as follows "comprising 3 two bedroom flats 14 two bedroom houses and 8 three bedroom houses"
- 1.1.7 The transfer to the Association of the freehold estate in the Affordable Housing Land shall satisfy the obligation on the part of the Company contained in paragraph 4.6.1 of the Schedule of the Section 106 Agreement

- 1.1.8 The words ".....and contracts for the sale of them shall have been exchanged with an RSL" shall be deleted from paragraphs 4.7.1; 4.7.2 and 4.7.3 of the Schedule to the Section 106 Agreement

Social Rented Housing Units

- 1.2 All Social Rented Housing Units shall be allocated pursuant to the nomination arrangements as contained in the Nomination Agreement Subject to the provisions of clause 2 the Social Rented Housing Units shall not be used other than for Affordable Housing other than by a tenant exercising a Right or any mortgagee or chargee of such tenant who exercises a Right or any person deriving title from a tenant who exercises a Right or any successor in title thereto and their respective mortgagees and chargees

- 1.2.1 The rents to be charged on the Social Rented Housing Units shall not be greater than but shall be in accordance with the Government Guidance on Formulae Rent issued by the Tenants Services Authority and/or Department of Communities and Local Government or their successors which governs rents to be charged by all social landlords whether they be Registered Providers or Local Authorities

Intermediate Rent to Homebuy Sale Units

- 1.3.1 On completion of the construction of the IRHU or as soon as possible thereafter the Association shall _____
- (a) ensure that each of the IRHU are used for shared ownership accommodation or upon Intermediate Rent to Homebuy Scheme terms to meet the objectives of the Association as established by the Housing Act 1996
 - (b) Shared Ownership Leases shall be granted to an Approved Person and such Approved Person shall use the individual IRHU as his only residence and shall not be permitted to sublet.

- (c) the rent level on the percentage equity retained by the Association under the shared ownership lease shall be determined for the time being by the Home and Communities Agency and in the absence of such determination at a rent level comparable with rent levels set for similar comparable new build home buy in Clitheroe.
- (d) any individual IRHU may be offered at 80% (eighty per cent) of the market rent for a maximum period of five years from the date of the grant and shall be signed up to the Intermediate Rent to Homebuy Scheme and adhering to the terms of that scheme.
- (e) the Approved Person shall be required to purchase a minimum 25% (twenty five per cent) equity share and will then have the option to purchase additional equity share(s) in increments of no less than 10% (ten per cent) up to a maximum of 100% ("Final Staircasing")

1.3.2 On each and every subsequent disposal of any individual IRHU after the first disposal the Association shall, before giving consent to a subsequent disposal obtain the Councils confirmation that the proposed purchaser of an individual IRHU is an Approved Person who meets the Eligibility Criteria PROVIDED THAT if the decision of the Council is not received by the Association within two weeks of the Associations request then the Association shall be free to decide whether to give consent to the disposal. The Association will in such circumstances ensure that the disposal is to a person that falls within the criteria of an Approved Person contained in this Agreement. In the event of Final Staircasing the Seller must give to the Association the first opportunity to buy back the Unit at a price determined by the provisions as contained in the Shared Ownership Lease

1.3.3. In the event that the Association is unable to dispose of any IRHU to an Approved Person because it is unable to find a person who meets the definition of Approved Person then the Association shall market the IRHU for a period of at least two months. If at the end of the period of two months during which the relevant IRHU has been marketed no Approved Person has been identified then the Association may with the consent of the Council not to be unreasonably withheld or delayed and in any event to be provided within two weeks of the Associations request dispose of the unit to a person who is not an Approved Person. The Council shall require reasonable evidence of two months marketing of the relevant IRHU before it will grant any such consent to a disposal to a person who does not meet the definition of Approved Person. _____

1.3.4. The Association shall ensure that proposed purchasers of an individual IRHU meet the Eligibility Criteria

2. Chargee Provisions

Any Chargee 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 restrictions set out in this Deed and the Section 106 Agreement which shall from the time of completion of the disposal cease to apply

- (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 free of the restrictions set out in this Deed and the Section 106 Agreement which shall from the time of completion of the disposal cease to apply

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 Association covenants with the Council not to allow occupation of the Affordable Housing Units by any persons other than in accordance with this Deed and the Section 106 Agreement and the Nomination Agreement.
4. A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this agreement
5. Notices

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 Strategic Housing Officer 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 _____

6. Records

The Association shall maintain records enabling them to supply to the Council (within four weeks of the Council's written request to do so) such information as the Council may reasonably require in connection with this agreement

7. **THE** expressions "the Council" and "the Association" shall include their respective successors in title and assigns and shall include any persons or mortgagees of such persons deriving title through or under the Association **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 _____

8. The Company shall indemnify the Association and keep the Association indemnified in respect of the Public Open Space Contribution and the Highways Contribution and any breaches of the Section 106 Agreement
9. The Section 106 Agreement remains valid and in full force and effect subject to the additions and variations in this Deed
10. In the event that a conflict arise between the interpretation of the Section 106 Agreement and this Deed then this Deed shall prevail

APPENDIX 1
NOMINATION AGREEMENT

DATED

2010

RIBBLE VALLEY BOROUGH COUNCIL (1)

and

CONTOUR HOMES LIMITED (2)

NOMINATION AGREEMENT

Relating to

Land at Primrose Mill, Woone Lane, Clitheroe

THIS AGREEMENT is made the day of 2010

BETWEEN:

- (1) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA (the "Council")
- (2) **CONTOUR HOMES LIMITED** (a Charitable Industrial and Provident Society number 23607R) of Quay Plaza 2, 1st Floor Lowry Mall, Salford Quays, Salford M50 3AH (the "Association")

WHEREAS:

This Agreement sets out the agreed procedure for the purposes of the Council making nominations for Units (as hereinafter defined) at the Property (as hereinafter defined)

NOW IT IS HEREBY AGREED as follows:

1. IN this Agreement the masculine shall include the feminine the singular shall include the plural any covenant where appropriate shall be deemed to be joint and several and the following terms shall have the following meanings:

"Agreed Letting Policy"	the Council's letting criteria and allocations policy in relation to the Units
"Council Nominee"	a person who appears on the Council's Housing Register nominated by the Council to take a tenancy of a Unit being a person who is within the Council's Allocations Policy and within the Rules of the Association
"First Letting"	the grant of the first tenancy immediately following construction and practical completion of the relevant Unit
"Nomination Period"	the period expiring sixty (60) years from the date of this Agreement or such extended period as may be agreed between the Association and the Council
"Property"	George Street, Clitheroe being part of the land in the Association's ownership at Primrose Village, Woone Lane, Clitheroe

"Right"	the exercise of the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a Unit or the exercise of any statutory right to buy (or any equivalent contractual rights) in respect of a Unit or similar right in respect of a Unit
"Subsequent Letting"	any subsequent grant of a tenancy in respect of a Unit within the Nomination Period
"Tenancy"	an introductory tenancy or assured tenancy in the Association's standard form of introductory tenancy or assured tenancy agreement
"Unit"	any dwellinghouse on the Property

- 2 The Association covenants with the Council to use all reasonable endeavours to procure the letting of the Units by the grant of Tenancies to a Council Nominee
- 3 The Association shall during the Nomination Period grant to the Council the right to nominate a Council Nominee for First Letting of all of the Units and 50% of the Units for any Subsequent Letting unless a tenant shall have exercised a Right
- 4 In respect of the First Letting of the Units:-
 - 4.1 The Association shall notify the Council of the availability of a Unit ("the Notice") and the Notice may be served on the Council prior to the issue of any certificate of practical completion issued in respect of the relevant Unit
 - 4.2 (i) If the Council fails to nominate a Council Nominee for the First Letting of a Unit within 7 days of the Notice; or

- (ii) If despite the reasonable efforts of the Association no Council Nominee shall on the occasion of a First Letting enter into a tenancy of a Unit within a reasonable time (being not less than 21 days from the date of Notice);

The Association shall be free to grant a tenancy of a Unit to any person satisfying the Agreed Letting Policy

- 5 In respect of a Subsequent Letting of any Unit which becomes vacant during the Nomination Period the Council shall have the right to nominate a Council Nominee to 50% of such Subsequent Lettings and the Association shall notify the Council of the availability of 50% of units at the Property which become vacant during the Nomination Period (the "Subsequent Notice") and

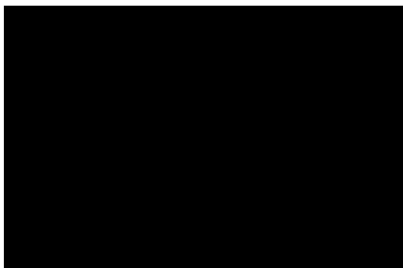
- (i) If the Council fails to nominate a Council Nominee for any Subsequent Letting of a Unit within five days from the date of the Subsequent Notice; or
- (ii) If despite the reasonable efforts of the Association no Council Nominee shall on the occasion of a Subsequent Letting enter into a Tenancy of Unit within seven days from the date of the Subsequent Notice

the Association shall be free to grant a Tenancy of such Unit to any person satisfying the Agreed Letting Policy

- 6 The Association shall promptly provide to the Council such reasonable and proper information as the Council shall from time to time reasonably request in respect of a Unit to enable the Council to monitor and review the operation of the nomination arrangements contained in this Agreement
- 7 The relevant officers or representatives of the Council and the Association shall meet together at such intervals as the Council and the Association shall reasonably require to agree the day to day working and operation of these nomination arrangements and to review and modify the same as required
- 8 For the purposes of clarification the Council hereby agrees that the nomination rights contained in this Agreement are personal to the Council and the Association and shall not be enforceable against any mortgagee in possession of any Dwelling or any purchaser acquiring from a mortgagee in possession

10. The provisions of this Agreement shall cease and determine upon the expiry of the Nomination Period save to the extent that any obligation remains to be performed

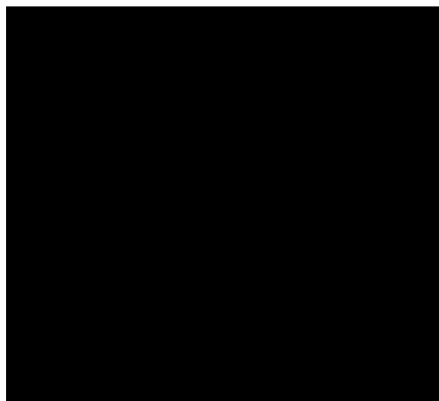
**THE COMMON SEAL of RIBBLE VALLEY
BOROUGH COUNCIL** was hereunto affixed
in the presence of:-



Mayor

Chief Executive

**THE COMMON SEAL of
CONTOUR HOMES LIMITED**
was hereunto affixed in the
presence of:-



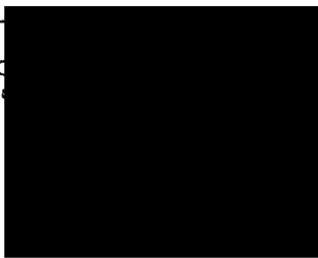
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THE COMMON SEAL of RIBBLE

VALLEY BOROUGH COUNCIL

was hereunto affixed to this Deed in the

presence of:-



Mayor

Chief Executive



1098

EXECUTED AND DELIVERED AS A DEED

by BECK DEVELOPMENTS LIMITED

acting by two Directors

Director Name.



Director Name.



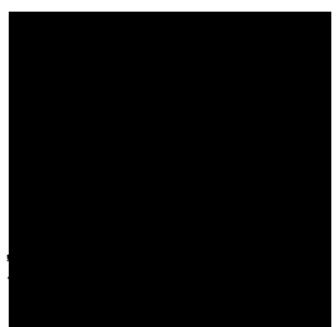
Director

Director

SIGNED AS A DEED by

HELENA BALMFORTH

in the presence of:-



EXECUTED AND DELIVERED AS A DEED)

BY TOR PENSION TRUSTEES LIMITED)

acting by two Directors or one)

Director and the Company Secretary)

Director

Director/Secretary

EXECUTED AND DELIVERED AS A DEED)

by HAYDOCK FINANCE LIMITED)

acting by two Directors)

Director Name...

Director Name...

Director

Director

EXECUTED AND DELIVERED AS A DEED)

by CONTOUR HOMES LIMITED)

acting by two Members)

Member Name.....

Member Name.....

Member

2597.