

DATED

3rd March

2014

RIBBLE VALLEY BOROUGH COUNCIL (1)

and

LANCASHIRE COUNTY COUNCIL (2)

and

Deed of Variation to a Planning Obligation Agreement
under section 106 Town and Country Planning Act 1990

relating to

DEMOLITION AND REDEVELOPMENT FOR RESIDENTIAL USE OF LAND AT BROWN
LEAVES COUNTRY HOTEL, LONGSIGHT ROAD, COPSTER GREEN, BLACKBURN, BB1
9EU

THIS DEED is made the 3rd day of March 2014

BETWEEN:

RIBBLE VALLEY BOROUGH COUNCIL of Council Offices Church Walk Clitheroe BB7 2RA (hereinafter called "the Council") of the first part

LANCASHIRE COUNTY COUNCIL of PO Box 78 County Hall Preston PR1 8XS (hereinafter called "the County Council") of the second part and

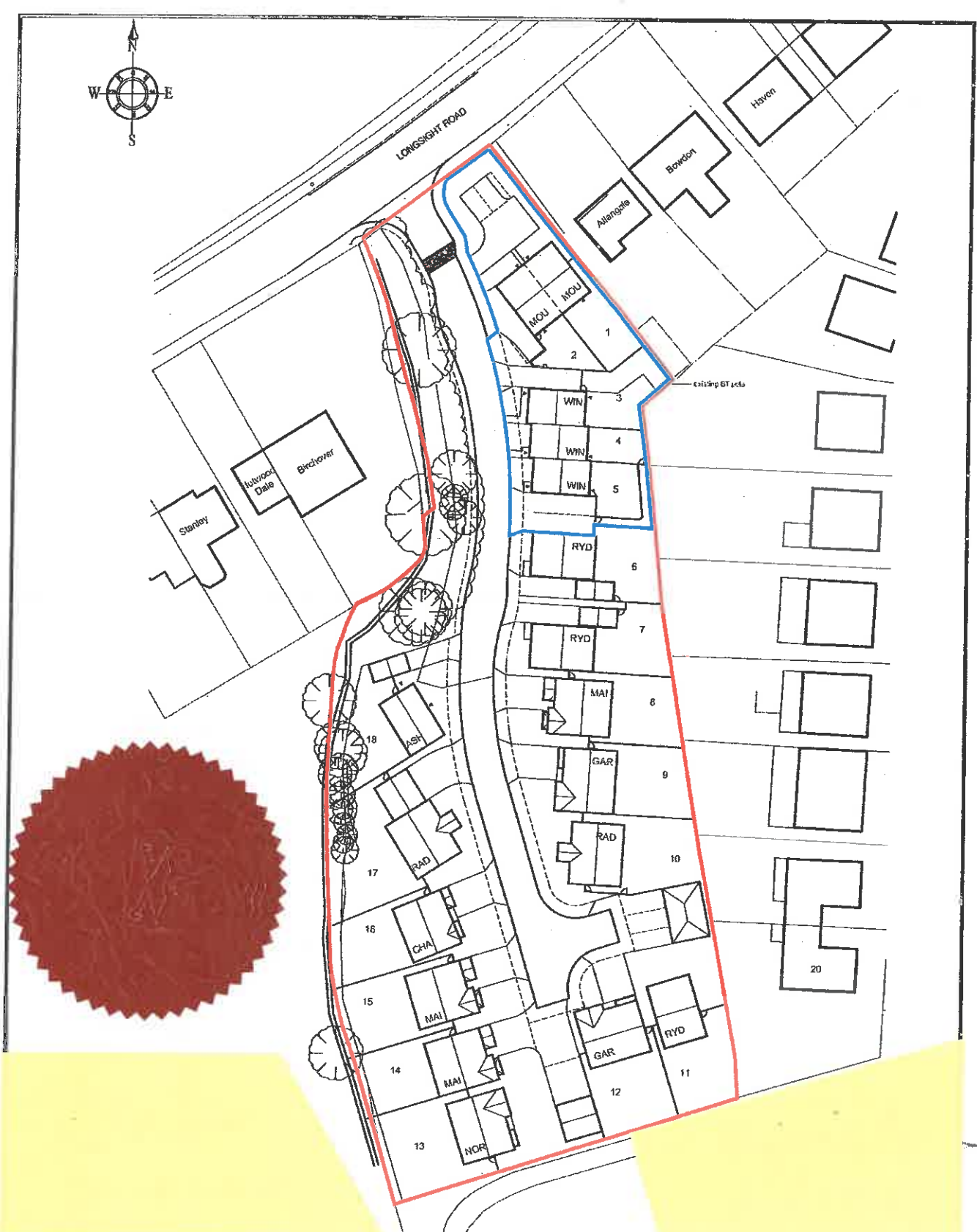
WITNESSES

- 1 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 where the Property is situated.
- 2 The County Council is the Local Education Authority pursuant to the Education Act 1994 for the area where the Property is situated.
- 3 The Owner is now the owner of the freehold interest in the premises known as Brown Leaves Longsight Road Copster Green Blackburn BB1 9EU which is registered with HM Land Registry under Title LAN129438 ("the Property").
- 4 This Deed is supplemental to the Agreement under the provisions of Section 106 of the Act dated 27th March 2012 and made between the Council (1) the County Council (2) and Arthur Fisher and Irene Fisher (3) ("the Agreement")
- 5 Outline Planning Permission for the Development was granted on 3rd April 2012 under reference 3/2011/0482 and Approval of Reserved Matters was granted on 8th November 2012 under reference 3/2012/0745 ("the Planning Permission").
- 6 The Council has agreed with the Owner to vary the Agreement as hereinafter appears to facilitate the Development.

1. DEFINITIONS

The definitions contained in the Agreement shall apply to this Deed and the following words and phrases shall where the context so admits have the following meanings:

- 1.1 **"Affordable Housing Provider"** means a Registered Social Landlord or a local or similar authority or a housing association or similar organisation or a social landlord or such other body or organisation whose main object is the provision of affordable housing (and "AHP" shall be construed accordingly)
- 1.2 **"Affordable Units"** means plot numbers 1-5 inclusive on the Property and shown edged blue on the Plan



BROWN LEAVES COPSTER GREEN

			Scale 1:500
Rev	Date	Revision	Date DEC 2013
Title			Dwg. No.
TRANSFER PLAN			TP. 1.0

- 1.3 **"Commence"** means the carrying out of a material operation as defined by Section 56(4) of the Act (excluding any act of demolition, remediation, site clearance, archaeological investigations, forming any site entrance investigations for the purpose of assessing ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements) in accordance with the Planning Permission and the expression "Commencement" shall have a corresponding meaning
- 1.4 **"Commencement of Marketing"** means the date notified by the AHP to the Council upon which it launched its Shared Ownership sales of the Affordable Units
- 1.5 **"Commuted Payment"** means the sum equal to 40% of the Open Market Value of the relevant Low Cost Market Unit sold by the Developer pursuant to clause 6 of the First Schedule to this Deed to be used for the provision of affordable housing in the Borough of Ribble Valley
- 1.6 **"the Development"** means the demolition of the existing hotel and associated outbuildings and the subsequent redevelopment of the Property for residential use by the erection of 18 dwellings in accordance with the Planning Permission
- 1.7 **"Disposal"** means each and every means by which the right of occupation of an Affordable Unit is given or transferred to another person, body or company and "Dispose" and "Disposed" shall be construed accordingly
- 1.8 **"Low Cost Market Units"** means the Affordable Units built by the Owner to be sold to the Approved Persons (as hereinafter defined in Clause 4.2 of the First Schedule) at a 40% discount to the Open Market Value and subject to a restriction placed upon the title of such Units to ensure that they are available to subsequent occupiers on the same basis
- 1.9 **"Plan"** means the plan annexed hereto
- 1.10 **"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 an AHP where occupiers can purchase additional shares
- 1.11 **"Shared Ownership Lease"** means a Lease in the model form prescribed by the Homes and Communities Agency
- 1.12 **"Unit"** means a dwelling to be constructed pursuant to the Planning Permission

2. **Alterations to Terms**

It is mutually agreed that in lieu of the relevant provisions of the Agreement the following provisions shall apply:

- 2.1. The provisions of Schedules 1, 3 and 4 of the Agreement shall be deleted and shall be replaced by the provisions contained in the First and Second Schedules to this Deed.
- 2.2. The provisions of Clause 3 of Schedule 2 of the Agreement shall be modified so that the Occupier shall be bound by the provisions contained in the First Schedule to this Deed.

3. Confirmation of the Agreement

The Agreement shall continue in full force save as modified by this Deed and shall operate as if the provisions contained in this Deed were incorporated in lieu of the provisions for which they are substituted and the covenants conditions and provisions of the Agreement shall have effect as though the provisions contained in this Deed had been originally contained in the Agreement

FIRST SCHEDULE

Owner's Obligations relating to Affordable Housing

The Owner covenants with the Council as follows and for the purposes of this Schedule reference to the Owner shall include the Affordable Housing Provider with whom the Owner has entered into an agreement for the provision of the Affordable Housing Units.

1. To notify the Council in writing of the Commencement of the Development, such notice to include details of which Units within the Development are to be the Affordable Units and such notice shall be served on the Council within 7 days of the Commencement of the Development
2. **Construction and transfer of the Affordable Units**
 - 2.1 The Affordable Units shall be designed and constructed to a specification no less favourable than the Open Market Units and shall comprise:

5 x 3 bed houses
 - 2.2 Not to allow the first occupation of more than 50% of the Open Market Units (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
 - 2.3 To dispose of the Low Cost Market Units to Approved Persons who meet the Eligibility Criteria (as defined in clause 4 of this Schedule) or as otherwise provided herein

3. Mechanism for dealing with the Affordable Units

The Affordable Units shall (unless as otherwise expressly provided in clause 8 of this Schedule) be permanently subject to each and every one of the restrictions regulating the Development as are contained in this Agreement and the purpose and intent of such restrictions shall be registered at HM Land Registry upon the title relating to the Affordable Units

4. The said restrictions referred to in the preceding clause are as follows:

4.1 Low Cost Market Units

- (i) that the Low Cost Market Units are offered for sale by grant of a long leasehold interest (being 250 years calculated from 1st January 2013) at a premium of not more than 60% of the Open Market Value in accordance with the provisions set out herein.
- (ii) that in order that the future ownership and selling price of the Low Cost Market Units shall be controlled so as to ensure that the Low Cost Market Units will remain as affordable housing the Owner shall include within the lease of each Low Cost Market Unit (other than a Shared Ownership Lease) the clauses set out in the Second Schedule to this Deed
- (iii) that the Low Cost Market Units shall initially be offered to Approved Persons who meet the Eligibility Criteria as set out below:

4.2 Approved Persons

Approved persons for the purposes of this scheme are defined below in paragraphs (a) and (b) with those in paragraph (a) being given preference for a period of six weeks from the Commencement of Marketing (in the case of Shared Ownership Sales by an AHP pursuant to Clause 7 of this Schedule) whereafter any of the Affordable Units still available shall be offered to those persons falling within paragraph (b) and for the purposes of this clause 4.2 and in the case of Shared Ownership Sales only reference to Clause 4 shall be deemed to extend to the "AHP"

- (a) First time buyers who can demonstrate housing need for the type of an Affordable Housing Unit who are either

- (i) Currently living in the Parishes of Salesbury Dutton Clayton-le-Dale Wilpshire Billington Langho or Dinckley for more than ten years or
 - (ii) Currently living in the Parishes of Salesbury Dutton Clayton-le-Dale Wilpshire Billington Langho or Dinckley and have done so continually for between five to ten years
 - (iii) Currently living in the Parishes of Salesbury Dutton Clayton-le-Dale Wilpshire Billington Langho or Dinckley and have done so continually for a minimum of twelve months
 - (iv) Currently employed in the Parishes of Salesbury Dutton Clayton-le-Dale Wilpshire Billington Langho or Dinckley for a minimum of twelve months and work for a minimum of 18 hours per week paid or unpaid or
 - (v) Persons who at least one of the adult applicants have Next of Kin who have lived in the Parishes of Salesbury Dutton Clayton-le-Dale Wilpshire Billington Langho or Dinckley 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 dependent children
 - (vi) Persons who are former residents of the Parishes of Salesbury Dutton Clayton-le-Dale Wilpshire Billington Langho or Dinckley who have moved from the Parish because of a lack of affordable housing in the Parish
 - (vii) Persons who are not first time buyers, but who can meet one of the qualification provisions set out in this sub-clause and can demonstrate a housing needs requirement for the property type
- (b) First time buyers who can demonstrate a housing need requirement for the type of Affordable Housing Unit who are either
- (i) Currently living in the Ribble Valley Borough for more than ten years or
 - (ii) Currently living in the Ribble Valley Borough and have done so continually for between five to ten years or
 - (iii) Currently living in the Ribble Valley Borough and have done so continually for a minimum of twelve months

- (iv) Currently permanently employed in the Ribble Valley Borough for a minimum of twelve months and work for a minimum of 18 hours per week paid or unpaid
 - (v) Persons who at least one of the adult applicants have Next of Kin who have lived in the Ribble Valley Borough 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
 - (vi) Persons who are former residents of the Ribble Valley Borough who have moved from the Borough because of a lack of Affordable Housing in the Borough
 - (vii) Persons who are not first time buyers, but who can meet one of the qualification provisions set out in this sub-clause and can demonstrate a housing needs requirement for the property type
- (c) Eligibility criteria: financial

The Owner will ensure purchasers of all Low Cost Market Units demonstrate that they have sufficient income to purchase the property but that they could not afford to purchase on the open market taking account of a satisfactory credit history and having sufficient funds to cover the legal costs involved in purchase
- (d) Eligibility criteria: income

The Owner will ensure that the Low Cost Market Units are allocated to those who meet the requirements of this Agreement and will impose upper income brackets for purchasers of each Low Cost Market Unit type and will ensure income levels are verified via wage slips/P60s
- (e) Eligibility criteria: local connection
 - (i) The Owner will 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 and the Owner will verify five out of last ten years connection where relevant by placing the onus on the approved person to provide suitable supporting evidence e.g. council tax records, electoral roll records

- (ii) The Owner may also verify local connection based on employment by way of references/confirmation of employment history confirmation of permanence of employment will be required from employer
- 5. If any of the Low Cost Housing Units have not been sold within four months of their release for sale the Developer shall be entitled to dispose of such Low Cost Market Units to any persons Subject to the restrictions contained in Clause 4.1 of this Schedule
- 6. If any of the Low Cost Market Units have not been sold within 20 weeks of their release for sale the Developer shall be entitled to dispose of such Low Cost Market Units to any person on the open market but free of the restrictions contained in clause 4.1 of this Schedule Provided That within 7 days of completion of the sale of each such unit the Developer shall pay the Commuted Payment to the Council in respect of each unit sold under the terms of this Clause
- 7. At any time the Owner may make a written request to the Council for approval to dispose of some or all of the Low Cost Market Units to an AHP for sale by the AHP on the basis of Shared Ownership If the Council gives approval to such request then the following restrictions shall apply:
 - (a) that on completion of the Affordable Units (for Shared Ownership) or as soon as possible thereafter the AHP shall dispose of the Affordable Units intended for Shared Ownership
 - (i) at Open Market Value on a Shared Ownership basis with the rental element being discounted by the AHP and by way of a Shared Ownership Lease
 - (ii) to an Approved Person who shall purchase the Affordable Unit for occupation by the approved person under a Shared Ownership Lease
 - (iii) The AHP shall (in the case of a sale to an Approved Person falling within clause 4.2 (b) of this First Schedule) have first provided the six week priority period referred to in clause 4.2 for those Approved Persons described in clause 4.2 (a) of this First Schedule

- (b) the approved person shall be required to purchase a minimum share of the Affordable Unit which share shall be 35%.
 - (c) the approved person shall be allowed to purchase additional shares in increments of no 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
8. None of the Affordable Housing obligations more particularly set out in this Schedule or elsewhere in the Agreement shall be binding upon a chargee or mortgagee of the Affordable Housing Provider in the event of default under a mortgage or charge or upon any receiver appointed by them (including administrative receivers) or any successors in title to such mortgagee, chargee or receiver and such chargee, mortgagee or receiver appointed by them and their successors in title shall be entitled to sell the Affordable Units free from the provisions of this Agreement and provided further that such provisions shall not bind:
- (i) a tenant of an Affordable Unit who exercises any right to buy or right to acquire such dwelling or acquires the relevant Affordable Unit pursuant to a voluntary sales policy of his landlord nor any mortgagee or chargee of such a tenant nor any receiver appointed by such mortgagee or chargee (including administrative receivers); nor
 - (ii) any tenant who staircases out a Shared Ownership Affordable Unit to 100% nor any mortgagee or chargee of such a tenant nor any receiver appointed by such mortgagee or chargee (including administrative receivers); nor
 - (iii) any persons deriving title from the tenants, mortgagees, chargees or receivers referred to in paragraphs (i) and (ii) above.
9. The AHP shall maintain records enabling them 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 restrictions herein are being observed

SECOND SCHEDULE

Standard Lease Provisions for Low Cost Market Units (other than those sold for Shared Ownership)

1.1 In this clause the following further expressions have where the context admits the following meaning and for the avoidance of doubt the provisions of this Schedule not not apply to any Low Cost Market Units sold for Shared Ownership pursuant to clause 7 of the First Schedule by way of a Shared Ownership Lease:-

1.1.1 "the Assumptions" are:

1.1.1.2 that prior to the date of valuation the premises were freely exposed to the market and there has been a reasonable period within which to negotiate the sale (having regard to the nature of the premises and the state of the market) and that values remained static throughout that period and

1.1.1.3 that no account is taken of any bid by any prospective purchaser with a special interest and

1.1.1.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion; and

1.1.1.5 that the premises are in their existing state of repair and sold with vacant possession

1.1.1.6 that the deed of assignment or transfer does not contain any provisions that are not standard or usual in residential leasehold or freehold transactions

1.1.2 The "Council" means Ribble Valley Borough Council of Council Offices Church Walk Lancashire

1.1.3 "the Council's Affordable Housing Register" means the list maintained by the Council for the purpose of providing access to properties at less than market value to Approved Persons (or any successor to the list that may be introduced by the Council)

1.1.4 the "Discounted Price" means no more than 60% of the Open Market Value of the unit

1.1.5 "Independent Valuer" means a member of the Royal Institution of Chartered Surveyor appointed by the tenant at his own cost but first approved by the Council

- 1.1.6 "Open Market Value" means the value as determined by an Independent Valuer to be the price at which the lease can reasonably be sold on the date of valuation taking into account the Assumptions
- 1.1.7 "Qualifying Person" means a person or persons on the Council's Affordable Register or in the circumstances set out in clause 1.2.3.5 of this lease such other person that may qualify for the purposes of that clause
- 1.1.8 A "Sale" of the premises occurs in every case where there is a transfer or assignment in the premises except when the transfer or assignment is:
- (i) executed in pursuant of an order of a court on granting in respect of the parties a decree of marriage or judicial or
 - (ii) executed in pursuant of an order of a court which is made in connection with the dissolution of annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree or
 - (iii) executed at any time in pursuant of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution of annulment of the marriage or their judicial separation or
 - (iv) executed by personal representative of the tenant for the purpose of transferring or assigning into the sole ownership of the spouse of the tenant or
 - (v) executed by personal representatives of a joint tenant and the surviving tenant for the purpose of transferring or assigning the premises into the sole ownership of the surviving tenant
- 1.2 Subject to provisions of clause 1.6 the tenant hereby covenants with:
- 1.2.1 the Council and
 - 1.2.2 as a separate covenants with the landlord (but not so as to render the liable to the landlord after the tenant shall have parted with his interest in the premises) and
 - 1.2.2.1 any Sale of the premises shall only be for the Discounted Price
 - 1.2.2.2 subject to clause 1.2.2.5 any sale of the premises shall be to a Qualifying Person

1.2.2.3 the premises shall at all times be the sole residence of the Tenant

1.2.2.4 the tenant shall not effect a Sale unless at least seven days prior to the marketing of the premises the tenant gives notice to the Council of the proposed sale

1.2.2.5 the tenant shall not effect a Sale unless the Council has been allowed a period of ten weeks in which to nominate a purchaser for the Premises from the Council's Affordable Housing register PROVIDED THAT if a suitable purchaser shall not have nominated by the Council by the end of the tenth week the premises may be sold to another person subject to the restriction contained within this lease

1.2.3.6 the tenant shall not sell the premises without

1.2.3.6.1 procuring that any transferee or assignee enters into a covenant with the Council to observe and perform the covenant set out in this clause 1 and

1.2.3.6.2 delivering to the Council the covenant referred to in clause 1.2.3.6.1 on the Sale of the premises

1.3 To intent that no transfer or assignment of this lease shall take place otherwise than in accordance with clause 1.2 of this lease the tenant shall at the tenant's expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the lease such restriction to remain on the Register during its subsistence:

"No disposition of the registered estate (other than a charge) by the Registered Proprietor is to be registered without a Certificate addressed to HM Land Registry and signed by Ribble Valley Borough Council of Council Offices Church Walk Clitheroe Lancashire that the disposition complies with clause [] of a lease dated [] made between [] (1) and [] (2)"

1.4 The Council shall have the benefit of the right to enforce the covenants contained in this lease pursuant to the Contracts (Rights of Third Parties) Act 1999

1.5 If this lease becomes vested in a mortgagee in possession of the whole of the premises the provisions of clause 1.2 shall cease to apply to the residue of the term of the lease and where any disposition is by any person or persons who are excluded from the affordable housing provisions as more particularly set out in clause 8 of the First Schedule to this Deed the Council shall forward a Certificate as provided for in clause 1.3 above that the restriction does not apply to the disposition

IN WITNESS whereof these presents were entered into the day and year first above written

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

Mayor

RESHER



Chief Executive

M. H. Scott

THE COMMON SEAL of
LANCASHIRE COUNTY COUNCIL
was hereunto affixed in the presence of:

[Signature]



23-82

