

DATED 27th March 2012

RIBBLE VALLEY BOROUGH COUNCIL

And

LANCASHIRE COUNTY COUNCIL



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, CLAYTON LE DALE, NR. BLACKBURN, LANCASHIRE

THIS AGREEMENT AND DEED is made on the 27th day of March

2012

BETWEEN:

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

LANCASHIRE COUNTY COUNCIL of County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (hereinafter called "the County Council") and

WHEREAS:

- (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 Property shown edged red on the plan ("the Plan") annexed to this Agreement
- (2) The County Council is the Local Education Authority pursuant to the Education Act 1994
- (3) The Owner holds the Freehold Estate of the Property known as Brown Leaves Country Hotel, Longsight Road, Clayton Le Dale, Near Blackburn, Lancashire ("the Property") which is unregistered at HM Land Registry
- (4) The Owner on the 20th June 2011 applied to the Council for outline planning permission for the redevelopment of the Property comprising demolition of the existing hotel and the erection of 18 residential dwelling houses ("the Proposed Development") more fully shown in the planning application submitted to the Council under Reference Number 3/2011/0482 ("the Application")
- (5) The Owner enters into this Deed pursuant to section 106 of the Act
- (6) The Council have resolved on the 8th December 2011 and is satisfied that the Application for the Proposed Development may be approved by it under the Act subject to the Owner entering into this Deed but without which the Planning Permission would not be granted.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

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

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

“Affordable Value” means 60% of the Open Market Value of a Unit.

“Approved Person” means a person within the criteria set out in Schedule 4 to this Agreement

“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 registered social landlords in accordance with the Homes and Communities Agency regulations and guidance from time to time;

“Open Market Value” means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion”

“Open Market Units” are dwellings constructed on the Property that are to be offered on the open market at Open Market Value

“Planning Permission” means the planning permission granted by the Council or the Secretary of State for the construction of the Proposed Development on the Property as applied for in the Application

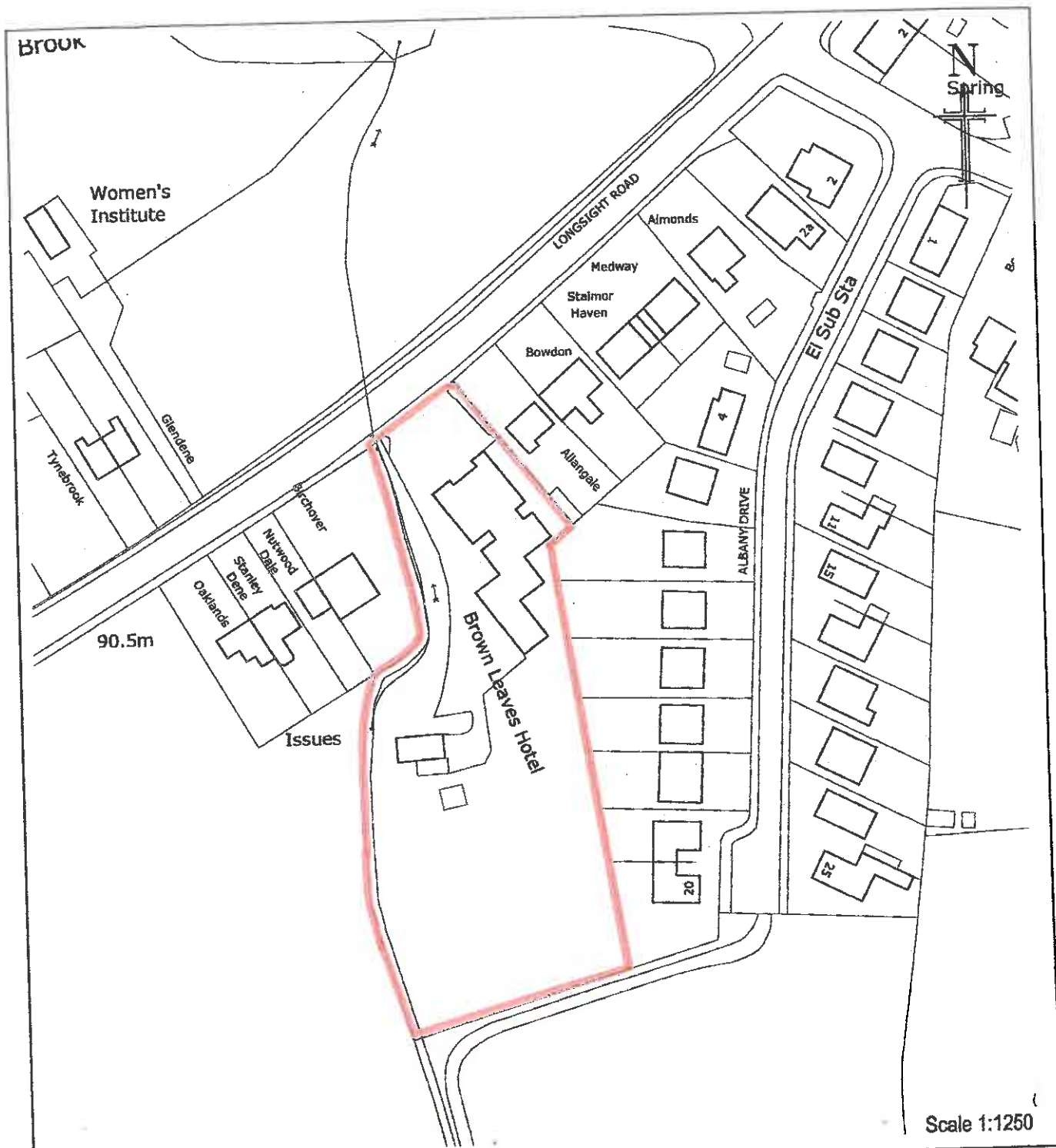
2. THIS Deed is made in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) and is a planning obligation enforceable by the Council and the County Council for the purposes of that Section with the intent to bind each and every part of the Property
3. The Owner covenants to observe and perform the covenants restrictions and obligations as set out in the Schedules hereto

4. THE expressions "the Owner" and "the Council" and "the County Council" 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. Unless the context otherwise requires references to statutory provisions include those statutory provisions as amended or enacted; and references to any gender includes all genders; and words denoting the singular shall include the plural and vice versa
8. This Deed is conditional upon and shall not take effect unless and until
 - (a) the Planning Permission has been granted;
 - (b) the commencement of development pursuant to that Planning PermissionAND for the avoidance of doubt such Planning Permission will only be subject to the imposition of those obligations appearing in this Deed which are necessary to the grant of Planning Permission for the Proposed Development and meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)
9. This Deed shall not be binding on an owner or occupier of any individual residential unit constructed on the Property pursuant to the Planning Permission once that completed dwelling has been purchased from the Owner or its successors in title save that the Obligations in Schedule 2 and 3 and 4 shall be binding on owners or occupiers of the Affordable Housing Units
10. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this agreement
11. Any notice or other communication given or made in accordance with this Deed 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 or to the County Council in the case of matters relating to Schedule 5 at the address shown on the first page of this Agreement

12. The Owner of the Property shall maintain records enabling them to supply to the Council and the County Council (within four weeks of the Council's or County Council's written request to do so) such information as the Council or County Council may reasonably require in connection with this agreement
13. The Owner shall pay the Council's legal fees in relation to this Deed on the date of this Deed in the sum of £330 (three hundred and thirty pounds) and the County Council's legal fees incurred in relation to this Deed on the date of this Deed in the sum of £250 (Two hundred and fifty pounds)

IN WITNESS whereof the parties have executed as a Deed the day and year first before written



LEA, HOUGH & Co.

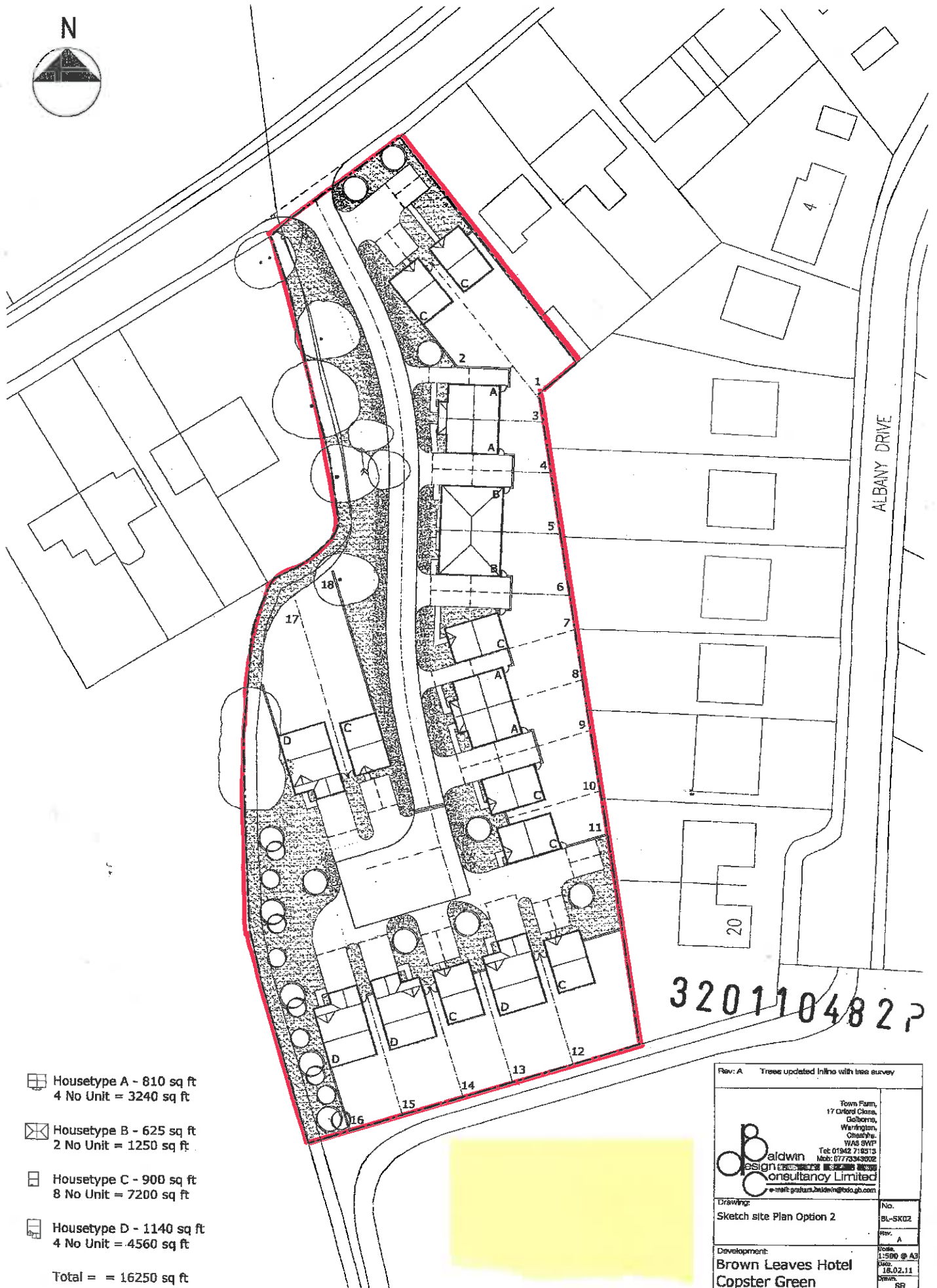
Property Consultants

Blakewater House
Phoenix Business Park
Blakewater Road
Blackburn BB1 5RW
Telephone 01254 260196
Facsimile 01254 51905

PLAN REFERRED TO:

Brown Leaves Hotel, Longsight Road, Copster Green, Blackburn.

Based on the Ordnance Survey with the sanction
of the Controller of HM Stationery Office
Crown Copyright



 Housetype A - 810 sq ft
 4 No Unit = 3240 sq ft

 Housetype B - 625 sq ft
 2 No Unit = 1250 sq ft

 Housetype C - 900 sq ft
 8 No Unit = 7200 sq ft

 Housetype D - 1140 sq ft
 4 No Unit = 4560 sq ft

Total = = 16250 sq ft

320110482P

Rev: A Trees updated inline with tree survey	
 Town Farm, 17 Oxford Close, Gillingham, Dorset, TA14 6JF Tel: 01942 718313 Mob: 07773 43502 Email: graham.aldwin@aldwin.co.uk	
Drawing: Sketch site Plan Option 2	No. BL-SK02
Development: Brown Leaves Hotel Copster Green	Rev. A
Scale: 1:500 @ A3 Date: 18.02.11	Drawn: BB

SCHEDULE 1

Affordable Housing Units

THE Owner covenants with the Council as follows and for the purposes of this Schedule references to the Owner shall include any registered provider with whom the Owner has entered into an agreement for the provision of the Affordable Housing Units:

1. To provide the Affordable Housing Units (AHU) on the Property as follows:
 - 1.1 The total number of AHU shall comprise of 30% of the total dwellings which may be constructed on the Property pursuant to the Planning Permission. In the event a subsequent permission is granted, the total number of AHU shall comprise no more than 30% of the total number of dwellings to be constructed on the Property.
 - 1.2 The AHU shall comprise a mix two bedroom units and bungalows or such other mix and/or sizes of units as shall be agreed with the Council with the number size and tenure of units to be agreed with the Council in writing prior to commencement of development pursuant to the Planning Permission
 - 1.3 The AHU shall be offered for sale under the terms of this agreement at the Affordable Value.
 - 1.4 Any bungalows that are provided on site as AHU are to be offered in the first instance to purchasers over the age of 55. If no such purchasers are found following the marketing outlined in Paragraph 3.1 3.2 and 3.3 of Schedule 1 then paragraph 3.4 of Schedule 1 shall apply
 - 1.5 Not more than 50% of the Open Market Units shall be occupied until all of the Affordable Housing Units are available for occupation.
2. On each and every subsequent disposal of any individual unit of an AHU the Owner of the AHU will ensure that the disposal is to a person that falls within the criteria of an Approved Person who meets the Eligibility Criteria contained in this Agreement.
3. The Owner:
 - 3.1 shall market the AHU for a period of at least two months to persons falling within paragraph 1 of Schedule 4. If at the end of the period of two months during which the relevant

AHU has been marketed no Approved Person has been identified then paragraph 3.2 shall apply

3.2 shall market the AHU for a period of at least two months to persons falling within paragraph 2 of Schedule 4. If at the end of the period of two months during which the relevant AHU has been marketed no Approved Person has been identified then paragraph 3.3 shall apply

3.3 shall market the AHU for a period of at least two months to persons falling within paragraph 3 of Schedule 4. If at the end of the period of two months during which the relevant AHU has been marketed no Approved Person has been identified then paragraph 3.4 shall apply

3.4 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 Owner's request dispose of the unit to a person who is not an Approved Person. The Council may require reasonable evidence of the marketing of the relevant unit pursuant to paragraphs 3.1 3.2 and 3.3 of this Schedule before it will grant any such consent to a disposal.

SCHEDULE 2

Obligations of Occupiers of Affordable Housing Units

1. The Occupier of an Affordable Housing Unit (the 'Occupier') must use the Affordable Housing Unit (the 'Unit') as their only or principle home throughout their ownership. Only or principle homes means the home occupied for at least 9 months of any year.
2. The Occupier must not let the AHU to a third party.
3. The Occupier shall also be bound by Schedule 3 and Schedule 4
4. Re-mortgaging
 - 4.1 Where an Occupier has applied to re-mortgage the AHU, the lender shall be a Member of the Council of Mortgage Lenders and where the Occupier is proposing to increase their borrowing the new level of borrowing shall be no more than the Affordable Value of the Unit at that time.

SCHEDULE 3

Affordable Housing Transfer Provisions

- 1 The transfer of each and every Affordable Housing Unit ('AHU') shall contain the following covenants by the transferee ('Transferee') for themselves and their successors in title to the AHU for the benefit of the Council:
 - 1.1 The Transferee shall not allow the AHU to be occupied other than by themselves and their immediate dependents as their primary and sole residence.
 - 1.2 The Transferee shall not dispose of the AHU except to an Approved Person and Eligible Person or Persons and at a price equal to the Affordable Value.
 - 1.3 The Transferee shall serve written notice ('The Selling Notice') on the Council of their intention to dispose of the AHU. For the purpose of this Schedule 'dispose' shall mean the transfer sale or other disposal of the freehold or any leasehold interest for a term in excess of 7 years.
 - 1.4 The Selling Notice shall contain the Transferees calculation of the Affordable Value for approval by the Council. Such approval is not to be unreasonably withheld.
 - 1.5 The Transferee and the Council shall use reasonable endeavours to agree the Affordable Value of the AHU as soon as possible after the service of the Selling Notice
 - 1.6 In the event that the Affordable Value has not been agreed within 15 working days of service of the Selling Notice the Transferee and the Council shall apply to an independent chartered surveyor appointed by agreement and whose costs shall be borne equally between the Transferee and the Council to determine the Open Market Value as at the date of service of the Selling Notice.
 - 1.7 In the absence of an agreement between the Transferee and the Council the President of the Royal Institution of Chartered Surveyors shall appoint an independent chartered surveyor.

- 1.8 Following the determination of the Affordable Value the AHU may be placed on the market with a view to achieving the Affordable Value. The Transferee is then to be responsible for ensuring any prospective purchaser meets the Approved Person and Eligibility Criteria.
- 1.9 On receipt of an acceptable offer for the AHU the Transferee must obtain the agreement of the Council that the prospective purchaser meets the Approved Person and Eligibility Criteria. Such agreement is not to be unreasonably withheld.
- 1.10 In the event that approval is not received within 15 working days either party may apply to the President of RICS for independent determination of the suitability of the prospective purchaser.
- 1.11 The Transferee shall not dispose of the Property at a price exceeding 60% of the Market Value provided that this clause shall not apply in respect of a disposal by a mortgagee in possession.
- 1.12 The Transferee shall observe and perform the provisions of Schedule 2 & 3 & 4 insofar as they relate to and affect the AHU.
- 1.13 The Transferee shall not dispose of the AHU without on each occasion procuring that any intended buyer covenants directly with the Council to observe and perform the covenants contained in this Schedule and delivers a completed deed of covenant in such terms to the Council.
- 1.14 It is agreed between the parties hereto that a Form L Restriction in favour of the Council shall be made in the Proprietorship Register of the title of each and every AHU that "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by Ribble Valley Borough Council or their conveyancer that the provisions of the Section 106 Agreement dated 2012 have been complied with".

2 The transfer of each and every AHU shall contain the following mortgagee relief provisions:

2.1 In the event that there is at any time any default under any legal charge over the AHU the mortgagee takes possession of the AHU and proposes to exercise its power of sale in relation to the Unit the mortgagee shall:

2.2 Not dispose of the AHU without first by irrevocable notice in writing informing the Council of such intention to dispose and allow the Council within 30 days to nominate a Approved Person and to offer the AHU for sale to the person so nominated at a price which is no more than 60% of the Market Value

In the event of the Council failing to nominate any Approved Person for a AHU or the persons so nominated not being ready willing and able to complete the sale and purchase of such property within 60 days of their nomination by the Council the Mortgagee may dispose of the AHU to a person who is not an Approved Person at the Affordable Value

SCHEDULE 4

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

1. First time buyers who can demonstrate housing need for the type of an Affordable Housing Unit who are either:
 - 1.1 currently living in the Parish of Salesbury for more than 10 years or
 - 1.2 currently living in the Parish of Salesbury and have done so continually for between 5 to 10 years
 - 1.3 currently living in the Parish of Salesbury and have done so continually for a minimum of 12 months
 - 1.4 currently permanently employed in the Parish of Salesbury for a minimum of 12 months and are employed for a minimum of 18 hours per week paid or unpaid or
 - 1.5 Persons who at least one of the adult applicants have next of kin who have lived in the Parish of Salesbury 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.
 - 1.6 Persons who are former residents of the Parish of Salesbury who have moved from the Parish because of a lack of affordable housing in the Parish
 - 1.7 Non first time buyers who can meet one of the qualification provisions set out at paragraphs 1.1 to 1.6 above
2. First time buyers who can demonstrate a housing need requirement for the type of Affordable Housing Unit who are either
 - 2.1 currently living in the Parish of Dutton, Clayton-le-dale, Wilpshire, Billington, Langho or Dinckley for more than 10 years or
 - 2.2 currently living in the Parish of Dutton, Clayton-le-dale, Wilpshire, Billington, Langho or Dinckley and have done so continually for between 5 to 10 years or
 - 2.3 currently living in the Parish of Dutton, Clayton-le-dale, Wilpshire, Billington, Langho or Dinckley and have done so continually for a minimum of 12 months

- 2.4 currently permanently employed in the Parish of Dutton, Clayton-le-dale, Wilpshire, Billington, Langho or Dinckley for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or
- 2.5 Persons who at least one of the adult applicants have next of kin who have lived in the Parish of 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.
- 2.6 Persons who are former residents of the Parish of 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
- 2.7 Non first time buyers who can meet one of the qualification provisions set out at paragraphs 2.1 to 2.6 above

3. First time buyers who can demonstrate a housing need requirement for the type of Affordable Housing Unit who are either

- 3.1 currently living in the Ribble Valley borough for more than 10 years or
- 3.2 currently living in the Ribble Valley borough and have done so continually for between 5 to 10 years or
- 3.3 currently living in the Ribble Valley Borough and have done so continually for a minimum of 12 months
- 3.4 currently permanently employed in the Ribble Valley Borough for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or
- 3.5 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.
- 3.6 Persons who are former residents of the Ribble Valley borough who have moved from the Parish because of a lack of affordable housing in the Parish
- 3.7 Non first time buyers who can meet one of the qualification provisions set out at paragraphs 3.1 to 3.6 above

SCHEDULE 5

Education Contribution

1. The Owner of the Property covenants with the Council to pay the Contribution for Primary Education facilities in the local area as detailed in (4) and (5) of this Schedule
2. The number of Primary School places ('A') generated by the development can be calculated;

Number of dwellings to be erected on the Property with 2 or more bedrooms x 0.35 = A

3. The Contribution ('B') is calculated;

$$A \times \pounds 12,257 \times 0.9 \times 1.1072 = B$$

4. On occupation of the 9th unit or 50% of the units to be completed on the Property, whichever is the sooner the first education instalment payment is made. This payment is calculated as B x 50%
5. Before the occupation of the 18th unit or the last of the units to be completed on the Property pursuant to a reserved matters application and consent, whichever is the sooner the final education instalment payment is made. This payment is calculated as B x 50%

SCHEDULE 6

Wheeled Bin Contribution

1. The Owner of the Property covenants with the Council to pay the Contribution for Wheeled Bins as detailed in (3) and (4) of this Schedule

2. The Contribution for Wheeled Bins is calculated as below;

Number of dwellings to be erected on the Property x £90 (plus VAT) = A

3. On the occupation of the first unit to be completed on the Property the first Wheeled Bin Contribution payment is made. This payment is calculated as $A \times 50\%$
4. On occupation of 50% of the units to be completed on the Property the final Wheeled Bin Contribution payment is made. This payment is calculated as $A \times 50\%$

THE COMMON SEAL of RIBBLE VALLEY

BOROUGH COUNCIL was hereunto affixed

to this Deed in the presence of:



Mayor

M. H. Scott Chief Executive



12

THE COMMON SEAL of LANCASHIRE

COUNTY COUNCIL was hereunto affixed

to this Deed in the presence of:



Authorised Signatory



21373

