

DATED

7th May

2009

RIBBLE VALLEY BOROUGH COUNCIL

– and –

[REDACTED]

– and –

[REDACTED]

– and –

[REDACTED]

AGREEMENT

Under Section 106 Town and Country Planning Act 1990

Relating to property known as

land at Barrow Brook, Barrow, Clitheroe

Legal Services Manager
Ribble Valley Borough Council
CLITHEROE

THIS AGREEMENT is made the Seventh day of May Two thousand and nine BETWEEN RIBBLE VALLEY BOROUGH COUNCIL of Council Offices Church Walk Clitheroe Lancashire (hereinafter called "the Council") of the first part [REDACTED]

[REDACTED]
(hereinafter called "the Company") of the second part and [REDACTED]

[REDACTED] and
[REDACTED]

WHEREAS:

- 1 The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which certain property known as land at Barrow Brook, Barrow, Clitheroe (hereinafter called "the Site") is situated and shown edged red on the plan (hereinafter called "the Plan") annexed to this Agreement_____
- 2 The Owner is seized of the fee simple in possession of the Site which is registered at H M Land Registry with Absolute Title under Title Numbers [REDACTED] and [REDACTED]_____
- 3 The Site within title number [REDACTED] is subject to a Legal Charge dated the Thirty-first day of March Two thousand and six made between the Owner and the Mortgagee_____
- 4 The Company on the Seventh day of December Two thousand and seven applied to the Council for planning permission for a mixed use development comprising vocational learning centre children's nursery commercial live work and residential units (which shall hereafter be referred to in this Agreement as "the Application") more fully shown in the application form together with the accompanying plans all deposited under the Council's reference 3/2007/1144_____
- 5 The Council is satisfied that the development is such as may be approved by it under the said Act of 1990 (as amended) but subject to the Owner entering into an agreement with the Council under the provisions of Section 106 of the said Act of 1990 (as amended) and extended by Section 33 of the Local Government (Miscellaneous Provisions) Act 1982_____

Introduction

In this Agreement

- 5.1 "the Act" means the Town and Country Planning Act 1990 as amended_____
- 5.2 "Affordable Dwellings" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market_____
- 5.3 "Affordable Live Work Unit" means a subsidised Live Work Unit that will be available to persons who cannot afford to rent or buy a Live Work Unit generally available on the open market_____
- 5.4 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement_____
- 5.5 "the Application" means planning application for full planning permission dated 7th December 2007 submitted to the Council for the Development made by the Company to develop the Site by the erection of a vocational learning centre children's nursery commercial live work and residential units_____
- 5.6 "Ribble Valley Area" means the administrative area of Ribble Valley Borough Council_____
- 5.7 "the Commencement Date" means the date on which the Planning Permission is implemented by the carrying out of a material operation in accordance with s56(4) of the Act_____
- 5.8 "Commutated Sum[s]" means the sums payable by the Owner to the Council pursuant to Clauses 1.1 and 3.1 of the Second Schedule provided that for the avoidance of doubt none of the purchasers of the Market Dwellings or the Affordable Dwellings shall be liable to pay the Commuted Sum_____
- 5.9 "the Development" means the development of the Site as proposed in the Application or permitted by the Planning Permission or carried out substantially in accordance with the Planning Permission and more particularly described in the Second Schedule_____
- 5.10 "Index" means the 'all items' index figure of the Index of Retail Prices published by the Department of Employment or any successor Ministry or Department_____

- 5.11 "Live Work Unit" means a dwelling unit part of which may be used as a business establishment and the dwelling unit is the principal residence of the operator of the business save as permitted by Clause 4.3 of the Second Schedule_____
- 5.12 "Market Dwelling" means a residential unit constructed on the Site which is not an Affordable Dwelling or affordable Live Work Unit as referred to in clauses 1 and 2 of the Second Schedule_____
- 5.13 "occupation" means the legal completion of the sale of the dwelling_____
- 5.14 "the Plan" means the plan attached to this Agreement_____
- 5.15 "Planning Permission" means the full planning permission subject to conditions to be granted by the Council pursuant to the Application a draft of which is attached_____
- 5.16 "the Public Open Space" means the land shown for identification purposes hatched green on the Plan and more particularly defined in the Second Schedule_____
- 5.17 "the Site" means the land against which this Deed may be enforced as shown edged red on the Plan and more particularly described in the First Schedule of this Deed_____
- 5.18 In this Agreement when the context so requires:
The expressions "the Council" and "the Company" and "the Owner" and "the Mortgagee" shall include their successors in title and assigns_____
- 5.19 Words incorporating the masculine include the feminine and vice versa_____
- 5.20 Words incorporating the singular include the plural and vice versa_____
- 5.21 Words importing persons include companies and corporations and vice versa_____
- 5.22 References to clauses schedules appendices or plans are references to clauses schedules appendices or plans in this Agreement except where otherwise specified_____
- 5.23 Title headings to the clauses schedules and appendices are for convenience only and shall not affect the interpretation of this Agreement_____
- 5.24 Any reference to any statutory provision shall be deemed to include:
5.24.1 any subsequent re-enactment or amending provision; and

5.24 2 every statutory instrument direction or specification made or issued under that provision or deriving validity from it:

5.25 An obligation to do something includes an obligation to procure it to be done; and an obligation not to do something includes an obligation not to allow it to be done_____

6.0 Enabling Provisions

6.1 This Agreement is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and of all other enabling powers and has been entered into by the Council pursuant to the Planning Committee's resolution of the 18th December 2008_____

7.0 Agreements and Declarations

7.1 The Owner consents to the making of this Agreement and acknowledges that its interest in the Site shall henceforth be bound by it_____

7.2 This Agreement is registrable as a Local Land Charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such by the Council_____

7.3 The parties agree that nothing in this Agreement constitutes an obligation to grant planning permission_____

7.4 Nothing in this Agreement grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function_____

7.5 Nothing in the Agreement fetters or restricts the exercise by the Council of any of their powers_____

7.6 The obligations contained in this Agreement are planning obligations for the purpose of Section 106 of the Act_____

7.7 This Agreement constitutes a Deed_____

7.8 This Agreement is enforceable by the Council_____

7.9 No person shall be liable for breach of the obligations contained in this Agreement after they shall have parted with all interests in the Site or the part in respect of which such breach occurs but without prejudice for any subsisting breach or obligation prior to parting with such interest_____

- 7.10 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it_____
- 7.11 If the Planning Permission is quashed, revoked or otherwise withdrawn or expires within the meaning of Section 91, 92 and 93 of the Act or is revoked or modified in accordance with Section 97 to 100 inclusive of the Act without the consent of the Owner or is successfully challenged by a third party or otherwise, this Agreement shall cease to have effect_____
- 7.12 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement_____
- 7.13 In the event that any of the provisions of this Agreement are unenforceable this shall not affect the enforceability of the remaining provisions hereof_____
- 7.14 Any variation of this Agreement agreed between the parties and the Council in writing shall not vitiate the remainder of this Agreement which shall remain in full force and effect subject to the amendment or amendments so agreed_____
- 7.15 Where any consent or approval is required under the terms of this Agreement such consent or approval shall not be unreasonably withheld or delayed_____

8.0 Notices

- 8.1 All notices demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if despatched by first class recorded delivery special delivery letter to the party to which such notice request demand or other written communication is to be given or made under this Agreement and addressed as follows:

8.1.1 In the case of the Council to the Solicitor to the Council;

8.1.2 In the case of the Company to its Company Secretary at its respective registered offices;

8.1.3 In the case of the Owner and the Mortgagee to its Company Secretary at its respective registered offices_____

8.2 Any such notice request or demand of other written communication shall be deemed to have been served as follows:

8.2.1 If posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

8.2.2 And in providing such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate)_____

9.0 Governing Law

9.1 The parties hereto hereby acknowledge that this Agreement shall be subject to the law of England and Wales and shall be governed by the jurisdiction of the courts therein_____

9.2 It is hereby acknowledged that nothing in this Agreement is intended to prevent the Council from exercising any function duty or discretion that it is bound by statute so to do_____

10.0 Dispute Resolution

10.1 Any dispute or difference arising out of this Agreement shall be submitted for the determination of an expert_____

10.2 The expert shall be appointed by the parties jointly or in default of agreement within 10 clear Working Days after either party has given to the other a written request requiring the appointment of an expert by the President of the Royal Institute of Chartered Surveyors_____

10.3 The President shall, if so requested, appoint an independent chartered surveyor as such expert or other person qualified in the discipline that the President deems appropriate for the dispute or difference in question_____

10.4 The expert so appointed must:

10.4.1 act as an expert and not as an arbitrator;

10.4.2 afford the parties the opportunity within reasonable time limits to make representations to him;

10.4.3 inform each party of the representations of the other;

10.4.4 afford each party the opportunity within reasonable time limits to make submission to him on the representations of the other; and

10.4.5 notify the parties of his decision, with reasons, as quickly as practicable_____

10.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert_____

10.6 The expert's determination is to be conclusive and binding on the parties except:

10.6.1 where there is a manifest error; and/or

10.6.2 on a matter of law_____

10.7 Either party may pay the share of the expert's fees and expenses due from other party on behalf of the other party if such share is not paid within 20 Working Days of demand by the expert in which case the amount so paid plus all incidental expenses shall become a debt due and immediately payable to the paying party from the other party_____

FIRST SCHEDULE

THE SITE

The freehold land being registered at Land Registry under Title Numbers [REDACTED] and [REDACTED] for the purposes of identification only edged red on the Plan_____

SECOND SCHEDULE

COVENANTS BY THE OWNER

The Owner covenants with the Council_____

1. On Site Affordable Housing

1.1 To provide five Affordable Dwellings on site for sale at a discount market rate. Such discount to be determined by the Council and any discount in excess of 17.5% is to be offset against the overall 17.5% off-site contribution towards affordable housing that the Owner is to make to the Council_____

1.2 To provide the following five properties as Affordable Dwellings_____

- | | | |
|----|-------------------------|-----------------|
| 1. | One No. 2-bed apartment | Plot 53 |
| 2. | Two No. 2-bed houses | Plots 12 and 13 |
| 3. | Two No. 3-bed houses | Plots 2 and 14 |

2. On Site Affordable Live Work Units

2.1 To provide two Affordable Live Work Units on site for sale at a discount market rate. Such discount to be determined by the Council and any discount in excess of 17.5% is to be offset against the overall 17.5% off-site contribution towards affordable housing that the Owner is to make to the Council in the final financial contribution payment_____

2.2 To provide the following two live work units as affordable units: -

1. Unit 1B in LW-3
2. Unit 1C in LW-3

3. Off Site Affordable Housing

3.1 To make a financial contribution to the Council in lieu of on-site provision of affordable housing. Such contribution to be 17.5% of the net revenue from sales of the Market Dwellings, the net revenue being the achieved sale figure for the property less any estate agency/conveyancing or other costs associated with the sale. Other costs include those for the direct marketing and sale of the Market Dwellings by the Owner which would be carried out in addition to any assistance from an estate agent. Costs will be subject to a ceiling of 4% of the achieved sale figure for each dwelling_____

3.2 To provide to the Council upon written request within 14days of such request financial accounts and details of the sales of the Market Dwellings and properties on the site_____

3.3 To pay the financial contribution in the following phases:

1. £450,000 shall be paid to the Council upon the commencement of development of the first Market Dwelling_____

Either: -

- 2a £250,000 shall be paid to the Council within 2 months after the occupation of the 20th Market Dwelling if construction of the Aspire Centre has commenced unless 21 months

have passed since commencement of development of the 1st Market Dwelling in which case an interim payment of a pro rata sum determined by the number of Market Dwellings occupied at the end of that 21 month period becomes due. Further interim payments would become due on occupation of each subsequent Market Dwelling until occupation of the 20th Market Dwelling when the total phase payment will have been reached. Each interim payment shall be made within 2 months of the due date subject to the proviso that the total cumulative payment made to the Council under this clause 2a cannot exceed 17.5% of the total net revenue received by the owner from the sale of the Market Dwellings at the time any interim payment is due_____

or

- 2b. £250,000 shall be paid to the Council within 2 months after the occupation of the 26th Market Dwelling if the Aspire Centre has not commenced but the shell of approximately 10,000 sq ft of B1 use has been completed unless 27 months have passed since the commencement of the 1st Market Dwelling in which case an interim payment of a pro rata sum determined by the number of Market Dwellings occupied at the end of that 27 month period becomes due. Further interim payments would become due on occupation of each subsequent Market Dwelling until occupation of the 26th Market Dwelling when the total phase payment will have been reached. Each interim payment shall be made within 2 months of the due date subject to the proviso that the total cumulative payment made to the Council cannot exceed 17.5% of the total net revenue received by the owner from the sale of the Market Dwellings at the time any interim payment is due_____
3. £350,000 shall be paid to the Council within 2 months after the occupation of the 40th Market Dwelling unless 21 months have passed since the commencement of the 21st Market Dwelling in which case an interim payment of a pro rata sum determined by the number of Market Dwellings occupied at the end of that 21 month period becomes due. Further interim payments would become due on occupation of each subsequent Market

Dwelling until occupation of the 40th Market Dwelling when the total phase payment will have been reached. Each interim payment shall be made within 2 months of the due date subject to the proviso that the total cumulative payment made to the Council cannot exceed 17.5% of the total net revenue received by the owner from the sale of the Market Dwellings at the time any interim payment is due_____

4. The residue of the contribution set out in 3.1 above shall be paid to the Council within 2 months of the occupation of the 50th Market Dwelling unless 15 months have passed since commencement of development of the 41st Market Dwelling in which case an interim payment becomes due based on 17.5% of the total net revenue received by the owner from the sale of the Market Dwellings occupied at the end of that 15 month period less the total cumulative lump sum payments made to the Council to date. Further interim payments would become due on occupation of each subsequent Market Dwelling until occupation of the 50th Market Dwelling when the total payment will have been reached. Each interim payment shall be made within 2 months of the due date_____
5. Not to occupy or allow occupation of any Market Dwelling or property on the site unless and until all monies in respect of each prior phase of development as set out above at 3.3 1,2a,2b,3 and 4 has been fully paid to the Council_____

4. Live Work Units

- 4.1 Not to occupy any dwelling unless the related work unit is completed_____
- 4.2 Not to use any work unit for any use other than Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987_____
- 4.3 To permit occupiers of the Live Work Units to sub-let the ancillary work unit provided it can be shown that the original commercial use has failed_____
- 4.4 The Occupier to make a declaration to the Council in January of each year of the planning use to which the related work unit was put during the previous calendar year_____

5. Public Open Space

- 5.1** To pay the Council a commuted sum of £50,000 in respect of the improvement and future maintenance of the Public Open Space shown hatched green on the Plan. The initial £10,000 of this commuted sum shall be paid within 2 months following the occupation of the 10th Market Dwelling with the remaining balance of £40,000 to be paid within 2 months following the occupation of the 25th Market Dwelling_____

6. Local Occupancy for Affordable Housing and Affordable Live Work Units

The Owner agrees with the Council:

- 6.1** That except with the prior written consent of the Council the Owner shall not dispose or cause or allow the disposal of any individual Affordable Dwelling, being Plots 2, 12, 13, 14 and 53 or Affordable Live Work Units 1B and 1C in LW-3 other than to an "Approved Person"_____
- 6.2** Approved persons for the purposes of this scheme and in the order of priority are detailed below:
- (a) 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:
 - (i) living in the Parish in which the site is located on the First day of January Two thousand and six; or
 - (ii) working in the Parish in which the site is located on the First day of January two thousand and six; or
 - (iii) who have lived in the Parish in which the site is located for any five of the last ten years having left to find suitable accommodation elsewhere and who also have close family living in the Ribble Valley as at the First day of January Two thousand and six_____
 - (iv) living in Ribble Valley Area on the First day of January Two thousand and six; or
 - (v) working in Ribble Valley Area on the First day of January two thousand and six; or

- (vi) who have lived in Ribble Valley Area for any five of the last ten years having left to find suitable accommodation elsewhere and who also have close family living in the Ribble Valley as at the First day of January Two thousand and six_____
- (vii) on the fifth anniversary of the date of this agreement the date stated above being the first day of January two thousand and six in (i), (ii), (iii), (iv), (v) and (vi) above shall move forward five years to the first day of January two thousand and eleven and shall subsequently move forward a further five years every fifth anniversary of the date of this agreement_____
- (b) Thereafter people who are not first time buyers who can meet one or other of the local connections detailed in (a) and can demonstrate a housing needs requirement for the property type they are purchasing_____

Eligibility criteria: financial

The Owners will ensure purchasers of all properties demonstrate that they have:

- (i) sufficient income to purchase the property but that they could not afford to purchase on the open market_____
- (ii) have a satisfactory credit history_____
- (iii) have sufficient funds to cover the legal costs involved in purchase_____

Eligibility criteria: income

The Owners will ensure that the Units are allocated to those who meet the requirements of this Agreement and will:

- (i) impose upper income brackets in accordance with the Homes and Communities Agency regulations and guidance for purchasers of each Unit_____
- (ii) ensure income levels are verified via wage slips/P60s_____
- (iii) 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/bank statements/government department issued documents if they are not on the electoral roll_____

Eligibility criteria: local connection

- (i) verify local connection based on employment by way of references/confirmation of employment history confirmation of permanence of employment will be required from employer_____
- (ii) 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_____

- 6.3** That where an Affordable Dwelling or Affordable Live Work 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 clause 6.2 has offered in writing to buy that Affordable Dwelling or Affordable Live Work Unit then the dwelling or unit may be made available for sale to a Housing Association either for resale or rental_____
- 6.4** That where an Affordable Dwelling or Affordable Live Work Unit has been bona fide marketed to a Housing Association for a period of 3 months and no Housing Association has offered in writing to buy that Affordable Dwelling or Affordable Live Work Unit then the dwelling or unit may be made available for sale to purchasers outside the definition of Approved Person_____
- 6.5** That the five Affordable Dwellings and two Affordable Live Work Units are to be sold on the basis that they remain affordable at the initial sale 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 the 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_____

THIRD SCHEDULE
COUNCIL'S COVENANTS

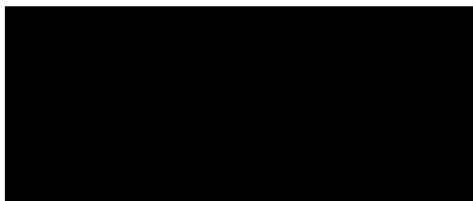
- 1.0 The Council hereby covenants with the Owner to use all sums (save for the commuted sum) received from the Owner under the terms of this Deed for the purposes of securing increased provision of affordable housing in the Ribble Valley Area_____
- 2.0 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within five years of receipt by the Council of the final payment provided that the Owner has fulfilled all of its obligations under this Agreement_____
- 3.0 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed_____

IN WITNESS whereof the Council, the Company, the Owner, and Mortgagee have hereunto caused their respective Common Seals to be hereunto affixed and executed as a Deed the day and year first before written

THE COMMON SEAL of **RIBBLE VALLEY**)

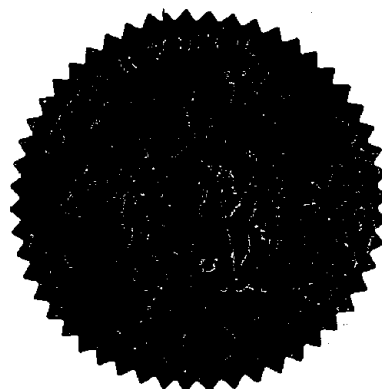
BOROUGH COUNCIL was hereunto affixed to)

this Deed in the presence of:)



Mayor

Chief Executive



EXECUTED AS A DEED on behalf of)

Seal No 994

acting by)

Direct)

~~Director/Secretan~~)

EXECUTED AS A DEED on behalf of

acting by

)

)

Director

~~Director/Secretary~~

EXECUTED AS A DEED on behalf of

acting by an Authorised

)

)

Director

~~Secretary~~

Signatory in the presence of

Name

Address