

DATED 5th September 2012

RIBBLE VALLEY BOROUGH COUNCIL

– and –

LIVERPOOL HOUSING TRUST LIMITED

A G R E E M E N T

Under Section 106 Town and Country Planning Act 1990
relating to property known as former garage site on Land at Henthorn Road,
Clitheroe.

Legal Services Manager, Diane Rice
Ribble Valley Borough Council
CLITHEROE

THIS AGREEMENT is made as a Deed the 5th day
of September Two thousand and twelve **BETWEEN RIBBLE VALLEY BOROUGH**
COUNCIL of Council Offices Church Walk Clitheroe Lancashire BB7 2RA
(hereinafter called "the Council") of the first part and **LIVERPOOL HOUSING TRUST**
LIMITED (Registered Charity No.LH0250) of 12 Hanover St Liverpool L1 4AA
(hereinafter called "the Association") of the other part

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 Henthorn Road, Clitheroe is situated and is shown edged red on the plan annexed to this Agreement
- 2 The Council is the owner of the freehold interest in the Property which is registered at HM Land Registry under title number LAN13802
- 3 The Association has an interest in the Property by virtue of a conditional contract to purchase the Property and wishes to construct the Development upon the Property in accordance with the Planning Permission and the obligations contained herein
- 4 The Association submitted to the Council the Application together with the accompanying plans for the Development
- 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 Association entering into this Agreement with the Council under the provisions of Section 106 of the Act of 1990 (as amended) to secure the planning obligations contained herein

NOW THIS DEED WITNESSETH as follows:

DEFINITIONS

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

"Act of 1990": the Town and Country Planning Act 1990

"Application": the application for planning permission dated 4 November 2010 submitted to the Council (and subsequently amended on 13th June 2011) for the Development and allocated reference number 3/2010/0929/P

"Approved Persons": as defined in clause 12 of this Agreement

"Implementation of Development": the date on which any material operation (as defined in Section 56(4) of the Act of 1990) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Implement Development" shall be construed accordingly

"Development": the development of the Property for planning permission for the demolition of existing garage buildings on the Property and erection of 8 no houses (5 2bed/4person houses and 3 4bed/6person houses)

"Dwelling": the 8 dwellings to be constructed pursuant to the Planning Permission

"Occupation" and "Occupied": occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Plan": the plan attached to this Agreement

"Planning Permission": the planning permission subject to conditions to be granted by the Council pursuant to the Application in the form annexed hereto

"Property" the property known as land at Henthorn Road against which this Agreement may be enforced as shown edged red on the Plan

- 7 This Agreement is a Planning Obligation and is made under the provisions of Section 106 of the Act of 1990 (as amended) and the covenants imposed upon the Association under this Agreement create planning obligations pursuant to Section 106 of the Act of 1990 and are enforceable by the Council as local planning authority against the Association
- 8 This Agreement is conditional upon the grant of the Planning Permission for Development of the Property under the Application and the Implementation of Development in whole or in part save for the provisions of clauses 27, 28 and 29 which shall come into effect immediately upon completion of the Agreement
- 9 The Association hereby covenants with the Council that the Property shall be permanently subject to each and every one of the restrictions regulating the Development as are contained in this Agreement
- 10 This Agreement shall be registered as a Local Land Charge under the Local Land Charges Act 1975 upon the register maintained by the Council
- 11 The said restrictions referred to in clause 9 of this Deed are as follows:

Rental Dwellings

11.1 that the 8 Dwellings for rental to be built on the Property shall not be Occupied otherwise than for Occupation by tenants for Rental at Affordable rent

11.2 unless otherwise agreed in writing between the Council and the Association that on completion of the Dwellings they shall be allocated to tenants by 100% nomination arrangements to

Approved Persons nominated by the Council in accordance with the Council's allocations policy

- 11.3 that rents to be charged on the 8 Dwellings will be in accordance with the Government's Guidance on Affordable Rents, as issued by the Homes and Communities Agency or such other successor to the Homes and Communities Agency, which governs the rents to be charged by all social landlords or Registered Housing Providers, whether they be Registered Social Landlords or Local Authorities

12 Approved Persons

- 12.1 Approved Persons for the purposes of this urban scheme and as referred to in clause 11.2 above, and in the order of priority shall not be otherwise than as defined below:

12.1.1 Households on the Council's waiting list who can demonstrate a housing need requirement for the type of Dwelling who are either

12.1.1.1 living in the Borough of Ribble Valley or

12.1.1.2 working in the Borough of Ribble Valley or

12.1.1.3 who have lived in the Borough of Ribble Valley for any five of the last ten years having left to find suitable accommodation elsewhere and who also have close family living in the Borough of Ribble Valley

12.1.1.4 Persons moving to the Ribble Valley to offer support or receive support from a close family member who is living in the Ribble Valley

- 13 The Council covenant to nominate Approved Persons for each Dwelling within two weeks of a request for a nomination by the Association

14 Wheeled Bin Contribution

- 14.1. The Association covenants with the Council to pay the Wheeled Bin Contribution of £90 for each of the 8 Dwellings prior to first Occupation of each Dwelling
- 14.2. The Council covenants to use the Wheeled Bin Contribution towards the administration and delivery costs of providing wheeled bins at the proposed Development

15 Notices

- 15.1 Any notice or other communication given or made in accordance with this Agreement shall be in writing and shall be deemed to have been properly served if sent by recorded delivery or registered post to:

- 15.1.1 the Strategic Housing Officer of the Council at the address of the Council shown on the first page of this Agreement or such other address that the Council shall notify to the Association as being the address for service of the Council for the purposes of this Agreement; and

- 14.1.2 the Association at the address set out above or such other address that the Association shall notify the Council of

16 Records

The Association 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 Association's covenants are being observed

- 17 The expressions "the Council" and "the Association" shall include their respective successors in title and assigns **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

- 18** The Council will within fourteen days of this Agreement grant the Planning Permission for the Development
- 19** This Agreement shall not be binding on the Association with regards to sales under right to buy and right to acquire legislation
- 20** If the Planning Permission shall expire before the Implementation of Development or shall at any time be quashed, revoked or otherwise withdrawn or without the consent of the Association it is modified this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges
- 21** No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 22** Where the agreement, approval, consent or expression of satisfaction is required by the Association from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 23** Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
- 24** Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement
- 25** This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or

otherwise withdrawn or (without the consent of the Association) it is modified by any statutory procedure or expires prior to the Implementation of the Development

- 26** This Agreement shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them

27 Dispute Provisions

27.1 In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares

27.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 27.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by

the parties in equal shares

27.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation

27.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days

28 The Association shall pay to the Council on completion of this Agreement the sum of three hundred and thirty pounds (£330.00) towards the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement.

29 This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England

IN WITNESS whereof the Council and the Association 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



**THE COMMON SEAL of LIVERPOOL HOUSING
TRUST LIMITED** was hereunto affixed to
this Deed in the presence of:

)



Authorised Signatory



Authorised Signatory

