

PT 131242

DATED 13 November 2007

SCARBOROUGH BOROUGH COUNCIL

and

NORTH YORKSHIRE COUNTY COUNCIL

and

DEBORAH LEE TAYLOR, ELISSA KATE HOWARD and *to view*

PHILIPPA ANNE ROBERTSON

and

MILL PROPERTIES LIMITED

and

FURTIS BEADS TRUSTEES LIMITED as trustees of
THE WILLOWS TRUST ~~TRUSTEES~~

and

STEPHEN BRIAN SOUTHWELL and DAVID CLIVE SOUTHWELL

AGREEMENT

pursuant to section 106

of the Town and Country Planning Act 1990 (as amended)

relating to the land at Muston Road, Filey

WALKER MORRIS

Kings Court

12 King Street

LEEDS

LS1 2HL

Tel 0113 2832500

Fax. 0113 2459412

Ref CAS/BAR 3452-2

THIS DEED is made the 13th day of November 2007

BETWEEN -

- (1) SCARBOROUGH BOROUGH COUNCIL of Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG ("Borough Council"), and
- (2) NORTH YORKSHIRE COUNTY COUNCIL of County Hall, Northallerton, North Yorkshire, DL7 8AD ("County Council"), and
- (3) MRS DEBORAH LEE TAYLOR of Lavender Cottage, Broxa, Scarborough, North Yorkshire, YO13 0BP, MRS ELISSA KATE HOWARD of 14 Southfarm, Nedderton Village, Bedington, Northumberland, NE22 6BH and MRS PHILIPPA ANNE ROBERTSON of 10 Cedar Court, Widdrington Station, Morpeth, Northumberland, NE61 5PL ("First Owners"), and
- (4) MILL PROPERTIES LIMITED of PO Box 119, Martello Court, Admiral Park, St Peter's Port, Guernsey, GY1 3HB ("Developer"); and
- (5) ^{READS} ~~WILLOWS TRUST TRUSTEES~~ LIMITED AS TRUSTEES OF THE ^{ED} ~~WILLOWS TRUST TRUSTEES~~ of PO Box 119, Martello Court, Admiral Park, St Peter's Port, Guernsey, GY1 3HB ("Second Developer"), and ^{of} ^W ¹¹
- (6) STEPHEN BRIAN SOUTHWELL c/o 12 Belle Vue Street, Filey, East Riding of Yorkshire YO14 9HY and DAVID CLIVE SOUTHWELL of Church Farm, Burton Flemming, Driffield, East Riding of Yorkshire ("Second Owners")

WHEREAS

- 1 The Borough Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable
- 2 The County Council are the Local Education Authority for the area within which the Land is situated.
- 3 The First Owners are the freehold owners of land registered under Title Number NYK300128, over which the Developer has the benefit of Option No. 1
- 4 The Second Owners are the freehold owners of land registered under Title Number NYK273530, over which the Second Developer has the benefit of Option No 2

5 NJW Developments Limited ("NJW") has submitted the Planning Application to the Borough Council for permission to carry out the Development on the Land

6 The Borough Council resolved on 10 July 2007 to refuse planning permission for the Planning Application

7 The Appeal was lodged against the Council's refusal of the Planning Application.

NOW THIS DEED is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that Section and WITNESSES as follows -

1 In this Agreement the following words and expressions shall where the context so requires or admits have the following meanings: -

"Act" means the Town and Country Planning Act 1990 (as amended),

"Affordable Housing" means housing including social rented housing, provided to specified eligible households whose needs are not met by the market and should -

- meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices
- include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision

"Affordable Housing Units" means 20% of the total number of Dwellings which are to be constructed on the Land pursuant to the Planning Permission and which are to be Affordable Housing and "Affordable Housing Unit" shall mean an individual one of the Affordable Housing Units

"Affordable Price" means a price not exceeding 50% of the Market Value for an equivalent Open Market Dwelling for each of the

Affordable Sale Dwellings,

"Affordable Rent"

means a rent which is comparable to the average rents charged in the Borough Council's administrative area by Registered Social Landlords for properties of an equivalent type age and floor area to the Social Rented Dwellings (in accordance with the Government Target Rents) and any increases or decreases shall be in accordance with the Housing Association's rent setting policy and the Housing Corporation's guidance at the time,

"Affordable Sale Dwellings"

means 40% of the total number of Affordable Housing Units which are to be constructed on the Land the size / type and location of which is to be agreed with the Borough Council in accordance with the provisions of paragraph 1 of the First Schedule to this Agreement which will be offered for transfer to a Registered Social Landlord at the Affordable Price and sold on a discounted for sale or shared ownership basis to occupiers in accordance with its objects and reference to "Affordable Sale Dwelling" shall mean any of the Affordable Sale Dwellings;

"Appeal"

means the appeal dated 19 July 2007 (reference no APP/H2733/A/07 lodged on behalf of NJW against the refusal by the Borough Council to grant planning permission for the Planning Application,

"Commencement of Development"

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act **Save That** the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary laying of any access road or service media and reference to "Commence Development" and "Commencement of

Development of each phase of the Development" shall be construed accordingly,

"Developers"

means the Developer and the Second Developer together,

"Development"

means the residential development with open space and means of access to be carried out on the Land pursuant to the Planning Permission,

"District Person"

means a person who -

- (a) currently lives within the administrative area of Scarborough and has lived there for six months, or
- (b) has a close family relative who is ordinarily resident within the area; or
- (c) has previously lived in the administrative area of Scarborough for a continuous period of at least ten years, or
- (d) are permanent employment in the administrative area of Scarborough,

"Dwelling"

means a residential unit that may be built on the Land as part of the Development and reference to "Dwellings" shall be construed accordingly,

"Family Member"

means a member of the family of a person who is entitled by virtue of the terms of this Agreement to occupy an Affordable Sale Dwelling, in that they are either -

- (a) a spouse of that person, or they are living together as husband and wife or partner; or
- (b) a dependent parent, brother, sister, daughter or son of that person

and for the purposes of this definition a relationship by marriage shall be treated as a relationship by blood, a relationship of the half blood shall be related as a

relationship of the whole blood, the step-child of a person shall be treated as their child and an illegitimate child shall be treated as the legitimate child of their mother and reputed father,

"Filey Junior School Contribution"

means the sum of £274,800 00 (two hundred and seventy four thousand eight hundred pounds only) to be paid by the Owners or the Developers to the Council as a contribution towards the improvement of Filey Junior School the need for which directly arises from the Development,

"Government Target Rents"

means the target rents published by the Housing Corporation as amended from time to time;

"Housing Corporation"

means the Housing Corporation or any bodies undertaking the existing functions of the Housing Corporation within the meaning of Part III of the Housing Association Act 1985 (or as redefined by any amendment, replacement or re-enactment of such Act),

"Housing Need"

means being able to demonstrate -

(A)

(1) that a person lacks their own housing or lives in housing which is inadequate or unsuitable to meet their existing and future requirements whether because of its tenure, size, type, design, condition, security or cost,
OR

(2) they are unintentionally homeless and last resided locally,

AND

(B)

(1) they are unlikely to be able to meet their needs in the existing local housing market without assistance

through discounting of sale price or rent

For the avoidance of doubt in order for a person to qualify as having "housing Need" they must satisfy A and B

"Infant and Nursery School Contribution" means the sum of £34,350 00 (thirty four thousand and three hundred and fifty pounds only) to be paid by the Owners or the Developers to the County Council as a contribution towards the improvement of Filey CE VC Infant and Nursery School the need for which directly arises from the Development,

"Interest" means interest at the rate of 3% above the base lending rate of Barclays Bank plc in force at the due date which shall mean the date when interest first becomes payable,

"Land" means the land at Muston Road, Filey, North Yorkshire which is edged in red on the Plan for the purposes of identification only,

"Local Health Contribution" means the sum of £50,000 00 (fifty thousand pounds) to be paid by the Owners or the Developers to the Borough Council as a contribution towards improvements to the Filey surgery to be carried out by North Yorkshire and York Primary Care Trust the need for which is generated by the Development,

"Local Person" means a person who: -

- (a) currently lives within the town of Filey and has lived there for six months; or
- (b) has a close family relative who is ordinarily resident within the area;
- (c) has previously lived in Filey for a continuous period of at least ten years
- (d) are in permanent employment in Filey;

"Market Value"	means a figure calculated having regard to the estimated amount for which a relevant dwelling should sell 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 and reference to "Market Values" shall be construed accordingly,
"Multi Use Games Area Contribution"	means the sum of £15,520 00 (fifteen thousand five hundred and twenty pounds) to be paid by the Owners or the Developers to the Borough Council as a contribution towards the provision by the Borough Council of an off-site multi use games area within the vicinity of the Land the need for which directly arises as a result of the Development,
"Open Market Dwelling"	means a residential unit that is built on the Land as part of the Development which is not an Affordable Housing Unit and and reference to "Open Market Dwellings" shall be construed accordingly,
"Option No. 1"	means an option dated 8 th November 2004 in favour of Sandco 859 Limited to purchase the land registered under title number NYK300128 and which was assigned to the Developer on 31 May 2007,
"Option No. 2"	means an option dated [] in favour the Second Developer to purchase the land registered under title number NYK273530,
"Owners"	means the First Owners and the Second Owners together,
"Plan"	means the plan attached to this Agreement at the Second Schedule,
"Planning Application"	means application submitted by NJW Developments Limited to the Borough Council dated 7 March 2007 and for permission to carry out the Development and allotted

reference 07/00547/OL,

- "Planning Permission"** means a planning permission granted by the Secretary of State,
- "Practical Completion"** means the issue of a certificate(s) of practical completion in relation to the Affordable Housing Units by an architect or such other person who has been supervising the Development,
- "Registered Social Landlord"** means a registered social landlord as defined in part 1 of the Housing Act 1996 (or as redefined by any amendment, replacement or re-enactment of such Act) who is registered with the Housing Corporation pursuant to section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act or any company or other body approved by the Housing Corporation for receipt of social housing grant as may be proposed by the Owners and / or the Developers and approved by the Council (such approval not to be unreasonably withheld or delayed),
- "Secretary of State"** means the First Secretary of State within Communities and Local Government or any substitute or any Inspector appointed by her;
- "Social Rented Dwellings"** means 60% of the total number of Affordable Housing Units which are to be constructed on the Land the location of which is to be agreed with the Borough Council in accordance with the provisions of paragraph 1 of the First Schedule to this Agreement which will be offered for transfer to a Registered Social Landlord at the Social Rented Dwelling Price and let to occupiers in accordance with its objectives and reference to "Social Rented Dwelling" shall mean any of the Social Rented Dwellings,
- "Social Rented Dwelling Price"** means a price that will enable the Registered Social Landlord to charge an Affordable Rent

- 2 The Owners and Developers covenant with the Borough Council and the County Council to perform the obligations and observe the restrictions specified in the First Schedule
- 3 The Borough Council covenants with the Owners and Developers to perform the obligations and observe the restrictions specified in the Fifth Schedule.
- 4 The County Council covenants with the Owners and Developers to perform the obligations and observe the restrictions specified in the Third Schedule.
- 5 It is declared as follows -
- 5 1 The obligations in the Agreement shall be enforceable in accordance with the provisions of section 106(3) of the Act
- 5 2 The expression "the Borough Council" shall include its successor(s) to its statutory functions as the party which pursuant to legislation relating to Town and Country Planning is entitled to enforce the planning obligations hereby created and the expressions "the Owners" and "the Developers" shall include their successors in title and assigns to the Land and "the County Council" shall include its successor(s) to its statutory functions in respect of education matters
- 5 3 The parties to this Agreement hereto covenant on behalf of themselves and their successors in title that no person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 5 4 The covenants contained in clauses 2, 3 and 4, and in the First, Third, Fourth and Fifth Schedules of this Agreement shall only take effect upon the Commencement of Development
- 5.5 The covenants on the part of the Owners and Developers contained in this Agreement shall not be enforceable against purchasers' lessees or mortgagees of individual Open Market Dwellings
- 5 6 The covenants on the part of the Owners and Developers contained paragraphs 2, 3, and 4 of the First Schedule shall not be enforceable against purchasers' lessees or mortgagees of individual Affordable Housing Units
- 5 7 This Agreement shall have effect as from the date hereof until discharged but shall cease to have effect if the Planning Permission shall lapse or expire or be revoked or for any reason cease to have effect before the Commencement of Development

- 5 8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of the Agreement
- 5 9 This Agreement is a Local Land Charge and shall be registered as such
- 5 10 The Borough Council will upon the written request of the Owner and or Developers at any time after the obligations of the Owner and / or Developers under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges
- 5 11 This Agreement does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999
- 5 12 In the event that the Owners and Developers fail to make payment in accordance with their obligations set out in this Agreement they shall pay Interest on the sum due from the date it becomes payable until actual payment thereof
- 5 13 Any notice consent or approval required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission
- 5 14 The address for service of any such notice consent or approval as aforesaid shall -
- 5 14 1 in the case of service upon the Borough Council or the County Council be at its address aforesaid or such other address for service as shall have been previously notified by the Borough Council or County Council to the Owners and Developers; and
- 5 14 2 in the case of service upon the Owner or Developers shall be the registered offices or such other address for service as shall have been previously notified by the Owners or Developers to the Borough Council and County Council
- 5.15 A notice consent or approval under this Agreement shall be deemed to have been served as follows: -
- 5 15 1 if personally delivered at the time of delivery,
- 5.15.2 if posted 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,

5 15 3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3 30pm otherwise the following working day,

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

6 The Owners covenant with the Developers that they shall not during the subsistence of Option No 1 and / or Option No 2 undertake (or authorise any person on their behalf to undertake) any actions which would constitute the Commencement of Development nor give any written notice to the Council as to the date of such Commencement of Development except in so far as they become under a legal duty to disclose such information

7 The Developers covenant with the Owners to indemnify and keep the Owners fully and effectively indemnified in respect of all loss, damage, claims, liabilities, actions, cost , expenses and demands arising directly or indirectly from entering into this Agreement for the purposes of Section 106 of the Act and all liability thereunder save to the extent that any such loss, damage, liability, cost, claim, action, expense or demand arises -

7 1 out of any breach by the Owners of their obligation in clause 6 above, and / or

7 2 after Option No 1 and / or Option No 2 as the case may be has expired or for any reason is terminated and the land subject to Option No 1 and / or Option No 2 has not been transferred to the Developers except that in circumstances where notwithstanding the said termination or lapse of Option No 1 and / or Option No 2 the land that is subject to Option No 1 and / or Option No 2 has nevertheless been transferred to the Developers, the indemnity herein stated shall be binding and effective

8 If the terms of any conveyance transfer or other disposal (including any contract thereof) cannot be agreed by the Owners or the Developers and the Council and / or any dispute or difference arises between the parties as to their respective rights duties or obligations or as to the failure of the Borough Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter it shall be dealt with as follows: -

8 1 1 in the case of any design requirement or matter regarding the Affordable Housing Units the same shall be referred to an independent Chartered Surveyor of at least fifteen years

standing who shall be nominated in default of agreement between the Owners or the Developers and the Borough Council by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to be decided as provided below,

8.1.2 in the case of any legal requirements or matter arising from this Agreement and / or regarding the documentation or rights for the Affordable Housing Units the same shall be referred to an independent Solicitor or Barrister of at least fifteen years standing who shall be appointed in default of agreement between the Owners or the Developers and the Borough Council and / or the County Council as the case may be by the President of the Law Society or his deputy to be decided as provided below,

8.1.3 any matter referred to an independent Chartered Surveyor or independent Solicitor in accordance with the foregoing provisions shall be decided by such person as an expert not as an arbitrator and such independent person ("**Expert**") shall consider the written submissions of the parties and his determination shall be made in writing and in each case be final and binding on such parties and the costs of such determination shall be paid as the expert shall direct

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written

THE FIRST SCHEDULE
(Owners' and Developers' Covenants)

1 AFFORDABLE HOUSING

The Owners and the Developers jointly and severally covenant with the Borough Council -

1 1 Not to allow Commencement of Development of each phase of the Development until it has submitted to the Council for approval a scheme to provide details of the proposed Affordable Housing Units to be provided within that phase such scheme to provide that -

1 1 1 60 per cent of the Affordable Housing Units shall be Social Rented Housing and 40 per cent of the Affordable Housing Units shall be Affordable Sale Dwellings,

1 1 2 the Affordable Housing Units shall be a pro-rata mix of the size and type of homes being built on the overall Development and shall be pepper-potted in small clusters throughout the Development,

1 1 3 the Affordable Housing Units shall be built to a high standard of design and amenity and shall be of similar size and quality to the Open Market Dwellings and visually indistinguishable, and

1 1.4 the Social Rental Housing shall be constructed to an acceptable standard to a Registered Social Landlord

("Affordable Housing Scheme")

1 2 Save unless the terms of paragraphs 1 12 and / or 1 19 of this Schedule apply not to -

1 2 1 allow the occupation of more than 60 per cent of the Open Market Dwellings within a phase of the Development until construction has been commenced in respect of the Affordable Housing Units to be provided within that phase, and

1 2 2 occupation of more than 95 per cent of the Dwellings within a phase of the Development until the Practical Completion of the Affordable Housing Units to be provided within that Phase, and

1 2 3 on production to the Council of a certified copy of the executed and dated transfer between the Owners or the Developers and the Registered Social Landlord or evidence of the sale of the Affordable Housing Units on the open market in accordance with paragraphs 1.12 and / or 1 19 of this Schedule the obligations to provide Affordable Housing Units hereunder shall be discharged in relation to that particular phase

1 3 Within 28 working days (or within such other time period of not more than an additional 28 working days that the Borough Council may reasonably require and which may be agreed in writing between the Borough Council and the Owners or the Developers within the initial 28 working day period such agreement not to be unreasonably withheld or delayed) of the Borough Council receiving from the Owners or the Developers the Affordable Housing Scheme the Borough Council shall notify the Owners or the Developers in writing of its approval to the Affordable Housing Scheme or will provide in writing its proposed amendments in relation to the Affordable Housing Scheme pursuant to which the Owners or the Developers shall submit a revised Affordable Housing Scheme incorporating those amendments proposed by the Borough Council that are reasonable and accepted by the Owners or the Developers **PROVIDED ALWAYS** that if the Borough Council does not notify the Owners or the Developers within 28 working days (or such longer period as may be agreed in accordance with this paragraph 1.3) of its agreement or proposed amendments to the Affordable Housing Scheme it shall be deemed that the Borough Council has approved the Affordable Housing Scheme submitted by the Owners or the Developers **AND FURTHER PROVIDED THAT** if agreement cannot be reached between the Borough Council and the Owners or the Developers within 56 days (or such other period of time that may be agreed) then the provisions of clause 7 11 of this Agreement relating to expert determination can be invoked by any party in relation to only those points that are in dispute

1 4 On receipt of the Borough Council's approval or deemed approval to the Affordable Housing Scheme pursuant to paragraph 1 3 of this Schedule to construct the Affordable Housing Units on the Land in accordance with the approved Affordable Housing Scheme or any variations that may be agreed from time to time and the Planning Permission

1 5 To notify the Borough Council in writing seven days prior to the Commencement of Development.

1 6 Upon the Commencement of Development of each phase of the Development to nominate one or more Registered Social Landlords for the Council's approval (such approval not to be unreasonably withheld or delayed) **PROVIDED THAT** if the Borough Council does not notify the Owners or the Developers within 10 working days of receipt of nomination (or such longer period if agreed between the Borough Council and the Owners or the Developers) of its approval to the Registered Social Landlord(s) nominated by the Owners or the Developers it shall be deemed that the Borough Council has approved the Registered Social Landlord(s) nominated by the Owners or the Developers

Affordable Sale Dwelling

1 7 Immediately upon receiving confirmation of the Borough Council's approval or deemed approval to the nominated Registered Social Landlord(s) in accordance with paragraph 1 6 of this Schedule the Owners or the Developers will offer to enter into negotiations with the nominated Registered Social Landlord(s) and use reasonable endeavours to contract to dispose of some or all of the Affordable Sale Dwellings to the nominated Registered Social Landlord(s) at the Affordable Price for disposal by the Registered Social Landlord to a person or persons identified in accordance with the procedure as set out in the Fourth Schedule to this Agreement ("**Approved Person**") **PROVIDED THAT** it shall be a term of the transfer of the Affordable Sale Dwellings to a Registered Social Landlord that any future transfer of a Affordable Sale Dwelling is to be at no less than the Affordable Price to a person or persons identified in accordance with the procedure as set out in the Fourth Schedule to this Agreement unless otherwise agreed in writing by the Borough Council (such agreement not to be unreasonably withheld or delayed).

1 8 In the event that the nominated Registered Social Landlord declines to accept a transfer of some or all of the Affordable Sale Dwellings or no sale of some or all of the Affordable Sale Dwellings has been effected within two calendar months of the date when the Owners or the Developers nominated the Registered Social Landlord in accordance with paragraph 1 6 of this Schedule (whichever is the later) the Owners or the Developers shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with a nominated Registered Social Landlord together with evidence from the Registered Social Landlord(s) that they are not willing to so purchase the Affordable Sale Dwellings (if such evidence is available) and the Borough Council shall be invited to nominate an alternative Registered Social Landlord(s) within 10 days thereof **PROVIDED THAT** if the Borough Council does not nominate an alternative Registered Social Landlord within the 10 day period the Owners or the Developers will be entitled to nominate an alternative Registered Social Landlord of its choice

- 1 9 Immediately upon receiving confirmation of the Borough Council's approval to the alternative Registered Social Landlord or in the event the Owners or the Developers is entitled to nominate an alternative Registered Social Landlord in accordance with paragraph 1 8 of this Schedule the Owners or the Developers will offer to enter into negotiations with the alternative Registered Social Landlord and use reasonable endeavours to contract to dispose of some or all of the Affordable Sale Dwellings to the alternative Registered Social Landlord on the terms set out in paragraph 1 7 of this Schedule
- 1 10 If any offer pursuant to paragraph 1 7 of this Schedule is not accepted by an alternative Registered Social Landlord for the transfer of some or all of the Affordable Sale Dwellings or no sale of some or all of the Affordable Sale Dwellings has been effected within two calendar months of the date when the Borough Council or the Owners or the Developers nominated the alternative Registered Social Landlord in accordance with paragraph 1 8 of this Schedule (whichever is the later) the Owners or the Developers shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with an alternative Registered Social Landlord together with evidence from the alternative Registered Social Landlord(s) that they are not willing to so purchase the Affordable Sale Dwellings (if such evidence is available) and upon acknowledgement by the Borough Council of receipt of such evidence the Owners or the Developers will thereafter continue to use its reasonable endeavours until the expiration of six calendar months from the Commencement of Development to contract to transfer the Affordable Sale Dwellings at the Affordable Price to a Registered Social Landlord
- 1 11 At the expiration of six calendar months from the Commencement of Development the Owners or the Developers will offer to contract to transfer the Affordable Sale Dwellings to any further Registered Social Landlord nominated by the Borough Council and the Registered Social Landlord shall have four calendar months from receipt of an offer by the Owners or the Developers to accept the offer.
- 1 12 If any offer pursuant to paragraph 1 11 of this Schedule is not accepted or if once accepted the Registered Social Landlord then decides not to proceed with the transfer the Owners or the Developers shall notify the Borough Council as soon as reasonably practicable and shall provide written evidence of such non-acceptance of an offer or refusal to proceed with the transfer together with evidence from a Registered Social Landlord(s) that they are not willing to so purchase the Affordable Sale Dwellings (if such evidence is available) and upon acknowledgement by the Borough Council of receipt of such evidence the Owners or the Developers shall have no further obligation to offer the Affordable Sale Dwellings to any Registered Social Landlord or in any event if the Affordable Sale Dwellings (or any individual

unit or units comprised in the Affordable Sale Dwellings that has / have not been transferred) have not been transferred to a Registered Social Landlord within 12 calendar months of the Commencement of Development of a particular phase of the Development the obligations in paragraphs 1 7 to 1 11 of this Schedule shall cease and be of no effect and the Owners or the Developers shall be entitled to sell the Affordable Sale Dwellings that have not been transferred to a Registered Social Landlord on the open market free of the obligations contained in this Agreement relating to the provision of the Affordable Sale Dwellings and within 28 working days of the completion of the sale of each Affordable Sale Dwelling on the open market the Owners or the Developers shall pay a sum to the Borough Council equal to the difference between the Affordable Price and the actual sale price ("**Affordable Housing Commuted Sum**")

Social Rented Dwellings

- 1 13 Immediately upon receiving confirmation of the Borough Council's approval or deemed approval to the nominated Registered Social Landlord(s) in accordance with paragraph 1 6 of this Schedule the Owners or the Developers will offer to enter into negotiations with the nominated Registered Social Landlord(s) and use reasonable endeavours to contract to dispose of some or all of the Social Rented Dwellings to the nominated Registered Social Landlord(S) at the Social Rented Dwelling Price.
- 1 14 The Owners or the Developers will leave the offer open for acceptance by the nominated Registered Social Landlord for a period of two months and will during that period use reasonable endeavours to agree with the nominated Registered Social Landlord the terms other than price **PROVIDED THAT** it will be a term of the transfer of Social Rented Dwellings that the nominated Registered Social Landlord shall not dispose of or cause or permit the disposal of a Social Rented Dwelling other than for the purpose of providing tenancies at an Affordable Rent to a person or persons identified in accordance with the Registered Social Landlords selection and letting criteria unless otherwise agreed in writing by the Borough Council (such agreement not to be unreasonably withheld or delayed).
- 1 15 In the event that the nominated Registered Social Landlord declines to accept a transfer of some or all of the Social Rented Dwellings or no sale some or all of the Social Rented Dwellings has been effected within two months of the date when the Owners or the Developers nominated the Registered Social Landlord in accordance with paragraph 1 6 of this Schedule (whichever is the later) the Owners or the Developers shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with a nominated Registered Social Landlord together with evidence from the Registered Social

Landlord(s) that they are not willing to so purchase the Social Rented Dwellings (if such evidence is available) and the Borough Council shall be invited to nominate an alternative Registered Social Landlord within 10 days thereof **PROVIDED THAT** if the Borough Council does not nominate an alternative Registered Social Landlord within the 10 day period the Owners or the Developers will be entitled to nominate an alternative Registered Social Landlord of its choice

- 1 16 Immediately upon receiving confirmation of the Borough Council's approval to the alternative Registered Social Landlord or in the event the Owners or the Developers are entitled to nominate an alternative Registered Social Landlord in accordance with paragraph 1 15 of this Schedule the Owners or the Developers will offer to enter into negotiations with the alternative Registered Social Landlord and use reasonable endeavours to contract to dispose of some or all of the Social Rented Dwellings to the alternative Registered Social Landlord in accordance with the terms set out in paragraph 1 14 of this Schedule
- 1 17 If any offer pursuant to paragraph 1 16 of this Schedule is not accepted by an alternative Registered Social Landlord for the transfer of some or all of the Social Rented Dwellings or no sale of some or all of the Social Rented Dwellings has been effected within two calendar months of the date when the Borough Council or the Owners or the Developers nominated the alternative Registered Social Landlord in accordance with paragraph 1 15 of this Schedule (whichever is the later) the Owners or the Developers shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with an alternative Registered Social Landlord together with evidence from the alternative Registered Social Landlord(s) that they are not willing to so purchase the Social Rented Dwellings (if such evidence is available) and upon acknowledgement by the Borough Council of receipt of such evidence the Owners or the Developers will thereafter continue to use its reasonable endeavours until the expiration of six calendar months from the Commencement of Development to contract to transfer the Social Rented Dwellings at the Social Rented Dwelling Price to a Registered Social Landlord.
- 1 18 At the expiration of six calendar months from the Commencement of Development the Owners or the Developers will offer to contract to transfer the Social Rented Dwellings to any further Registered Social Landlord nominated by the Borough Council and the Registered Social Landlord shall have four calendar months from receipt of an offer by the Owners or the Developers to accept the offer
- 1 19 If any offer pursuant to paragraph 1 18 is not accepted or if once accepted the Registered Social Landlord then decides not to proceed with the transfer the Owners or the Developers shall notify

the Borough Council as soon as reasonably practicable and shall provide written evidence of such non-acceptance of an offer or refusal to proceed with the transfer and upon acknowledgement by the Borough Council of receipt of such evidence the Owners or the Developers shall have no further obligation to offer the Social Rented Dwellings to any Registered Social Landlord or in any event if the Social Rented Dwellings (or any individual unit or units comprised in the Social Rented Dwellings that has / have not been transferred) have not been transferred to a Registered Social Landlord within 12 calendar months of the Commencement of Development of a particular phase of the Development the obligations in paragraphs 1 13 to 1 18 of this Schedule shall cease and be of no effect and the Owners or the Developers shall be entitled to dispose of the Social Rented Dwellings that have not been transferred to a Registered Social Landlord on the open market free of the obligations contained in this Agreement relating to the provision of the Social Rented Dwellings and the provisions of paragraph 1 12 of this Schedule relating to the payment to the Borough Council of the Affordable Housing Commuted Sum shall apply equally to the Social Rented Dwellings as if reference to Affordable Sale Dwelling in paragraph 1 12 of this Schedule were to Social Rented Dwelling

General Provisions

- 1 20 Subject to paragraphs 1 12 and 1 19 of this Schedule not to allow permit or suffer the Affordable Housing Units to be used other than for the provision of accommodation by a Registered Social Landlord.
- 1.21 Save with the consent in writing of the Council (such consent not to be unreasonably withheld or delayed) not to allow permit or suffer each of the Affordable Sale Dwellings to be occupied by persons who are not identified in accordance with the procedure set out in the Fourth Schedule to this Agreement
- 1 22 The provisions of paragraphs 1 6 to 1 21 of this Schedule shall not be binding against -
- 1 22.1 any mortgagee or chargee of a Registered Social Landlord, its successors in title, or the mortgagee or chargee of the purchaser of any Affordable Sale Dwelling exercising its power of sale in respect of any of the Affordable Sale Dwellings who shall be free to sell from the provisions and also upon and following the appointment of a receiver by any such mortgagee or chargee and also upon and following the appointment of a receiver by any such mortgagee or chargee provided always that in the event of a disposal by a mortgagee or chargee of the purchaser of an Affordable Sale Dwelling the mortgagee in possession having exercised its power of sale shall in accordance with Section 105 of the Law of Property Act 1925 or such statutory modification or re-enactment thereof for the time being in force shall distribute the proceeds of sale with

the following priorities -

- (a) to itself the amount required to discharge its security,
- (b) to the dispossessed mortgagor the amount by which the sale price achieved by the mortgagee exceeds the amount required to discharge its security up to the value of the dispossessed mortgagor's interest in the Affordable Sale Dwelling as if the mortgagee in possession provisions herein did not apply,
- (c) to the Registered Social Landlord the balance of any proceeds of sale to be utilised for the provision of affordable housing elsewhere in the Borough of Scarborough, or

1 22 2 any tenant (or person claiming title from such tenant) of any of the Social Rented Dwellings or any mortgagee chargee or receiver of such dwellings in the event of such person mortgagee chargee or receiver having acquired 100% of the equity of any such dwellings whether this is acquired pursuant to the rights granted by the lease of such dwelling or pursuant to the provisions of the Housing Act 1985 or the Housing Act 1996 (or any legislation amending or replacing the same) or under any future legislation conferring such a right which is binding on any Registered Social Landlord, or

1 22 3 a disposal being required by -

- (a) any statutory provisions now or hereafter in force, or
- (b) the Housing Corporation, or
- (c) a Court Order

2 EDUCATION CONTRIBUTION

The Owners and Developers jointly and severally covenant with the County Council -

Infant and Nursery School Contribution

- 2 1 Not to allow the occupation of more than 100 Dwellings until £11,450 00 of the Infant and Nursery School Contribution has been paid to the County Council
- 2 2 Not to allow the occupation of more than 200 Dwellings until a further £11,450.00 of the Infant and Nursery School Contribution has been paid to the County Council

- 2 3 Not to allow the occupation of more than 300 Dwellings until the balance of £11,450 00 of the Infant and Nursery School Contribution has been paid to the County Council

Filey Junior School Contribution

- 2 4 Not to allow the occupation of more than 100 Dwellings until £91,600 00 of the Filey Junior School Contribution has been paid to the County Council
- 2 5 Not to allow the occupation of more than 200 Dwellings until a further £91,600 00 of the Filey Junior School Contribution has been paid to the County Council
- 2 6 Not to allow the occupation of more than 300 Dwellings until the balance of £91,600 00 of the Filey Junior School Contribution has been paid to the County Council

3 MULTI USE GAMES AREA

The Owners and Developers jointly and severally covenant with the Borough Council -

- 3 1 Not to allow the occupation of more than 60 per cent of the Open Market Dwellings until the Multi Use Games Area Contribution has been paid to the Borough Council

4 LOCAL HEALTH CONTRIBUTION

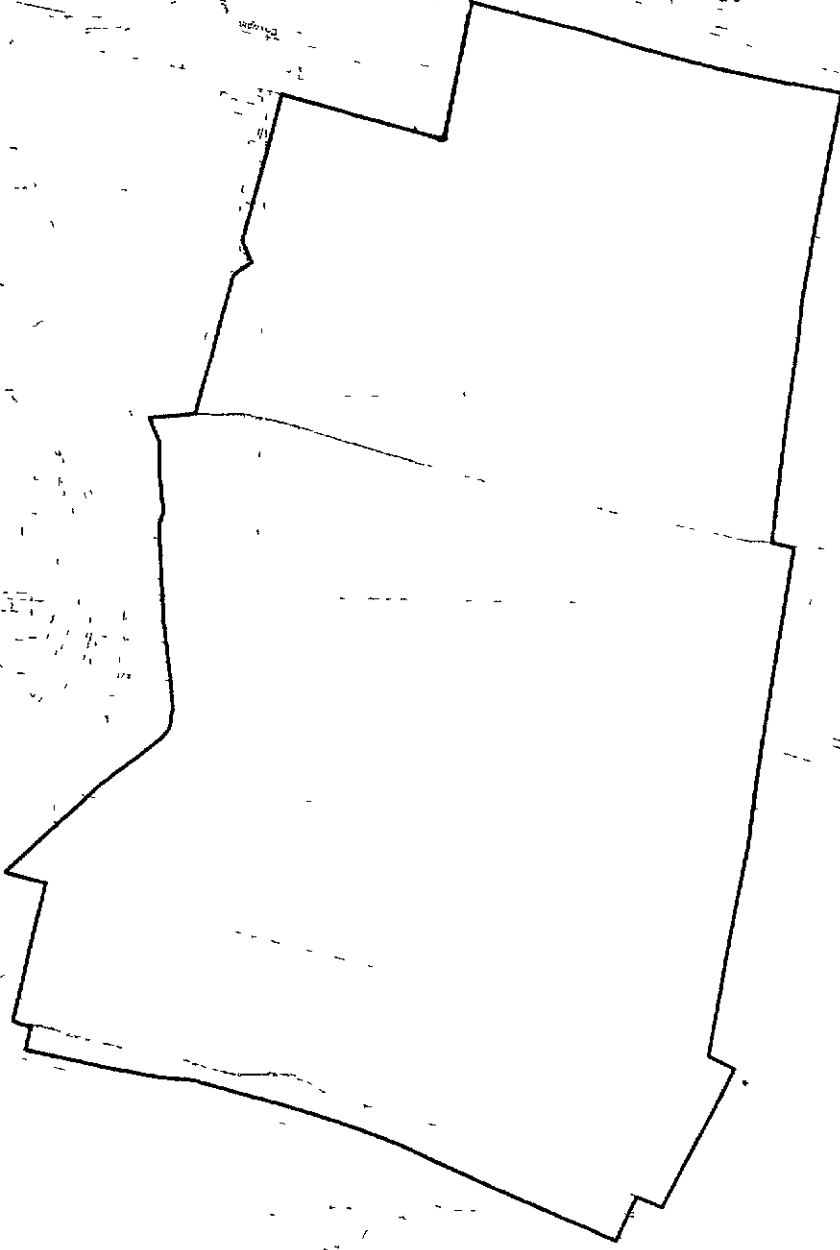
The Owners and Developers jointly and severally covenant with the Borough Council -

- 4.1 Not to allow the occupation of more than 60 per cent of the Open Market Dwellings until the Local Health Contribution has been paid to the Borough Council

THE SECOND SCHEDULE

(The Plan)

Key
/ Site location



Land off Muston Road, Filey - Site Location



NJW Developments
| Team MCC/EJT | February 2007 | 1 2500 @A3 | Pegasus Urban Design | drwg J 0112_06-1

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THIRD SCHEDULE

(The County Council's Covenants)

- 1 The County Council covenants with the Owners and the Developers -
- 1 1 To issue a receipt on request for the Infant and Nursery School Contribution the Filey Junior School Contribution
- 1 2 Upon receipt to place the sums referred to in paragraph 1 1 of this Schedule in an interest bearing account or in separate accounts as the County Council shall in its discretion decide
- 1 3 Not to apply the Infant and Nursery School Contribution for any purposes other than towards the improvement of Filey CE VC Infant and Nursery School the need for which directly arises from the Development and the County Council shall (on the reasonable request of the payee) provide evidence that the monies have been so applied
- 1 4 Not to apply the Filey Junior School Contribution for any purposes other than towards the improvement of Filey Junior School the need for which directly arises from the Development and the County Council shall (on the reasonable request of the payee) provide evidence that the monies have been so applied
- 1 5 In the event the Infant and Nursery School Contribution and / or the Filey Junior School Contribution or any part or parts thereof are not expended within 10 years of the date on which such monies were received by the County Council then the sum or sums not expended plus interest accrued will be repaid to the person who paid the sum or sums or its nominee

FOURTH SCHEDULE

(Occupancy Criteria)

- 1 The Owners and Developers (which in this Schedule also means each and every subsequent owner of an Affordable Sale Dwelling) shall -
 - 1 1 on the first sale of each Affordable Sale Dwelling, serve written notice on the Borough Council informing the Borough Council of when each Affordable Sale Dwelling will be complete and ready for occupation, and
 - 1 2 on all subsequent sales of each Affordable Sale Dwelling serve written notice on the Borough Council informing the Borough Council of the intention to dispose of the relevant Affordable Sale Dwelling
- 2 The Borough Council shall within 2 weeks of receipt of the notice referred to in paragraph 1 above, serve written notice on the Owners and Developers nominating a person from the Borough Council's housing waiting list as a potential purchaser of the respective Affordable Sale Dwelling ("the Nominee")
- 3 Upon receipt of the notice served pursuant to paragraph 2 above, the Owners and Developers shall offer the Affordable Sale Dwelling for sale to the Nominee unless the Owners and Developer have justifiable concerns of the Nominee's
 - 3 1 ability to raise finance for purchase, or
 - 3 2 any past or current history of anti social behaviour or issues concerning nuisance to neighbours or any other recurring disturbances of neighbouring occupiers' reasonable enjoyment of their dwelling
- 4 If the Owners and Developers do not offer an Affordable Sale Dwelling for sale to a Nominee on one of the grounds set out in paragraphs 3 1 and 3 2 above then the Owners and Developers shall immediately inform the Council of this in writing
- 5 In the event that a notice has been served by the Owners and Developers pursuant to paragraph 4 above then the Borough Council shall (for a period of two weeks from receipt of such notice) have the right to nominate a second person from the Borough Council's housing waiting list as a potential purchaser of the respective Affordable Sale Dwelling ("the Second Nominee")

6 Upon receipt of the notice by the Borough Council served pursuant to paragraph 5 above, the Owners and Developers shall offer the Affordable Sale Dwelling for sale to the Second Nominee unless the Owners and Developers have justifiable concerns of the Second Nominee's

6 1 ability to meet rental commitments or raise finance for purchase, or

6 2 any past or current history of anti social behaviour or issues concerning nuisance to neighbours or any other recurring disturbances of neighbouring occupiers' reasonable enjoyment of their dwelling

7 In the event that

7 1 a Nominee accepts the offer but has not exchanged contracts within two months of the offer being made, or

7 2 a Nominee rejects the offer, or

7 3 a Second Nominee accepts the offer but has not exchanged contracts within two months of the offer being made, or

7 4 the Second Nominee rejects the offer, or

7 5 the Borough Council fails to nominate a Nominee or a Second Nominee within the requisite timescales

then the provisions of paragraph 8 shall apply to the sale of the Affordable Sale Dwelling

8 In the event that one of the events set out in paragraph 7 occurs, then the Owners and Developers shall seek to sell the Affordable Sale Dwelling to a person who has Housing Need and who is a Local Person or a District Person PROVIDED that any such sale shall NOT be made at a sale-price which exceeds the Affordable Price For the avoidance of doubt, first priority shall be given to a Local Person in Housing Need and second priority shall be given to a District Person in Housing Need

9 In trying to allocate the occupation of an Affordable Sale Dwelling in accordance with paragraph 8 above, the Owner and Developers will advertise in the local press for a period of 4 weeks for prospective purchasers who have Housing Need and are either a Local Person or District Person to put their names forward to purchase the Affordable Sale Dwelling

- 10 The Owners and Developers shall provide at its own cost such information, documentation and evidence to the Borough Council to satisfy the Borough Council (acting reasonably) that the requirements of paragraphs 8 and 9 have been followed.
- 11 If after the 4 week advertising period referred to in paragraph 9 above has expired and the Owners and Developers has been unable to allocate a potential purchaser in accordance with the criteria specified in paragraph 8 above, the Owners and Developers shall be free to advertise the Affordable Sale Dwelling for sale on the open market PROVIDED that any such sale shall NOT be made at a sale-price which exceeds the Affordable Price
- 12 It is hereby PROVIDED AND AGREED that -
- 12 1 every time an Affordable Sale Dwelling shall become available for sale again in the future it shall be allocated to persons in strict accordance with the procedure and priority occupation criteria set out in this paragraph, and
- 12 2 any sale of an Affordable Sale Dwelling shall NOT be made at a sale-price which exceeds the Affordable Price which specified reduced sale-price shall apply to all future owners of the Affordable Sale Dwelling whichever occupation criteria set out above they satisfy and whether they are nominated by the Borough Council for occupation of an Affordable Sale Dwelling or not

Family Members

- 14 Nothing in this Agreement shall prevent the occupation of an Affordable Sale Dwelling by a Family Member of a person who is entitled by virtue of the terms of this Agreement to occupy such Affordable Sale Dwelling.
- 15 Nothing in this Agreement shall prevent the continued occupation of an Affordable Sale Dwelling by a person who at the time they commenced occupation of that Affordable Sale Dwelling was a Family Member of a person entitled by virtue of the terms of this Agreement to occupy such Affordable Sale Dwelling

FIFTH SCHEDULE

(Borough Council's Covenants)

- 1 The Borough Council covenants with the Owners and the Developers -
- 1 1 The Borough Council shall use any sum paid to the Borough Council pursuant to the First Schedule of this Agreement specifically and solely for the purposes described in this Agreement
- 1 2 The Borough Council shall on receipt of any sum or sums paid to the Borough Council pursuant to the First Schedule place the same into an interest bearing account from which any expended part may be readily identified
- 1 3 In the event that all or any part of any sum or sums paid to the Borough Council pursuant to the provisions of the First Schedule of this Agreement remain unexpended at the end of 10 years from the date of payment then the Borough Council shall immediately repay the unexpended sum to the payee together with all accrued interest
- 1 4 The Borough Council shall upon receipt of the sum paid to the Borough Council pursuant to paragraph 4 of the First Schedule to this Agreement immediately forward such monies to North Yorkshire and York Primary Care Trust for them to procure improvements of the Filey surgery

EXECUTED AS A DEED BY

SCARBOROUGH BOROUGH COUNCIL

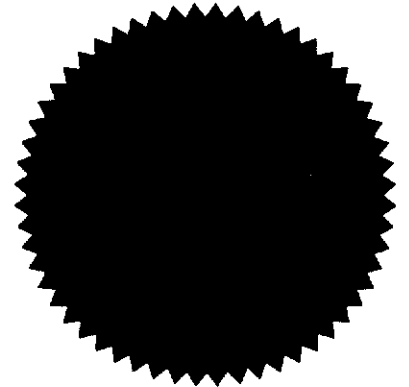
whose COMMON SEAL was

hereunto affixed

in the presence of



Michael F. Bell
Planning & Litigation Solicitor



11869

EXECUTED AS A DEED BY

NORTH YORKSHIRE COUNTY COUNCIL

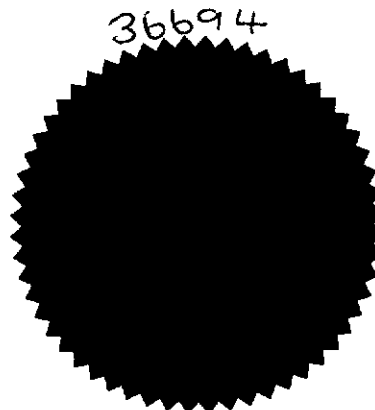
whose COMMON SEAL was

hereunto affixed

in the presence of



AUTHORISED
SIGNATORY



36694

**EXECUTED AS A DEED BY
DEBORAH LEE TAYLOR**



In the presence of

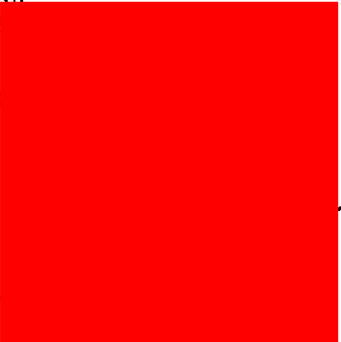
Signature

Name of witness

Address

Occupation

RE



**EXECUTED AS A DEED BY
ELISSA KATE HOWARD**



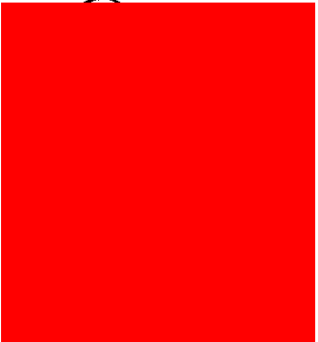
In the presence of

Signature

Name of witness

Address

Occupation



**EXECUTED AS A DEED BY
PHILIPPA ANNE ROBERTSON**



In the presence of
Signature
Name of witness
Address
Occupation



**EXECUTED AS A DEED BY
MILL PROPERTIES LIMITED**

Acting by



Director

Authorised Signatory
For COSIGN SERVICES LIMITED
Director

Director/Secretary

Authorised Signatory
For SPREAD SERVICES LIMITED
Director



**EXECUTED AS A DEED BY
WILLOW TRUST TRUSTEES**

FORTIS REAPS TRUSTEES LIMITED as trustees of the

acting by



Director
~~Authorised signatory~~

Director (Secretary)



**EXECUTED AS A DEED BY
STEPHEN BRIAN SOUTHWELL**



In the presence of ✓
Signature
Name of witness ✓
Address

Occupation



**EXECUTED AS A DEED BY
DAVID CLIVE SOUTHWELL**



In the presence of
Signature
Name of witness
Address

Occupation

