

DATED 19th September 2017

- (1) ROSSENDALE BOROUGH COUNCIL
- (2) A.T.C. PROPERTY LIMITED
- (3) LLOYDS BANK PLC
- (4) LLOYDS BANK COMMERCIAL FINANCE LIMITED

PLANNING AGREEMENT

under Section 106 Town and Country Planning Act 1990
relating to land at Reeds Holme Works, Burnley Road, Rawtenstall

Stuart Sugarman
Chief Executive
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made on the 19th day of September 2017

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Bacup OL13 0BB ("the Council")
- (2) **A.T.C. Property Limited** (Co. Regn. No 926947) of ^{1st Floor Marston} ~~Allied House Centre, 27~~ *Clydite Office Park, Wharfedale Road, Barnsley, South Yorkshire S75 1HQ* ~~Business Park, Bankwood Way, Birstall, West Yorkshire WF17 9TB~~ ("the Owner")
- (3) **LLOYDS BANK PLC** (Co. Regn. No 2065) whose registered office is at 25 Gresham Street London EC2V 7HN and additionally whose secondary correspondence address is Mid Market Securities, 5th Floor, 110 St Vincent Street, Glasgow G2 5ER ("the First Chargee")
- (4) **LLOYDS BANK COMMERCIAL FINANCE LIMITED** (Co. Regn. No. 733011) whose registered office is at 1 Brookhill Way, Banbury, Oxfordshire OX16 3EL ("the Second Chargee")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) Lancashire County Council ("the County Council") is the Education Authority for the area in which the Site is located
- (C) The Owner is the freehold owner of the whole of the Site registered at the Land Registry under title numbers LA464880, ^{and the leasehold area at title number LA464881} ~~LA464881~~ and LA481038 subject to

charges in favour of the First Chargee and the Second Chargee (together "**the Chargees**") but otherwise free from encumbrances which would prevent the Owner entering into this Agreement

- (D) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner, the Chargees and their successors in title
- (E) The Owner has by application reference 2016/0267 applied to the Council for permission to develop the Site in the manner and for the uses set out in the Application and in the plans specifications and particulars deposited with the Council and forming part of the Application
- (F) The Council has resolved to grant planning permission for the Development in accordance with the Application subject to the making of this Agreement without which planning permission for the Development would not have been granted
- (G) The Owner agrees to pay the Education Contribution to the Council as agents for the County Council in accordance with First Schedule

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 as amended
"Application"	an application for outline permission for the

	Development of the Site made by the Owner carrying the reference 2016/0267
"Commencement Date"	the date on which the Development commences by the carrying out on the Site pursuant to the Permission of a material operation as specified in section 56(4) of the 1990 Act but disregarding for the purposes of this Agreement and for no other purpose the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation and erection of any fences and hoardings around the Property Commence and Commences shall be construed accordingly
"Development"	the development of the Site in accordance with the Permission
"Dwelling"	any dwelling erected on the Site pursuant to the Permission
"Education Contribution"	means the sum calculated using the following formulae: $[A' \times E' \times I'] + [B' \times F' \times I'] + [C' \times G' \times I'] + [D' \times H' \times I']$ where;

'A' = the number of Dwellings referred to in the notice of Approval (Reserved Matters) that have one Bedroom

'B' = the number of Dwellings referred to in the notice of Approval (Reserved Matters) that have two Bedrooms

'C' = the number of Dwellings referred to in the notice of Approval (Reserved Matters) that have three Bedrooms

'D' = the number of Dwellings referred to in the notice of Approval (Reserved Matters) that have four Bedrooms

'E' = 0.01 (being the number of primary school places generated by each Dwelling falling within 'A' above)

'F' = 0.07 (being the number of primary school places generated by each Dwelling falling within 'B' above)

'G' = 0.16 (being the number of primary school places generated by each Dwelling falling within 'C' above)

'H' = 0.38 (being the number of primary school places generated by each Dwelling

falling within 'D' above)

'I' = £13,474.53 amount (being the cost of providing one primary school place at St Paul's Church Of England Primary School, Calder Road Rawtenstall

"Index"

means the Consumer Prices Index

"Interest"

means 2% above the base rate from time to time of National Westminster Bank Plc

"the Public Open Space Contribution"

means the sum of £1,366 per Dwelling built on the Site to be expended towards the provision, modernisation or maintenance of local recreational and play facilities at Fairview Recreation Ground and Sunnyside Play Area, off Mill Row, Rawtenstall to be paid as outlined in the First Schedule

"Permission"

the planning permission to be granted in pursuance of the Application

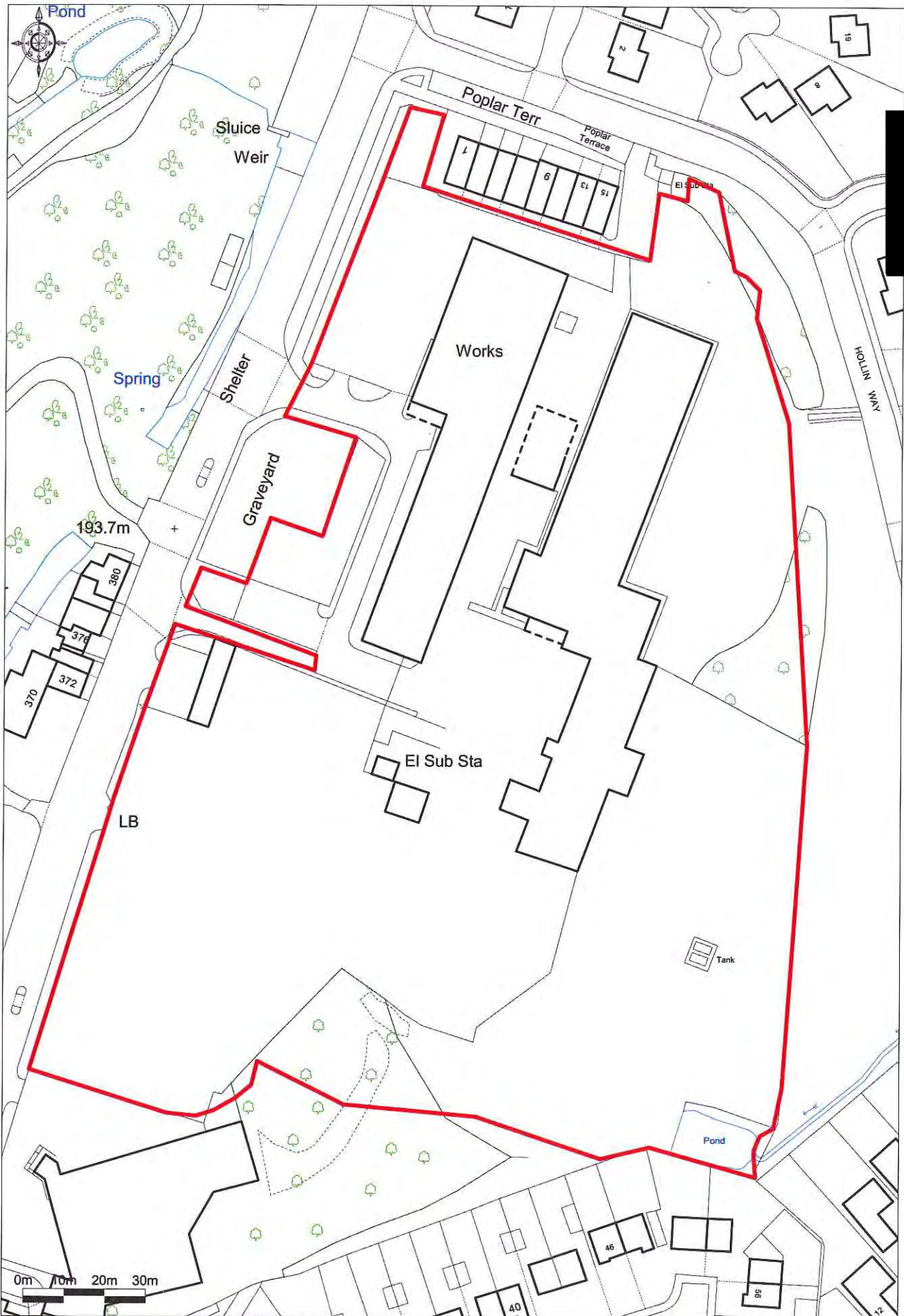
"Plan"

Plan attached to this Agreement

"Site"

the land at Reeds Holme Works, Burnley Road, Rawtenstall as shown edged red on the Plan which is registered with absolute title at HM Land Registry under Title Numbers LA464880, LA464881 and

Site Location Plan: Reedsholme Works, Rawtenstall



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LA481038

"Refuse Bin Contribution"

means the sum of £100 per Dwelling built on the Site for the provision of waste receptacles at the development to be paid as outlined in the First Schedule

"Approval (Reserved Matters)"

means the reserved matters approval or approvals which are obtained in respect of the Permission PROVIDED that where more than one reserved matters approval is obtained in respect of the Development for the purposes of calculating financial contributions due under the terms of this deed it shall mean the reserved matters approval or approvals that are implemented for the purposes of Section 56 (4) of the 1990 Act

"Statutory Undertaker"

by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking

2. **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 to the intent that it shall bind all interests in the Site into whosoever hands the same may come and the Owner and his successors in title and assigns and all persons claiming under or through them:-

2.2 Save for the provisions of Clause 2.11 the provisions of this Agreement shall only come into effect on the Commencement Date

2.3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his interest in the Site or the relevant part of the Site in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to the parting with such interest)

2.4 the covenants on the part of the Owner contained in this Agreement shall not be enforceable against:-

2.4.1 purchasers lessees or mortgagees of individual units or

2.4.2 a Statutory Undertaker which has an interest in any part of the Site for the purposes of its lawful undertaking

2.5 The Owner covenants with the Council to comply with the obligations specified in the First Schedule

2.6 The Council hereby covenants with the Owner to perform the obligations specified in the Second Schedule

2.7 It is agreed and declared as follows:-

2.8 The expressions "the Council" "the Owner" "the Chargees" and "County Council" shall include their successors in title and assigns

- 2.9 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders
- 2.10 This Agreement is a local land charge and shall be registered as such by the Council
- 2.11 The Owner agrees to pay the Council's reasonable legal fees in the sum of £151.50 relating to the preparation of the Agreement
- 2.12 All notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
- 2.12.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
- 2.12.2 in the case of a notice to be served on the Owner to the Owner at the above address
- 2.12.3 in the case of a notice to be served on the Chargees to the Chargees at their respective above registered office and correspondence addresses
- 2.13 If the Planning Permission is not granted or if it is revoked or the Planning Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- 2.14 Unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto

2.15 Whenever in this Agreement there is reference to the Council giving its approval to any matter or scheme that reference is on the basis that such approval shall not be unreasonably withheld or delayed

3. Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

It is hereby agreed and declared that:-

- (a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made

by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations

- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover a pro rata contribution or share from the others) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

4 The Education Contribution, the Public Open Space Contribution and the Refuse Bin Contribution shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid

5 If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date of actual payment

- 6 The Chargees acknowledge and declare that this Agreement has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the charges over the Site shall take effect subject to this Agreement PROVIDED THAT the Chargees shall otherwise have no liability under this Agreement unless they take possession of the Site, as a chargee in possession, (and then only if either of them shall have caused such breach to have been occasioned and provided further for the avoidance of doubt neither shall in any event be liable for any breach of this Agreement arising prior to either of them becoming a chargee in possession of the Site regardless of whether or not such pre-existing breach shall continue for any period during which it or they are a chargee in possession of the Site) in which case they too will be bound by the obligations as if either chargee were a person deriving title from the Owner
- 7 Nothing contained or implied in this Agreement shall prejudice or affect the rights power and duties of the Council in exercise of their functions as Local Planning Authority and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement PROVIDED ALWAYS for the avoidance of doubt the Council shall comply with the obligations on its part contained in this Agreement
- 8 This Agreement is governed by and interpreted in accordance with the law of England and Wales

FIRST SCHEDULE

The Owner covenants with the Council as follows:

1. to notify the Council in writing of the Commencement Date;
2. to notify the Council in writing on the Occupation of the 1st, 25th, 50th and 70th dwelling no less than 7 days prior to such occupation;
3. to pay 25% of the Education Contribution to the Council prior to the Occupation of the first Dwelling to be Occupied;
4. to pay 25% of the Education Contribution to the Council prior to the Occupation of the 25th Dwelling;
5. to pay 50% of the Education Contribution to the Council prior to the Occupation of the 50th Dwelling;
6. not to Occupy the 50th Dwelling unless and until the Education Contribution has been paid to the Council;
7. to pay the Refuse Bin Contribution to the Council prior to occupation of the 1st Dwelling ;
8. not to Occupy the 1st Dwelling unless and until the Refuse Bin Contribution has been paid to the Council;
9. to pay 50% of the Public Open Space Contribution to the Council prior to the Occupation of the 50th Dwelling;
10. not to Occupy the 50th Dwelling unless and until the 50% Public Open Space Contribution is paid to the Council;
11. to pay the remaining 50% of the Public Open Space Contribution prior to the Occupation of the 70th Dwelling

12. not to Occupy the 70th Dwelling unless and until the remaining 50% Public Open
Space Contribution is paid to the Council.

SECOND SCHEDULE

The Council covenants with the Owner as follows:

1. to use the Education Contribution, the Public Open Space Contribution and the Refuse Bin Contribution for the purposes set out in this Agreement;
2. upon receipt of a written request by the Owner for the repayment of such unexpended or uncommitted monies that they will pay to the Owner such amount of the Education Contribution, the Public Open Space Contribution and the Refuse Bin Contribution which has not been expended in accordance with the provisions of this Agreement within five (5) years of the date of receipt by the Council;
3. to promptly provide to the Owner on written request such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner; and
4. that the planning obligations contained in this Agreement do not breach regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
5. Following receipt of the last payment required under this Agreement the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement

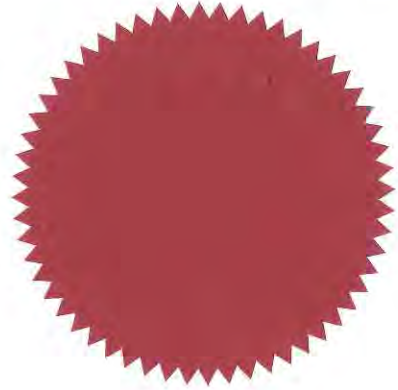
IN WITNESS whereof this document has been executed as a DEED by the respective parties hereto in the appropriate manner with the intention of such document being Delivered on the part of each of them a DEED on (but not before) the day and year first before written

No. IN SEAL
REGISTER
115345

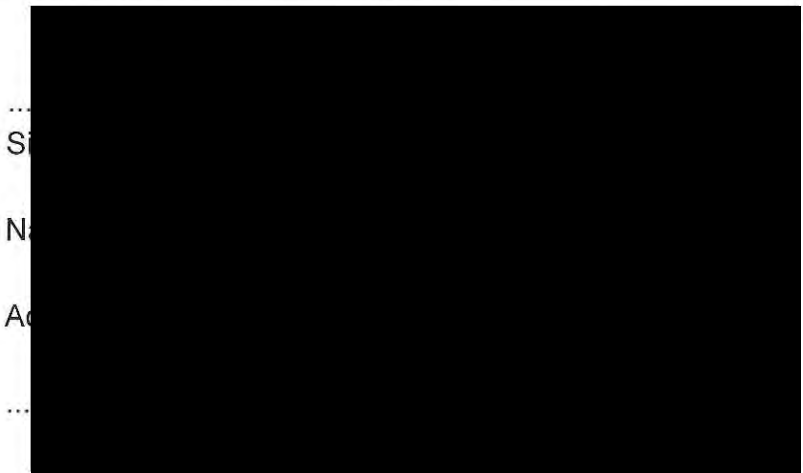
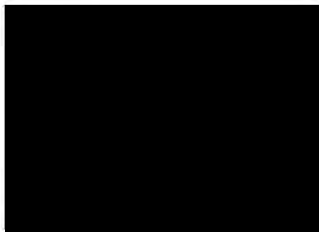
THE COMMON SEAL of ROSSENDALE)
BOROUGH COUNCIL was hereunto)
affixed in the presence of-)



ed Signatory



Executed as a deed by
A.T.C. PROPERTY LIMITED
acting by a director in the presence of



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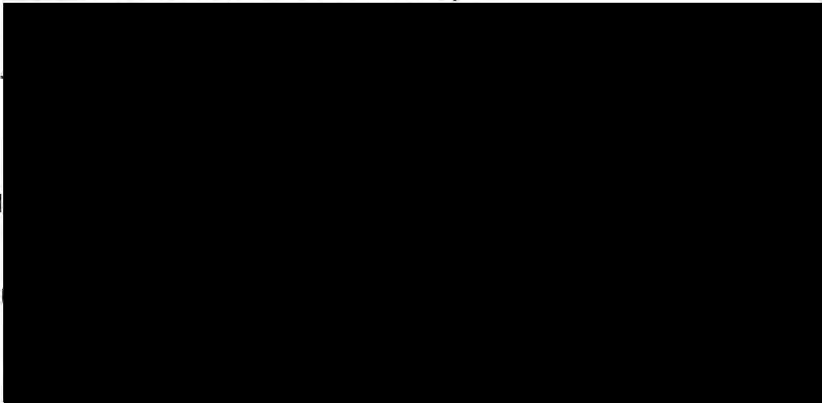
EXECUTED AS A DEED for and on behalf of

Lloyds Bank Plc under a power of attorney

dated ...

Authorised

Printed Na



EXECUTED AS A DEED for and on behalf of

LLOYDS BANK COMMERCIAL FINANCE LIMITED

under a power of attorney

dated2017

Authorised signatory

Printed Name and Designation

Signed as a Deed by the undernoted Attorney
of Lloyds Bank Commercial Finance Limited

