

2001/042

DATED

24th July

2001

(1) ROSSENDALE BOROUGH COUNCIL

- and -

(2) J NOVAK (TAILOR) LIMITED

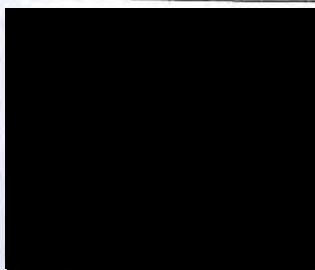
- and -

(3) NATIONAL WESTMINSTER BANK PLC

AGREEMENT

relating to

land at 331 Burnley Road, Rawtenstall
pursuant to Section 106 of the Town and
Country Planning Act 1990 (as amended)



Date of Original: 25 June 2001

Date of Version: 25 June 2001

Draft No: 1

FE Ref: SA

DP Ref: 600551.AGR

3932

THIS AGREEMENT is made on

24th July

2001

BETWEEN

- (1) **ROSSENDALE BOROUGH COUNCIL** of Stubbylee Hall, Bacup, Lancashire OL13 0DE ("Council")
- (2) **J NOVAK (TAILOR) LIMITED** whose registered office is situate at 331 Burnley Road, Rawtenstall, Rossendale, Lancashire BB4 8LA ("Owner")
- (3) **NATIONAL WESTMINSTER BANK PLC** whose Address for Service is situate at Manchester Securities Centre, PO Box 339, Floors 14 and 15, Lowry House, 17 Marble Street, Manchester M60 2AH ("Chargee")

BACKGROUND

- A. The Owner is the owner of the Property which he holds:
- (i) as to the land shown for the purposes of identification only edged red and blue on Plan 1 in fee simple with title absolute registered at HM Land Registry under title number LA 632269 and LA 825672 respectively;
 - (ii) as to the parcels of land shown for the purposes of identification only edged green on Plan 1 for the unexpired portion of a term of 999 years from 1 May 1898 created by a lease dated 30 July 1898 made between The Honourable William Brooks and The Honourable Marshall Jones Brooks (1) and George Coates and Alfred Coates (2) with good leasehold title registered at HM Land Registry under title number LA 618438;
 - (iii) as to the remaining part of the Property coloured yellow in fee simple by adverse possession.
- B. The interests as aforesaid of the Owner in the Property are free from incumbrances save for a registered charge affecting the said title numbers LA 618438 and LA 632269 in favour of the Chargee.
- C. The Council is the local planning authority for the purposes of the Act.
- D. The Owner is interested in the Property for the purposes of section 106(9) of the Act.

- E. The Application was submitted to the Council on behalf of the Owner on 8 February 2001 and has been allocated reference number 2001/042.
- F. The Council consider it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.
- G. For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of section 106 of the Act.
- H. The Council resolved through its Engineering and Planning Sub-Committee on 3 April 2001 that it was minded to grant the Planning Permission of even date herewith upon completion of this Agreement.

1. **DEFINITIONS AND INTERPRETATION**

Where in this Agreement the following words (arranged in alphabetical order) begin with a capital letter they shall have the following meaning:

"Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991);

"Agreement" means this planning obligation made pursuant to section 106 of the Act ;

"Application" means the planning application submitted on behalf of the Owner by Steven Abbott Associates on 8 February 2001 and given reference number 2001/042;

"Current Planning Permissions" means:

- (i) planning permission granted under reference 14/89/568 on 20 October 1989 for "4000 square feet stockroom for distribution to own outlets, 8,000 square feet formal hire garment preparation and distribution laundry, dry cleaning, tailoring and alterations room, 4000 square feet retail shop, 4000 square feet head office/administration" covering the area shown edged red on Plan 2 annexed hereto;
- (ii) planning permission granted under reference 14/1998/351 on 18 January 1999 for "demolition of existing entrance porch, construction of new porch and extension of proposed retail area" covering the area shown edged blue on Plan 2 annexed hereto,

(iii) both of which have been Implemented and are extant;

"Development" means use of the ground floor for retail purposes up to a maximum of 1,295 square metres of retail sales floor space for the retail sale of clothes and other specified items;

"Implementation" means the implementation of the Development by the carrying out pursuant to the Planning Permission of a material operation as defined in section 56(4)(e) of the Act and the words **"Implement"** and **"Implemented"** shall be construed accordingly;

"Implementation Date" means the date on which Implementation takes place;

"Plan" means the plans attached hereto;

"Planning Permission" means a planning permission granted for the Development in the draft form annexed hereto;

"Property" means 331 Burnley Road, Rawtenstall which for the purposes of identification only is shown edged brown on Plan 1 attached hereto;

1.2 References to clauses, sub-clauses, recitals and schedules are unless otherwise stated references to clauses, sub-clauses, recitals and schedules to this Agreement;

1.3 References in this Agreement to plan numbers means the correspondingly numbered plan annexed to this Agreement;

1.4 Words importing one gender will be construed as importing any other gender and words importing the singular will be construed as importing the plural and vice versa;

1.5 References to any party shall include the successor in title of that party;

1.6 References to any statute include all regulations, orders, directions and other instruments made under that statute and any statute, regulation, order, direction or other instrument amending, consolidating or replacing it in force from time to time;

1.7 Obligations undertaken by more than one party are joint and several obligations;

1.8 Where any approval, consent, agreement or the like is required to be given pursuant to the terms of this Agreement it shall be in writing and no party shall unreasonably

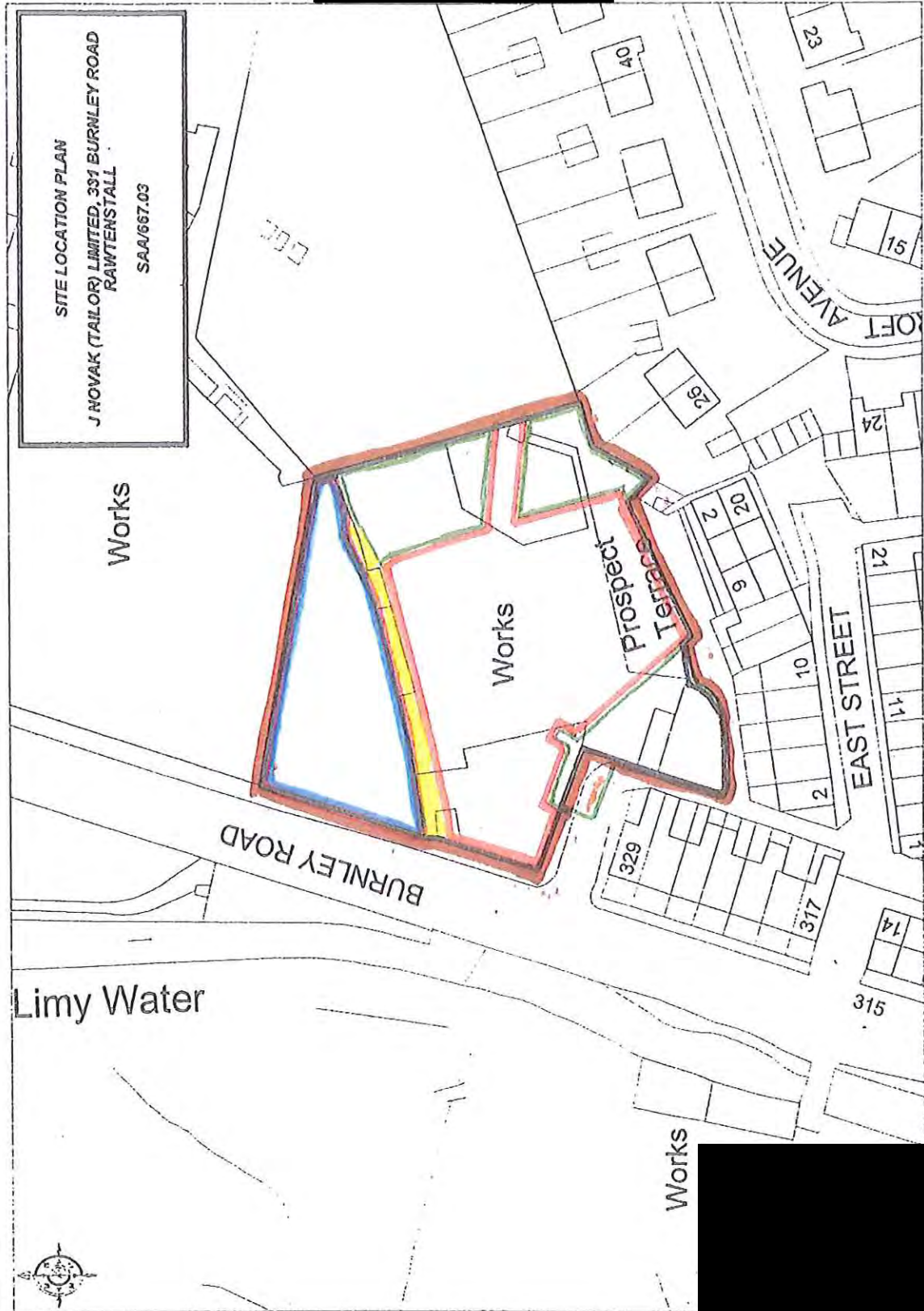
withhold or delay any such approval, consent, agreement or the like Provided That nothing herein shall fetter the statutory rights, powers or duties of the Council;

- 1.9 The headings in this Agreement are for convenience only and should not be taken into account in the construction or interpretation of the Agreement.

2. LEGAL EFFECT

- 2.1 This Agreement is made pursuant to the provisions of section 106 of the Act, section 111 of the Local Government Act 1972 and all other enabling powers with the intent that the obligations herein shall run with and bind the Property.
- 2.2 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act and the Council is the local planning authority by whom the obligation is enforceable.
- 2.3 Save as may be expressly provided in this Agreement, nothing in this Agreement shall be construed as prohibiting or limiting any future right to develop any part of the Property in accordance with and to the extent permitted by any future planning permission (other than the Planning Permission).
- 2.4 No party to this Agreement will be liable for any breach, non-performance or non-observance of the covenants, obligations and restrictions contained in this Agreement in respect of any period during which that party no longer has an interest in the Property or in the part in respect of which the breach, non-performance or non-observance occurs but without prejudice to liability for any subsisting breach, non-performance or non-observance prior to parting with such interest.
- 2.5 It is hereby agreed and declared that in the event of the Planning Permission being quashed as a result of legal proceedings or expiring before Implementation or being revoked or otherwise modified by any statutory procedure without the consent of the Owner then this Agreement shall cease to have effect.
- 2.6 It is hereby agreed between the parties that save for the provisions of clauses 6 and 7 below which shall come into effect on the date hereof all covenants, undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.

3. The Owner with the consent of the Chargee hereby covenants with the Council that upon the Implementation it shall forthwith refrain from exercising or benefiting from the development authorised under the Current Planning Permissions in so far as they relate to the sale of retail goods.
4. The Council covenants with the Owner to issue forthwith following execution of this Agreement the Planning Permission in the draft form annexed hereto.
5. It is hereby agreed and declared by the parties hereto that:
 - 5.1 This Agreement is without prejudice to and shall not be construed as derogating from any of the rights, powers and duties of the Council pursuant to any of its statutory functions or in any other capacity.
 - 5.2 The provisions of section 329 of the Town & Country Planning Act 1990 (as amended) shall apply to any notice to be served under or in connection with this Agreement any notice to the Council to be in writing and addressed to the Borough Engineer Planning Officer (Reference DC/2001/042).
6. This Agreement shall be registered as a Local Land Charge.
7. The Owner shall upon the completion of this Agreement pay to the Council a sum not exceeding £250 in respect of its legal costs and disbursements in connection herewith.
8. A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
9. The Chargee hereby consents to the completion of this Agreement and acknowledges that from the date hereof the Property shall be bound by the restrictions and obligations contained herein.
10. Notwithstanding the terms contained herein the parties hereto agree that the Chargee shall only be liable for any breach of any provisions of this Agreement during such periods (if any) as it is a mortgagee in possession of any part of the Property and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that the Chargee shall not in any event be liable for any breach of this Agreement arising prior to its becoming a mortgagee in possession of the Property regardless of whether or not

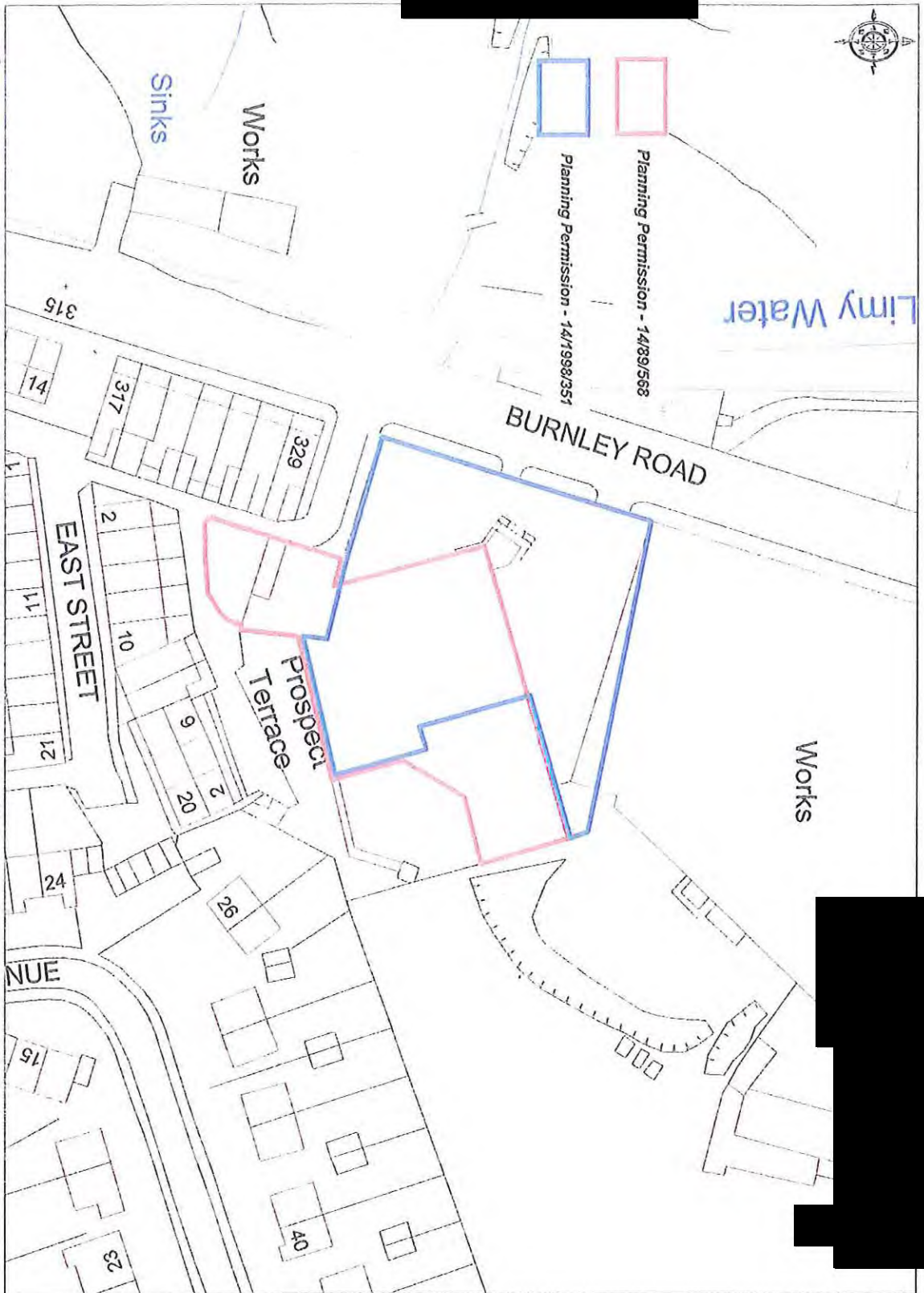


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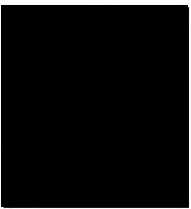
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J NOVAK (TAILOR) LIMITED
331 BURNLEY ROAD, RAWTENSTALL



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MAYOR

DKAT 1

PerPro
National
Manchester

ROSSENDALE BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

PLANNING PERMISSION

PART 1 - PARTICULARS OF APPLICATION:

Application number: 14/2001/042 Date received: 9th February 2001

Particulars and location of development:

Use of ground floor for retail purposes up to a maximum of 1295m² of retail sales floorspace for the retail sale of clothes and other specified items
J Novak (Tailor) Ltd, 331 Burnley Road, Rawtenstall, Rossendale

Name and address of applicant:

J Novak (Tailor) Ltd

Name and address of agent:

Steven Abbott Associates
North Quarry Office
North Quarry Business park
Appley Bridge
Wigan

PART 2 PARTICULARS OF DECISION

The Rossendale Borough Council hereby give notice that in pursuance of the provisions of the Town and Country Planning Act 1990 that PERMISSION HAS BEEN GRANTED for the carrying out of the development referred to in Part 1 hereof in accordance with the application and plans submitted subject to the following conditions:-

The development hereby permitted shall be begun before the expiration of FIVE YEARS from the date of this permission. Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

The premises shall not be used for retail sales except for that area (not exceeding 1295m²) of the ground floor shown coloured pink on the print marked A of Drawing No. 120/36, which print is appended hereto and shall be construed as part of this permission. Reason: For the avoidance of doubt.

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or any statutory modification or re-enactment thereof, the ground floor floorspace hereby approved for the retail sale of clothing, except as varied by condition 4 below, shall not be used for any other purpose (including any purpose in Class A1 Shops or Class A3 Food and Drink in Part A of the Schedule to the said order). Reason: To restrict the range of items sold in this out-of-centre location so as to mitigate any potential negative impact upon the viability and vitality of neighbouring town centres.

No part of the ground floor shall be used for retail sales other than the retail sale of clothing save that at any time not more than 20% of the ground floor floorspace hereby approved for the retail sale of clothing may be used for one or more of the following purposes: retail sale of luggage/briefcases/wallets, Christmas decorations/greeting cards/gift wrap, bric-a-brac/gifts/soft toys, perfumes/aftershaves, dried flowers/pots and hot or

cold non-alcoholic drinks, confectionery, biscuits or sweets.
Reason: To restrict the range of items sold in this out-of-centre location so as to mitigate any potential negative impact upon the viability and vitality of neighbouring town centres.

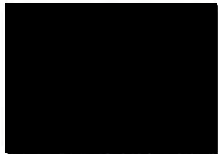
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Date

Borough Engineer and Planning Officer, Stubbylee Hall, Bacup. (See separate page for general information and guidance on post-decision procedures).

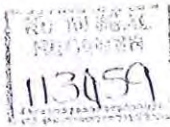
such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the Property.

IN WITNESS whereof the Owner and the Council have caused their respective common seals to be affixed the day and year first above written.

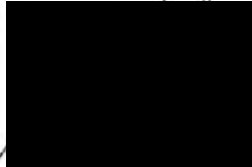
The Common Seal of **ROSSENDALE**)
BOROUGH COUNCIL was hereunto)
affixed to this deed in the presence of:)



WATSON

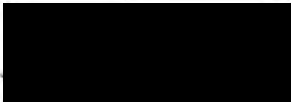


The Common Seal of **J NOVAK (TAILOR)**)
LIMITED was hereunto affixed to this deed)
in the presence of:)

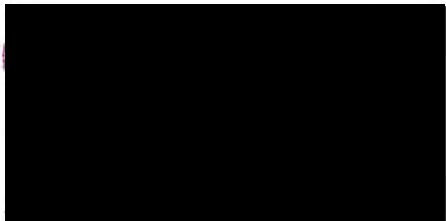


Director

Director/Secretary



SIGNED as a deed by **NEWTON JAMES BAKER**)
as the Attorney in their capacity as Assistant)
Manager of Manchester Securities Centre)
and on behalf of National Westminster Bank)
Plc in the presence of)



Bank Official

National Westminster Bank Plc
Manchester Securities Centre
PO Box 339
Floors 14 & 15
Lowry House
17 Marble Street
Manchester M60 2AH