

DATED

17 September

2010

THE BOROUGH COUNCIL OF PENDLE (1)

RIBBLE INDUSTRIAL ESTATES LIMITED (2)

NELSON & COLNE COLLEGE (3)

LANCASHIRE COUNTY COUNCIL (4)

SECTION 106 AGREEMENT

relating to Land at Nelson and Colne College,

Barrowford Road, Colne, Lancashire

Richard Townson

Democratic and Legal Services Manager

Town Hall

NELSON

Lancashire

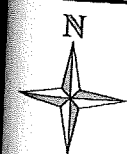
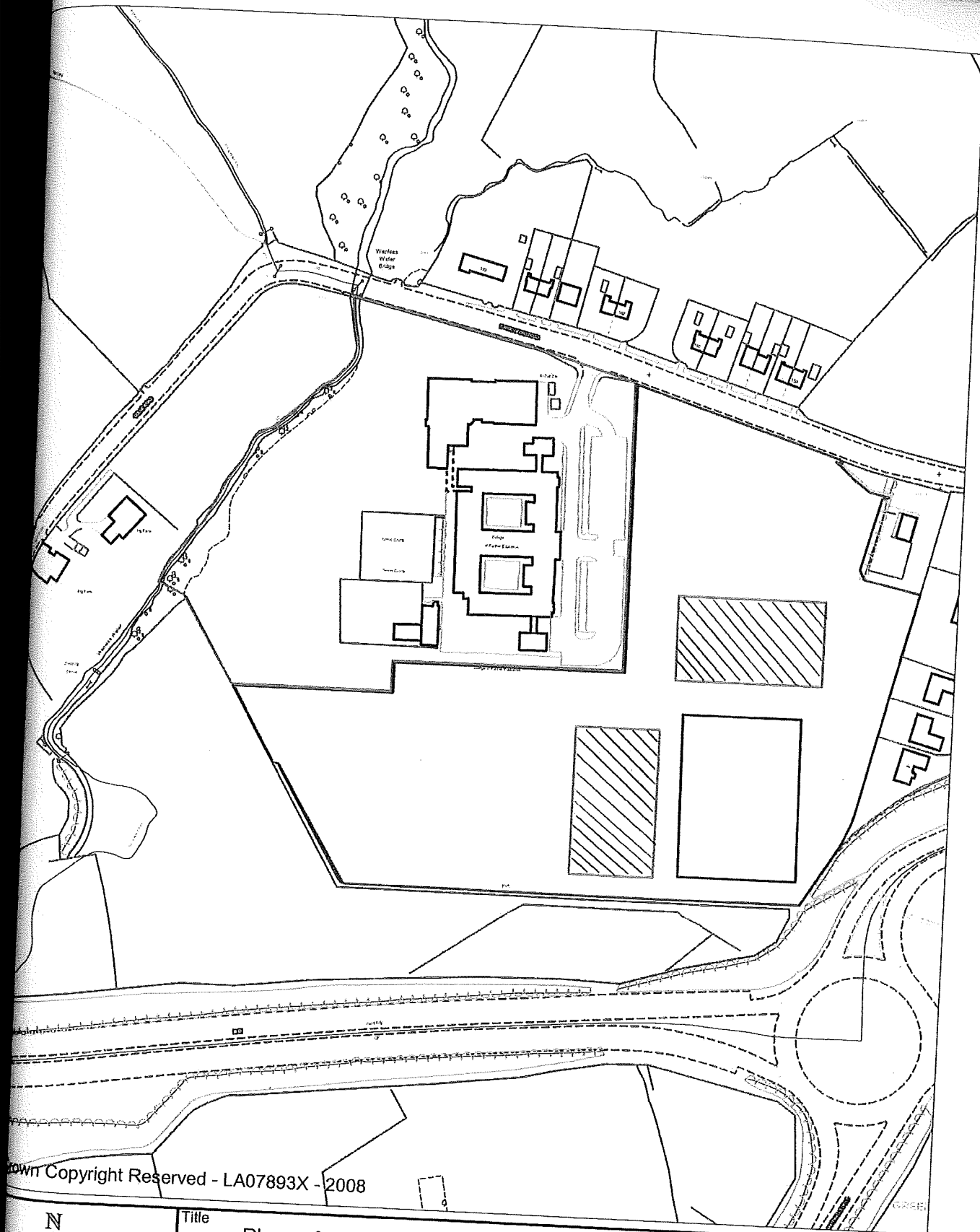
This Agreement is by made by deed *17 September* 2010

and is between

- (i) **THE BOROUGH COUNCIL OF PENDLE** of Town Hall,  
Market Street, Nelson, Lancashire BB9 7LG ("in this  
Agreement called "**the Council**"), and
- (ii) **RIBBLE INDUSTRIAL ESTATES LIMITED** of Ribble Court  
1 Mead Way, Shuttleworth Business Park, Padiham,  
Lancashire BB12 7NG (called "**the Owner**"), and
- (iii) **NELSON AND COLNE COLLEGE** of Scotland Road,  
Nelson BB9 7YT ("**the College**"), and
- (iv) **LANCASHIRE COUNTY COUNCIL** of P O Box 78, County  
Hall, Fishergate, Preston, Lancashire PR1 8XJ ("**the  
County Council**")

#### **BACKGROUND**

- and the County Council are*
- (a) The Council ~~is the~~ <sup>*ies*</sup> Local Planning Authority for the area where  
the land described in clause 1 below is situated and by whom the  
obligations contained in this Agreement are enforceable.
  - (b) The County Council ~~is the~~ <sup>*also the highway*</sup> public transport authority for the area  
where the Land is situated.
  - (c) The Owner is the freehold owner of the land edged green on the  
attached plan ("the Plan") which is registered at the Land  
Registry under Title Number LAN 82237.
  - (d) The College is the freehold owner of the land shown edged red



orough of  
endle

Title

Plan referred to in Section 106 Agreement

Location

Nelson & Colne College  
Barrowford Road  
Colne  
BB8 9QS

Description

Planning

Scale

1:2500

Date

7 July 2009

Reference

13/08/0144P

on the attached plan.

(e) The Owner and the College have separately applied to the Council at various times for permission to develop the Land.

(f) After considering the applications the Council has at various times granted planning permission for the Land subject to conditions in each case including a condition that a section 106 agreement is completed.

## **1 DEFINITIONS**

In this Agreement the following terms have the following meanings

<b>"the Act"</b>	Town and Country Planning Act 1990 (as amended)
<b>"The Agreed Times"</b>	the Saturday and Sunday of each week. Any weekday after 4.30pm and on any day during the College holidays
<b>"Commencement Date"</b>	the date when an operation specified in Section 56(4) of the Act is carried out on the Land as commencement of that planning permission of which notice has been given to the Council under paragraph 1 of the Second Schedule and 'Commence' shall be construed accordingly
<b>"the Land"</b>	The land at Nelson & Colne College, Barrowford Road, Colne shown edged red and the land shown edged green on the plan attached to this Agreement
<b>"the First Planning Permission",</b>	Planning permission reference 13/04/0429P
<b>"the Second Planning Permission"</b>	Planning permission reference 13/08/0144P
<b>"the Third Planning Permission",</b>	Planning permission reference 13/08/0401
<b>" the Fourth Planning Permission"</b>	Planning permission reference 13/09/0110P

<b>"Public Transport Contribution"</b>	Means the sum of £40,000
<b>"Football Pitch"</b>	the football pitch shown edged purple on the Plan or such other location to be designated by the College in its sole discretion provided that such discretion is exercised reasonably and the location is not closer than 15 metres to the boundary of the land shown edged red on the plan attached to this Agreement where such boundary is with land used for residential purposes
<b>"Junior Football Pitches"</b>	the football pitches shown edged green hatched black in the Plan or such other location to be designated by the College in its sole discretion provided that such discretion is exercised reasonably and the location is not closer than 15 metres to the boundary of the land shown edged red on the plan attached to this Agreement where such boundary is with land used for residential purposes
<b>"the Permitted Use"</b>	Use by children aged 10 years or younger for the playing of sport and any person watching or officiating at such sport
<b>"the Pitches"</b>	the Football Pitch and the Junior Football Pitches
<b>"the Planning Permissions"</b>	the First Planning Permission, the Second Planning Permission the Third Planning Permission and the Fourth Planning Permission.

## 2. INTERPRETATION

2.1 References to any party shall include the successors-in-title of that party and in the case of the Council and the County Council includes the successors to their respective functions as local planning authority and local highway authority.

2.2 words importing persons include companies and other bodies

incorporated and vice versa

3 words importing the singular shall include the plural and vice versa;

4 words importing any one gender shall include either other gender;

5 construction of this Agreement shall ignore the headings and front sheet (all of which are for reference only);

6 references to a numbered clause, schedule, paragraph or appendix are references to the clause, the schedule, paragraph or appendix of or to this Agreement so numbered;

7 any reference to any statutory provision shall be deemed to include:

2.7.1 any subsequent re-enactment or amending provision; and

2.7.2 every statutory instrument, direction or specification made or issued under that provision or deriving validity from it;

8 an obligation to do something includes an obligation to procure it to be done; and

9 an obligation not to do something includes an obligation not to allow it to be done.

## **ENABLING PROVISIONS**

This Agreement is made pursuant to the provisions of section 106 of the Act

## **COVENANTS OF THE COLLEGE**

The College covenants with the Council with the intention of binding the land edged red on the Plan to observe and perform the obligations set out in paragraphs 2 to 9 of the First Schedule.

## **COVENANTS BY THE OWNER**

The Owner covenants with the Council and the County Council with the intention of binding the land edged green on the Plan to observe and perform the obligation set out in the Second Schedule.

## COVENANTS BY THE COUNTY COUNCIL

### 1 The County Council covenants with the Owner:

- 6.1.1 to spend the Public Transport Contribution to improve public transport facilities in the vicinity of the Land and such improvements may include but shall not be limited to paying or contributing towards the cost of:
  - 6.1.1.1 a bus service from the Land to Nelson and/or Colne;
  - 6.1.1.2 up-grading bus stop facilities on the bus routes serving the Land.
- 6.1.2 If any of the Public Transport Contribution is unspent after 7 years of payment the County Council shall repay to the Owner the amount unspent together with interest at one-eighth per cent below base rate from time to time of National Westminster Bank for the period from the date of payment to the date of repayment.

## REVOCATION

- 1 The agreement between the parties dated 14 November 2005 is revoked and replaced by this Agreement.

## CESSATION AND LIABILITY

- 1 This Agreement shall cease to have effect if the Planning

Permissions:

- 8.1.1 <sup>are</sup> ~~is~~ quashed as a result of legal proceedings: or
- 8.1.2 ~~expires~~ before the Commencement Date; or
- 8.1.3 <sup>are</sup> ~~is~~ revoked.

- 2 Upon the cessation of this Agreement the Council shall forthwith procure the removal (or in the case of a cessation affecting only part



of the Land a modification) of entries relating to this Agreement from the register of local land charges.

8.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with all interests in the Land or part of the Land in respect of which the breach occurs but without prejudice to any liability for any subsisting breach of covenant prior to parting with such interest.

8.4 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 Planning Permissions) granted (whether or not on appeal) after the date of this Agreement.

## **9. LOCAL AUTHORITY POWERS**

Nothing in this Agreement fetters or restricts the exercise by the Council of any of its duties and powers.

## **10. LOCAL LAND CHARGE**

10.1 This Agreement is a local land charge and shall be registered as such.

## **11. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **12. EXECUTED AS A DEED**

This Agreement is a deed within the meaning of section 1 of the



Law of Property (Miscellaneous Provisions) Act 1989 and is executed as such.

## **THE FIRST SCHEDULE**

### **The Obligations of the College**

1. For the purpose of paragraphs 3, 4, 5, 6, 7 and 8 of this Schedule "the Council" shall include the employees of the Council, all those playing sport on the Pitches subsequent to booking the Pitches through the Council, all those watching the sport and all those officiating at the sport and playing sport shall include training and preparing for playing sport.
2. From the Commencement date to permit the Council to use the Pitches for the Permitted Use at the Agreed Times at no cost to the Council PROVIDED ALWAYS that the College has not served the Notice upon the Council and that the Pitches are fit to be played upon (and the decision as to whether the Pitches are fit to be played upon shall be a decision of the person officiating at the time of the relevant Permitted Use).
3. Keep the Council fully indemnified against all actions, proceedings, losses, costs, claims or demands arising directly or indirectly out of any breach of this Agreement by the College.
4. Permit the Council in common with the College and all others authorised by the College so far as is not inconsistent with the use of the Pitches for playing sport to pass and re-pass over the Land by foot to and from the Pitches and by vehicle over any roads on the Land to and from any car park on the Land and to permit the Council to park cars on the car parks on the Land while using the Pitches.

5. At all times to maintain the Pitches in a proper and groundsmanlike manner to a playable standard and such maintenance shall include (but shall not be limited to) carrying out the following work at the proper time and in accordance with good groundsman practice and to the Council's satisfaction:

- 5.1 grass cutting leaving the grass between 20 and 70 mm high
- 5.2 tractor-mounted spiking
- 5.3 chain harrow spiking up and down
- 5.4 applying herbicide
- 5.5 applying sand (1 ton per week)
- 5.6 applying fertiliser (spring/ summer)
- 5.7 line-out and mark (weed Killer)
- 5.8 over mark dry power
- 5.9 erecting goal posts
- 5.10 end of season reinstatement of pitches

## **THE SECOND SCHEDULE**

### **The obligations of the Owner**

1. Not less than 14 days before the Commencement Date the Owner shall notify the Council in writing of which of the Planning Permissions it will implement on the Land.
2. The Owner shall implement only that planning permission of which it has given notice under the preceding paragraph.
3. The Owner shall pay the County Council the Public Transport Contribution prior to the first occupation of that development carried out by Owner of which he has given notice under paragraph 1 of this

Schedule.

THE COMMON SEAL of The )  
Borough Council of Pendle was )  
hereunto affixed to this deed in the )  
presence of: )



1802

[Redacted signature]

Democratic & Legal Services Manager

EXECUTED AS A DEED by )  
Nelson and Colne College )  
acting by: )

[Redacted signature]

Authorised Signatory

THE COMMON SEAL of )  
Lancashire County Council was )  
hereunto affixed to this deed )  
in the presence of: )



20170

Authorised Signatory

[Redacted signature]

EXECUTED AS A DEED by )  
Ribble Industrial Estates Limited )

Director

[Redacted signature]

Director

[Redacted signature]