

DATED 9 November 2021

THE COUNCIL OF THE CITY OF MANCHESTER

– and –

ADELPHI (KENYON LANE) DEVELOPMENTS LIMITED

– and –

TOGETHER COMMERCIAL FINANCE LIMITED

AGREEMENT

pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to the Former Deanway DIY Store, 112 Kenyon Lane, Manchester, M40 9DH

City Solicitor
P O Box 532
Town Hall
Albert Square
Manchester
M60 2LA

THIS AGREEMENT is made the 9 day of November 2021

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the "Council") and
- (2) **ADELPHI (KENYON LANE) DEVELOPMENTS LIMITED** (incorporated in England with company number 11367217) whose registered office is at Reedham House C/O Abacus Solicitors, 31-33 King Street West, Manchester, United Kingdom, M3 2PN (the "Owner")
- (3) **TOGETHER COMMERCIAL FINANCE LIMITED** (incorporated in England with company number 2058813) whose registered office is at Lake View, Lakeside, Cheadle SK8 3GW (the "Mortgagee").

each one a "Party" and together the "Parties"

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- B The Owner is the freehold owner of parts of the Site at the Land Registry with Title Absolute under title numbers LA11988 and GM550804 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- C The Mortgagee is interested in parts of the Site registered under title number GM550804 by virtue of the Legal Charge and affecting also title number LA11988.
- D The Application was submitted to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application.
- E The Council resolved on 7th August 2020 that it was minded to grant the Planning Permission subject to the completion of this Agreement.
- F The Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundaries of Manchester and the planning purpose of this Agreement is to increase the provision of Affordable Housing within the Administrative Boundaries of Manchester.
- G The Council has determined that in order to comply with the policy H8 of the Core Strategy the Development must contribute to the city-wide target of 20% (twenty per cent) Affordable Housing. However, the Owner has stated that all Dwellings on Site will be Affordable Rented Housing Units.
- H The Council is satisfied that the obligations in this Agreement are,
 - (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (b) directly related to the Development, and
 - (c) fairly and reasonably related in scale and kind to the Development

- I The Owner have agreed to enter into this Agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants hereinafter contained.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out in this Clause apply to this Agreement
"Act" the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008,

"Administrative Boundaries of Manchester" all the wards that together comprise the City of Manchester,

"Affordable Housing" affordable housing as defined in the NPPF (as may be updated or replaced with an equivalent policy from time to time) that will be available to persons who cannot afford to rent or buy housing generally available on the open market provided that the total amount of Affordable Housing on the Site shall be 20% (twenty per cent) by number of all Dwellings and **"Affordable"** will be construed accordingly,

"Affordable Housing Scheme" a written scheme to be submitted to and approved in writing by the Council for the provision of Affordable Housing Units on the Site as a whole in accordance with policy H8 of the Core Strategy and detailing the number, size, location, occupancy criteria and tenure mix of the Affordable Housing Unit on the Site as a whole.

"Affordable Housing Units" those Dwellings which shall be designated as Affordable Housing in accordance with the Planning Permission and to be constructed according to the Design and Quality Standards 2007 published by Homes England as amended or replaced from time to time,

"Affordable Rent" a rent of no more than 80% (eighty per cent) of market rack rent for the relevant property type in the relevant rental market area and in relation to a letting by the owner of an individual Affordable Rented Housing Unit or their Chargee, the aggregate of repayments to the Chargee and any premium for property or contents insurance,

"Affordable Rented Housing Unit" means a single Dwelling that is also Affordable Rented Housing,

"Agreement" shall mean this Agreement,

"Application" the application to which the Council gave the reference 127669/FO/2020 for planning permission for the erection of 4 storey building to form 3 x 1 bedroom and 30 x 2 bedroom residential apartments (Use Class C3) together with associated car parking, landscaping and access following demolition of existing building;

“Chargee” shall mean any mortgagee, chargee or other financial institution of the Registered Provider or a Security Trustee or receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or any successors in title thereof”;

“Chargee’s Duty” the tasks and duties set out in paragraph 9 of Schedule 3;

“Commencement of Development” the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be material operations;

“Core Strategy” means the Manchester Core Strategy (adopted 11th July 2012) which is the key document in the Council’s Local Development Framework and details the Council’s vision for the development of Manchester during the period 2012 to 2027,

“Development” the development undertaken on the Site pursuant to the Planning Permission as specified in the Application,

“Dwelling” a unit of residential accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission;

“Expert” a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience;

“Legal Charge” a charge registered against title number GM550804 dated 14 August 2020 affecting also title LA11988,

“Management Fee” shall mean 15% of the planning application fee which equates to £2286 90 (two thousand two hundred and eighty-six pounds and ninety pence) to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein,

“NPPF” the National Planning Policy Framework issued in June 2019 (as may be updated or replaced with an equivalent policy from time to time) being the framework setting out the Government’s planning policies for England and how these are expected to be applied as may be amended or any replacement of the same,

“Occupation” means occupation of any part of the Development for the purposes permitted by the Planning Permission but does not include use by personnel whilst engaged in construction, fitting out or decoration of the Dwellings or occupation for marketing or display or occupation in relation to security operations and **“Occupy”** and **“Occupied”** shall be construed accordingly;

“Plan” the plan attached to the Agreement,

"Planning Obligations" shall mean the obligations of the Owner specified in Schedule 2,

"Planning Permission" the planning permission granted pursuant to the Application and as may be amended by any non-material amendment,

"Protected Tenant" any tenant who

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Units, their Chargees and successors in title, and/or
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Units, their Chargees and successors in title, and/or
- (c) has exercised a voluntary right to buy or acquire a particular Affordable Housing Units their Chargees and successors in title,

"Registered Provider" means either a registered social landlord as defined in the Part 1 of the Housing Act 1996 who is registered with the Regulator pursuant to s 3 of the Housing Act 1996 and has not been removed from that register pursuant to s 4 of Housing Act 1996 or a provider of social housing as defined in s 80 of the Housing and Regeneration Act 2008 who is registered with the Affordable Housing Regulator pursuant to s 111 of the Housing and Regeneration Act 2008 and has not been removed from the register,

"Regulations" the Community Infrastructure Levy Regulations 2010,

"Regulator" means the body known as the Regulation Committee of Homes England, also known as the Regulator of Social Housing, or any successor organisation or body which regulates Registered Providers,

"RICS" the Royal Institution of Chartered Surveyors,

"Site" the land described in Schedule 1 and shown for the purposes of identification only edged red on the Plan,

"Working Day" means any day except Saturday Sunday or a bank holiday and reference to **"Working Days"** shall be construed accordingly.

1.2 The clause headings do not affect this interpretation.

1.3 Unless otherwise indicated, references to clauses and schedules are to clauses of and schedules to this Agreement and references in a schedule to a part or paragraph are to a part or paragraph of that schedule.

1.4 References to any statute or statutory provision include reference to

1.4 1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1 4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision.

1.5 Except for the provisions of clause 9 references to the Site include any part of it

1.6 References to any Party in this Agreement include the successors in title of that Party. In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980.

1.7 **"Including"** means **"including, without limitation"**

1.8 Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

1.9 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected

1 10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.11 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2 PLANNING OBLIGATION

This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling legislation and is a planning obligation for the purposes of section 106 of the Act, with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in section 106 or such other enabling powers against the Owner

3 CONDITION PRECEDENT

This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 9, 11, 15, 16, 17, 18 and 19 which shall have immediate effect

4 CONDITION SUBSEQUENT

If the Planning Permission for the Development has not been implemented by the carrying out of a material operation in accordance with the provisions of sections 56, 91 and 93 of the Act or is revoked or modified in whole or in part (other than in approval of an application by or on behalf of either of the Owner) or quashed or declared unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of either Party against the other in respect of any antecedent breach.

5 THE OWNER'S COVENANTS

The Owner on behalf of themselves and any person deriving title to any part of the Site from the Owner hereafter hereby covenants with the Council so as to bind the Site to fully observe and perform the obligations on its part contained in this Agreement including those obligations set out in Schedule 2 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and provisions specified herein, such obligations being planning obligations for the purpose of section 106 of the Act.

6 THE COUNCIL'S COVENANTS

The Council hereby covenants with the Owner to observe and perform the obligations on its part in this Agreement including those obligations set out in the Schedule 3.

7 DISPUTE RESOLUTION

7.1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert to be appointed by agreement between the Council, the Owner.

7.2 If the Council, the Owner are unable to agree on the appointment of an Expert within 30 (thirty) days of one Party serving notice on the other calling for the appointment of an Expert, then an Expert shall be appointed on the application of either Party to the President for the time being of the Royal Town Planning Institute.

7.3 Any reference of a dispute to an Expert shall if the Parties are agreed in writing be deemed to be a reference to an Expert (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof

7.4 Any Party to this Agreement shall be entitled to submit to the Expert representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert shall have regard thereto in making their decision which shall be delivered in writing. The reference of any dispute shall include authority to determine in what manner all the costs of the referral shall be paid.

8 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP & LIABILITY

9.1 The Owner agrees with the Council to give the Council written notice within 5 (five) Working Days of any change in ownership of any of its interest in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and

registered office (if a company or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan.

9.2 No person shall be liable for any breach, non performance and non observance of the covenants, obligations and restrictions contained in this Agreement after it shall have parted with its entire interest in the Site or that part but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.

9.3 The provisions of this Agreement shall not be binding on a Protected Tenant or their mortgagees

10 COUNCIL'S CONSENT OR APPROVAL

Where in this Agreement the consent, agreement or approval of the Council is required to be given by the Council, the Council confirms that such consent, agreement or approval shall not be unreasonably withheld or delayed provided that this shall not fetter the proper discretion of the Council

11 LOCAL LAND CHARGE AND LAND REGISTRY ENTRY

11.1 This Agreement is a Local Land Charge and shall be registered as such by the Council

11.2 For the purpose of noting this Agreement on the title of the Owner registered under title number GM550804 and title number LA11988 at the Land Registry the Owner will on the date hereof provide the Council with completed Form AN1 (or any replacement of this form) together with either a cheque made payable to the Land Registry to cover the requisite fee or alternatively with the Owner's respective solicitor completed Land Registry account key number details inserted in the form The Council will arrange for the AN1 (or any replacement of this form) to be registered at the Land Registry and the Owner will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the from the Land Registry.

11.3 The Council will upon receipt of a written request of the Owner's or their successors in title, at any time after the obligations set out herein have been fulfilled in their entirety, issue written confirmation thereon and thereafter cancel all related entries in the register of local land charges

11.4 The costs of registration and cancellation pursuant to clause 11.3 above shall be met by the Owner if requested by the Council.

12 NON-PROHIBITION ON DEVELOPMENT

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission granted (whether or not on appeal) after the date of this Agreement.

13 THE CONTRACTS ACT

Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third Party pursuant

to the Contracts (Rights of Third Parties) Act 1999 and no third Party shall acquire any benefit rights or claims whatsoever pursuant thereto.

14 COMMUNICATION

14.1 Any notice or document to be served on or sent pursuant to this Agreement shall either be delivered personally or sent by recorded delivery service

14.1.1 to the Council and addressed to the Director at the Council's address first above written;

14.1.2 to the Owner and the Mortgagee at their registered office address,

15 FEES

15.1 The Owner shall pay forthwith to the Council its legal fees which have been reasonably and properly incurred in preparation of this Agreement,

15.2 Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council, and the Owner nor absolve the Owner from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law,

15.3 The Owner shall on the date hereof pay to the Council the Management Fee.

16 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England.

17 COMPLETION

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

18 MORTGAGEE PROVISIONS

18.1 The Affordable Housing provisions in this Agreement shall not be binding on a mortgagee or chargee howsoever appointed or any receiver (including an administrative receiver or administrator howsoever appointed) or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any person deriving title from any of the above

18.2 The Mortgagee consents to this Agreement being entered into with the intention that its interest in the Site in the form of the Legal Charge will be bound by the terms of this Agreement as if this Agreement had been executed and registered as a local land charge before the execution of the Legal Charge

18.3 The Mortgagee shall not be liable for any breach of the obligation in this Deed unless committed or continuing at a time when the mortgagee is in possession of all or any part of the Property

18.4 The Mortgagee shall not be liable for any breach of the obligation in the Deed committed prior to and continuing at a time when the mortgagee is in possession of all or any part of the Property where the surety has provided the appropriate sums for the Council to remedy the said breaches

19 COUNTERPARTS

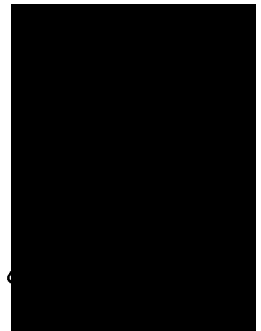
This Agreement may be executed in any number of counterparts and by the different Parties in different counterparts each of which when executed and delivered shall be deemed to constitute one and the same instrument. Each Party agrees that the delivery of this Agreement by electronic transmission, including copies of the executed signature pages via pdf, shall have the same force and effect as delivery of original signatures and that each Party may use such copies of the executed signature pages as evidence of the execution and delivery of this Agreement by all Parties.

EXECUTED as a deed by the Parties on the day and year first hereinbefore appearing

SCHEDULE 1

The Site

Land at Former Deanway DIY Store, 112 Kenyon Lane, Manchester, M40 9DH and shown for the purposes of identification only edged red on the Plan.



Project No
P19-008
Drawing No
02-01-003

SCHEDULE 2

THE OWNER'S COVENANTS

The Owner hereby covenant with the Council as follows

- 1 To notify the Council in writing within 5 (five) Working Days of Commencement of Development
- 2 To notify the Council within five (5) Working Days of Completion of Development
- 3 Prior to Commencement of Development to submit to the Council for its written approval the Affordable Housing Scheme in writing, such scheme to detail the following
 - 3.1 The type, tenure and location of the Affordable Housing provision, which shall consist of not less than (unless otherwise agreed) 20% (twenty percent) of the total number of Dwellings approved under the Planning Permission for the Development of the Site as a whole to be Affordable Rented Housing Units
 - 3.2 The arrangements for the transfer of the Affordable Housing to a Registered Provider or the management of the Affordable Housing if no Registered Provider is involved.
 - 3.3 The arrangements to be put in place to ensure that the Affordable Housing Units are affordable for both initial and subsequent occupiers
 - 3.4 The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the Affordable Housing Units and the means by which such occupancy shall be enforced.
- 4 Not to Commence Development until the Affordable Housing Scheme has been submitted to and approved in writing by the Council.
- 5 To provide the Affordable Housing in accordance with the approved Affordable Housing Scheme
- 6 Prior to Commencement of Development, to make offers to sell the Affordable Housing Units at a discounted price that will support the delivery of Affordable Housing on Site in accordance with the approved Affordable Housing Scheme to a minimum of 2 (two) Registered Providers, such Registered Providers to be agreed by the prior written approval of the Council
- 7 In the event of the earlier of

- 7.1 all Registered Providers to whom offers in accordance with Paragraph 6 are made declining to accept the transfer of the Affordable Housing Units in accordance with the offer made to it, or
- 8 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing [save that this obligation shall not be binding on
- 8.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees, or
- 8.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty and any person deriving title from the Chargee or any successor in title thereto and their respective mortgagees and chargees, or
- 8.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any person deriving title from that purchaser or any successor in title thereto and their respective mortgagees and chargees]
- 9 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than one month's prior notice (the "**Chargee's Notice**") to the Council of its intention to dispose, and
- 9.1 in the event that the Council responds within one month from receipt of the Chargee's Notice (the "**Council's Notice**") indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing and to satisfy the terms of the mortgage or charge then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer, or
- 9.2 if the Council does not serve its response to the Chargee's Notice within the one month period referred to above at paragraph 9.1 then the Chargee shall be entitled to dispose of the Affordable Housing Units or any part thereof free from the restrictions set out in this Schedule, or
- 9.3 if the Council or any person nominated by the Council cannot within two months of receipt of the Council's Notice secure completion of such transfer (so that for the avoidance of doubt there shall be a total of only three months from the Chargee's Notice to completion of such transfer) then provided the Chargee shall have complied with its

obligations under paragraph 9.1 the Chargee shall be entitled to dispose of the Affordable Housing Units or any part thereof free from the restrictions set out in this Schedule.

- 9 4 provided that at all times the rights and obligations in this paragraph 9 shall not require the Chargee to act contrary to its duties under the charge or mortgage and in particular (but without limitation)
- 9.4 1 the Chargee shall not be obliged to transfer, let or otherwise dispose of the Affordable Housing Units or any part thereof for a consideration less than the full amount outstanding under the legal charge or mortgage, plus all interest, costs and expenses

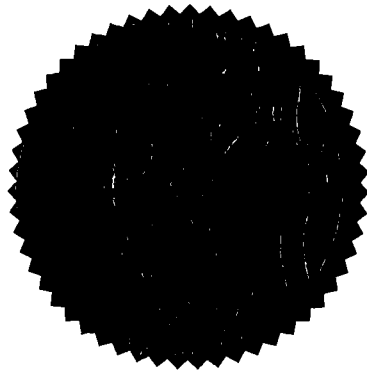
SCHEDULE 3

The COUNCIL'S COVENANTS

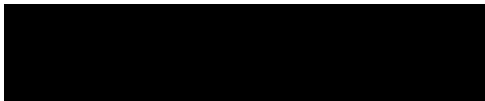
The Council hereby covenants with the Owner as follows:

- 1 At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.
- 2 To issue the Planning Permission within 2 (two) Working Days of the date hereof

THE COMMON SEAL of THE COUNCIL OF THE
CITY OF MANCHESTER was hereunto affixed in
pursuance of an Order of the Council of the said City



01112641



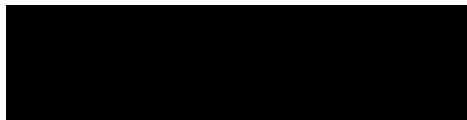
AUTHORISED SIGNATORY

EXECUTED AS A DEED by
ADELPHI (KENYON LANE) DEVELOPMENTS LIMITED

acting by a director

DIRECTOR

Signature ...

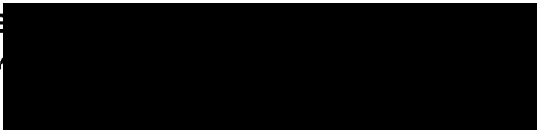


Name (in block capitals)

Eve Underhill

IN THE PRE

Signature.

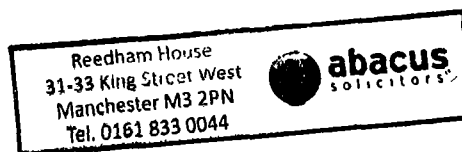


Name (in block capitals)

BEN GATON.

Address

Occupation



EXECUTED AS A DEED by
TOGETHER COMMERCIAL FINANCE LIMITED

acting by a ~~director~~

~~DIRECTOR~~

Signature . . .

Name (in block capitals)

Barry Matthews

IN THE PRESENCE OF:

Signature

Name (in block capitals)

Address

Occupation

Rhiannon Parker

Post Funding Executive