

02/407

DATED 16th April 2003

MCDERMOTT DEVELOPMENTS LIMITED

- and -

CLIFFORD DEVELOPMENTS LIMITED

-and-

THE LANCASHIRE COUNTY COUNCIL

AGREEMENT

made pursuant to Sections 38 and 278 Highways Act 1980 and Section 33 Local Government (Miscellaneous Provisions) Act 1982 relating to highway works at Manchester Road, Haslingden, Rossendale in the County of Lancashire.

Head of Legal Services
Resources Directorate
Lancashire County Council
P. O. Box 78, County Hall,
Preston, Lancashire PR1 8XJ
Tel: 01772 261414
(Ref. LSG4/KP/243/477)

DEED NO 7797/19

ENTERED IN
DEED REGISTER 50294

THIS AGREEMENT is made the day of 2003
BETWEEN:

- (1) the Developer: **MCDERMOTT DEVELOPMENTS LIMITED** whose registered office is at 321 Padiham Road Burnley Lancashire BB12 6SU (Company Registration Number 2701792 England & Wales); and
- (2) the Owner: **CLIFFORD DEVELOPMENTS LIMITED** ^{CAPE} of Manchester Road, Burnley, Lancashire BB11 1H and
- (3) the County Council: **THE LANCASHIRE COUNTY COUNCIL** of P. O. Box 78, County Hall, Preston, Lancashire PR1 8XJ.

1. Definitions and interpretation.

In this Agreement where the context admits:

- 1.1. "Estimated Design Fee" means the sum of **FIVE THOUSAND POUNDS (£5,000)**.
- 1.2. "Certificate of Actual Cost" means the certificate to be given by the County Council to the Developer at the same time as the Defects Correction Certificate certifying the actual cost incurred by the County Council in the preparation of the Design including (but not limited to) costs of supervision and the costs of the Environment Director in acting as Planning Supervisor in accordance with the provisions of this Agreement;
- 1.3. "Certificate of Final Satisfaction" means a certificate to be given by the County Council to the Developer certifying that the Developer has complied with all and singular its duties and obligations (including but not limited to the payment of all sums due) under this Agreement ((save for any claims arising under Clause 6.17) following the issue of the Defects Correction Certificate) and that the Highway Works are deemed to be maintainable at public expense;
- 1.4. "Certificate of Substantial Completion" means a certificate to be given by the County Council to the Developer certifying that the Highway Works have attained a sufficient standard of construction so as to enable the same to be regarded by the Environment Director in his absolute discretion as substantially complete subject only to any necessary correction of defects;
- 1.5. "The Construction Period" means the period of 6 weeks commencing on the date of commencement of the Highway Works;

- 1.6. "The County Council" includes its successors in title or other the person or body having the responsibility for the exercise of the functions of the principal highway authority for the County of Lancashire from time to time and for the time being;
- 1.7. "The County Solicitor" means the Head of Legal Services for the time being of the County Council or such other person as he shall appoint to execute his functions under this Agreement.
- 1.8. "Defects Correction Certificate" means a certificate to be given by the County Council to the Developer not earlier than the date of expiration of the Defects Correction Period certifying that the Developer has completed the correction of all defects (if any) in the Highway Works to the satisfaction of the Environment Director;
- 1.9. "Defects Correction Period" means the period of twelve calendar months commencing on the date of issue of the Maintenance Certificate or such longer period as the Environment Director in his absolute discretion may certify as being necessary for the rectification of any defects in the Highway Works;
- 1.10. "The Design" means the design and scheme of works to be prepared by the Environment Director for the carrying out of the Highway Works and to include all appropriate drawings, specifications, conditions of contract and programmes of works;
- 1.11. "The Developer" includes its successors in title and all persons deriving title under or through it and having any legal estate, interest, right or title in or to the Site or any part or parts of it;
- 1.12. "The Development" means the development of a Residential Estate on the Site pursuant to and in accordance with the provisions of the Planning Permission;
- 1.13. "The Environment Director" means the Environment Director of the County Council from time to time and for the time being and (where appropriate) may include reference to any other person (whether or not an officer or employee of the County Council) appointed or authorised by the Environment Director to implement any of the provisions of this Agreement on his behalf or in his stead;
- 1.14. "The Highway Land" means the land forming part of the highway in the vicinity of the Site and being known as Manchester Road, Haslingden;

- 1.15. "The Highway Works" means the works to be carried out by and at the sole expense of the Developer on the Highway Land and/or the Site particulars of which are set out in **the First Schedule**;
- 1.16. "Maintenance Certificate" means a certificate to be given by the County Council to the Developer (not earlier than the date of issue of the Certificate of Substantial Completion) certifying that the Developer has complied with its obligations under this Agreement including, but not limited to, the provision to the County Council of the items specified in **the Second Schedule** (but excluding correction of defects) and confirming the date of commencement of the Defects Correction Period;
- 1.17. "The Notice" means a notice in writing to be given by the Developer to the County Council informing the County Council of the date upon which the Developer or its appointed contractor will commence the Highway Works;
- 1.18. "Planning Permission" means the planning permission for the carrying out of the Development granted by the Rossendale Borough Council as the local planning authority pursuant to the provisions of the Town and Country Planning Act 1990 on the 25th day of September 2002 under Reference Number 14/02/407;
- 1.19. "Revised Certificate of Estimated Costs" means a certificate to be issued by the County Council to the Developer in accordance with the provisions of Clause 7.3;
- 1.20. "The Site" means the land situate on the North East side of Manchester Road, Haslingden, Lancashire and being known as land and buildings on the North East side of Manchester Road Haslingden and being registered under Title Number LA542939;
- 1.21. Clause, paragraph and schedule headings and the table of contents do not form part of this Agreement and must not be taken into account in its construction or interpretation;
- 1.22. References to clauses, paragraphs and schedules, in the absence of anything expressed to the contrary, are references to the clauses, paragraphs and schedules of this Agreement;
- 1.23. References to any statute include reference to any statutory amendment, modification or re-enactment of such statute and all delegated legislation made under it;
- 1.24. Words importing any one gender include every other gender;

- 1.25. Words importing the singular number include the plural and vice versa and where any party comprises more than one person covenants and obligations on the part of that party shall be deemed to be the joint and several covenants and obligations of those persons.

2. Powers to execute.

- 2.1. The County Council is a Principal Council within the meaning of Section 270(1) of the Local Government Act 1972 and the Local Highway Authority for the purposes of the Highways Act 1980 for highways other than trunk roads in the County of Lancashire including the Highway Land.
- 2.2. The Planning Permission has attached to it certain conditions for the carrying out of highway works (inter alia) within the Highway Land in connection with the Development.
- 2.3. The County Council enters into this Agreement pursuant to the provisions of Section 111 of the Local Government Act 1972, Sections 38 and 278 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling it to do so.

3. Warranties.

- 3.1. The Owner warrants that it is registered as Proprietor with an Absolute Freehold Title of the Site [under Title Number LA 542939] subject to a charge in favour of Yorkshire Bank plc but otherwise free from incumbrances.
- 3.2. The County Council warrants that in its capacity as local highway authority it has approved the carrying out of the Highway Works subject only to the Developer complying with, observing and performing the provisions of this Agreement and that it is satisfied that this Agreement will be of benefit to the public.

4. Enduring covenant.

The Developer admits that the covenants on its part contained in this Agreement are intended to annex to and run with the Site and each and every part of it and to bind the owner or owners of the Site into whosoever hands it may come and to that intent the parties agree and declare that the

provisions of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 apply to this Agreement and to each of the covenants on the part of the Developer contained, implied or referred to in it.

5. County Council's covenants.

The County Council **COVENANTS** with the Developer as follows:

- 5.1. Within a period of 6 weeks after receipt of the sum specified in the Certificate of Estimated Cost to prepare, in consultation with the Developer, the Design and to submit it to the Developer;
- 5.2. That the Environment Director shall carry out the duties of Planning Supervisor for the design and implementation of the Highway Works in accordance with the provisions of the Construction (Design and Management) Regulations 1994 made under the Health and Safety at Work etc Act 1974.
- 5.3. To permit the Developer together with its servants, agents and contractors with or without equipment, machinery, materials, plant, vehicles and workmen to enter and remain on the Highway Land for the purposes of constructing and correcting any defects in the Highway Works during such periods as the Environment in his reasonable discretion may deem appropriate;
- 5.4. When the Highway Works have reached a sufficient stage of construction to issue and give to the Developer a copy of the Certificate of Substantial Completion;
- 5.5. Upon the Developer becoming entitled to the issue of the Certificate of Substantial Completion and having satisfied the obligations conferred under clause 6. then the County Council shall issue and provide to the Developer a copy of the Maintenance Certificate;
- 5.6. At the end of the Defects Correction Period to issue and give to the Developer a copy of the Defects Correction Certificate together with the Certificate of Actual Cost and to pay to the Developer any excess in the Estimated Design Fee paid by the Developer over the sum certified in the Certificate of Actual Cost.

6. Developer's covenants.

The Developer **COVENANTS** with the County Council as follows:

- 6.1. To appoint the Environment Director as the Planning Supervisor for the design and implementation of the Highway Works;

- 6.2. Within fourteen days after the receipt of notification of the amounts due, to pay to the County Council any sum or sums reasonably incurred by the County Council in advertising any aspect of the Highway Works which requires to be advertised in compliance with any statute or any delegated legislation made under any statute;
- 6.3. Not to commence any part of the Highway Works without first having received the completed Design;
- 6.4. Not to commence any part of the Highway Works without first having submitted to the Environment Director details of, and received his approval (which shall not be unreasonably withheld or delayed) of:
- 6.4.1. the contractor to be appointed by the Developer to carry out the Highway Works: and
- 6.4.2. the person to be responsible for the organisation, co-ordination and execution of the Highway Works: and
- 6.4.3. the person to be responsible for safety in accordance with Regulation 6 of the Management of Health and Safety at Work Regulations 1992 made under the Health and Safety at Work etc Act 1974, and the Traffic Safety and Control Officer and their respective deputies (where appropriate).
- 6.5. Not to commence any part of the Highway Works without first having given to the County Council the Notice;
- 6.6. In carrying out the Highway Works to comply with all statutory provisions and requirements, including (but not limited to) the provisions of the New Roads and Street Works Act 1991, and shall serve all statutory notices that may be necessary or required pursuant to such provisions and requirements and, if called upon to do so, shall produce to the Environment Director satisfactory evidence of compliance with this clause;
- 6.7. That the Developer or its appointed contractor shall at its own cost and within the Construction Period commence, diligently proceed with and complete the Highway Works in a good and workmanlike manner and with good and sound materials of their respective kinds in accordance with the Design and the provisions of this Agreement and to the reasonable satisfaction of the Environment Director in all respects.
- 6.8. Not to enter upon any part of the public highway other than the Highway Land for the purpose of inspecting the Highway Works

without the prior written approval of the Environment Director as he may in his absolute discretion determine;

- 6.9. That at all times during the construction of and the correction of defects in the Highway Works the Developer shall permit the Environment Director to enter with or without equipment, machinery, materials, plant, vehicles and workmen upon such parts of the Site as shall be affected by the Highway Works for the purposes of inspecting and testing the Highway Works and any components, materials, tackle or methods of work used in connection with them.
- 6.10. That at all times during the carrying out of the Highway Works and the correction of defects in them the Developer shall afford to the Environment Director full power to test, at the expense of the Developer, all components, materials, tackle or workmanship and to reject any which in his absolute discretion shall appear to him to be unsatisfactory and in the event of any and every such rejection then the Developer shall replace the rejected parts with such replacements as shall be acceptable to the Environment Director and in this regard the Developer shall permit the Environment Director to have access (in so far as is practicable) to all components, materials or tackle intended for use in the carrying out of the Highway Works whether on Site or the Highway Land or in any other place whatsoever and shall permit the taking up and removal of any part or parts for analysis and testing.
- 6.11. That, if called upon to do so by the Environment Director, the Developer shall within one month of receipt of notification of the requirement carry out such additional works as the Environment Director may certify as being in his reasonable opinion necessary as a result of a post opening safety audit, and in the event of such works being necessary they shall be subject to the same provisions of this Agreement as if they were incorporated into the Design and carried out as part of the Highway Works.
- 6.12. That the Developer shall within the Defects Correction Period rectify all and any defects in the Highway Works which may become apparent and in particular (but without prejudice to the generality of the foregoing) shall rectify all and any defects which may be specified by the Environment Director in any list of defects which may be given by the Environment Director to the Developer during the Defects Correction Period.
- 6.13. Not to commence any part of the Development until the Certificate of Substantial Completion has been issued;

- 6.14. Shall as soon as is reasonably practicable after carrying out the Highway Works supply to the County Council the items specified in the **Second Schedule**;
- 6.15. Within 14 days after receipt of the Certificate of Actual Cost to pay to the County Council, without any deduction or set-off, any sum by which the amount paid under the Estimated Design Fee is less than the amount specified in the Certificate of Actual Cost;
- 6.16. If any sum of money shall become due to the County Council under this Agreement from the Developer and the same shall remain outstanding and unpaid for more than 15 working days after becoming due, then to pay interest on such sums from the date when it becomes due to the date of actual payment at the rate of 4% above the base lending rate from time to time and for the time being of National Westminster Bank plc and the provisions of Section 305 of the Highways Act 1980 shall apply to all sums becoming due under this Agreement;
- 6.17. That the Developer shall at all times indemnify and keep indemnified the County Council against all actions, claims, costs, demands, expenses and liabilities of whatever nature (including but not limited to claims under Parts I and II of the Land Compensation Act 1973 and the Noise Insulation Regulations 1975) which may be made at any time in connection with or incidental to the carrying out of the Highway Works unless such claim arises exclusively as a consequence of any negligent act, default or omission of the County Council.
- 6.18.
- 6.18.1. That on the completion of this Agreement the Developer shall deliver to the County Council a properly executed and completed Bond issued by a reputable surety in a form approved by the County Solicitor (which approval shall not be unreasonably withheld or delayed) for the sum of **TEN THOUSAND POUNDS (£10,000)** ("the Bond Figure").
- 6.18.2. In the event that there is any material default on the part of the Developer in the performance of its obligations under this Agreement and such default shall not have been remedied within 10 working days after service upon the Developer and the bondsman by the County Council of a notice specifying the default and requiring its remedy the County Council may, where the default requires remedial works, itself enter and carry out such remedial works as may be necessary to rectify the default specified and may call upon the bondsman to pay to the County Council the entirety of the proper and reasonable costs incurred

by the County Council in remedying the default up to and including the Bond Figure and, in all other cases, may call upon the bondsman to pay to the County Council a sum equal to any loss or damage sustained by the County Council as a consequence of the default up to and including the Bond Figure.

6.18.3. If no such claim is made prior to the issue of the Defects Correction Certificate and the Developer has paid all monies due under this Agreement to the County Council then the County Council shall discharge the Bond in full within 14 days after the issue of the Certificate of Final Satisfaction.

6.19. That the Developer shall pay to the County Council on the completion of this Agreement the sum of **SEVEN HUNDRED AND FIFTY POUNDS (£750.00)** as a contribution to the legal costs and the sum of **ONE THOUSAND POUNDS (£1,000.00)** as a contribution to the Environment Director's administration and staffing costs incurred by the County Council in the preparation, negotiation and completion of and ordinary administration of this Agreement.

6.20. Without prejudice to the specific provisions of this Agreement, to pay to the County Council all sums of money becoming due under this Agreement without any deduction or set-off.

7. The Owners Covenants

The Owner COVENANTS with the County Council and the Developers:-

- 7.1 To permit the County Council and all persons authorised by it to enter and remain upon the Site with or without equipment, machinery, materials, plant, workmen and vehicles for all purposes connected with and for such period or periods as may be necessary for the carrying out of the Highway Works;
- 7.2 To permit the Developers to enter upon the Site for the purposes of inspecting the progress of the Highway Works:

8. Provisos.

- 8.1. The parties may, by agreement (which shall not be unreasonably withheld or delayed), vary the Design to enable the Developer to complete the Highway Works without unreasonable delay or expenditure due to any labour or materials being or becoming

unavailable or available only at unreasonable cost or on terms which were not reasonably foreseeable in making up the Design.

- 8.2. Either or both of the Construction Period and the Defects Correction Period may be extended or enlarged by such further period as may be deemed reasonably appropriate in the circumstances by agreement between the Environment Director and the Developer in the event of any occurrence beyond the control of the Developer which impedes or inhibits the carrying out of the Highway Works or the rectification of any defects in them (as the case may be).
- 8.3. In the event that there is any material variation in the costs of design and supervision of the Highway Works then the County Council may at any time give to the Developer a Revised Certificate of Estimated Design Fees and within 14 days after such certificate has been given the Developer shall pay to the County Council any shortfall between the Estimated Design Fee paid by the Developer against the amount shown in the Revised Certificate of Estimated Design Fees. The County Council shall not be obliged to refund any overpayment until the issue of the Certificate of Actual Cost.
- 8.4. If the Developer shall fail to rectify any defect in the Highway Works which may become apparent within the Defects Correction Period and further damage or defect ensues as a consequence of such default, such further damage or defect shall be treated for all purposes and in all respects as if it formed part of the original defect requiring rectification.

9. Dispute resolution.

In the event of any dispute arising between the parties hereto in respect of the construction of the Highway Works, the same shall, at the request of either party, be referred to a Chartered Civil Engineer to be agreed between the parties hereto or, failing agreement as to the same within 14 days after such request, to be appointed upon the application of either party hereto by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

10. Service of notices.

Any notice requiring to be served under this Agreement on the Developer shall be sufficiently given or served if posted to the Developer's registered

office address set out in this Agreement, or otherwise notified in writing to the Environment Director, by first class prepaid letter post or by Document Exchange post or by facsimile transmission and shall be deemed to have been given or served forty eight hours after posting in the case of prepaid letter post or Document Exchange post and at time of transmission if by facsimile transmission (unless after 16:00 hours, in which case service shall be deemed to be effected on the next working day) and any notice required to be served on the County Council (unless otherwise specified in this Agreement) shall be sufficiently given or served if sent by any of the methods above specified to the County Solicitor whose address for service is as set out in this Agreement. Where, under the specific provisions of this Agreement, notice is to be given to the Environment Director then it should be addressed to him at P. O. Box 9, Guild House, Cross Street, Preston, Lancashire PR1 8RD but otherwise the provisions of this clause shall apply.

11. Contracts (Rights of Third Parties) Act 1999.

Pursuant to the provisions of Section 1 of the above, the provisions of the Act shall not apply to this Agreement.

12. Registration.

For the avoidance of doubt the County Council shall procure the registration of this Agreement in the Register of Local Land Charges in accordance with the provisions of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2002. Any fees that may be incurred by the County Council in effecting such registration shall be borne by the Developer and shall be payable by the Developer to the County Council on demand.

13. Nature of document.

This Agreement is a deed and is executed by the parties as a deed.

IN WITNESS of which the parties have caused their respective Common Seals to be affixed to this their deed the day and year first above written.

THE FIRST SCHEDULE

WORKS TO BE CARRIED OUT BY THE DEVELOPER OR A CONTRACTOR ON ITS BEHALF (THE HIGHWAY WORKS BEFORE REFERRED TO) IN ACCORDANCE WITH THE DRAWINGS, THE STANDARD DETAILS, AND THE PROVISIONS OF THIS AGREEMENT

Highway works at Manchester Road, Haslingden, and the access to the development comprising the following:

- 1. Carry out Highway works to the above roads and junctions adjacent to the development, in accordance with the details.**
- 2. Modification to and/or provision of highway drainage, carriageway markings, street lighting and ducts.**
- 3. Associated and consequential works and any necessary alteration to Service Companies plant and equipment necessitated by the roadworks.**
- 4. Provision/alteration of footways and footway crossings.**

Paragraphs 1-4 of the schedule shall include:

- a. Excavation of any material and disposal to tip.
- b.
 - (i) Taking up existing kerb/edgings and dispose to tip.
 - (ii) Taking up highway signs and storing on site for re-use as required.
 - (iii) Removal of existing carriageway markings as required.
 - (iv) Taking up of existing lighting columns and storing on site for re-use as required.
 - (v) Taking up existing gully grates and frames and store on site or dispose to tip as required.
 - (vi) Take up hedges, fences, railings, affected by the construction and visibility requirements.
- c. Provision and laying of filling material to embankments, verges and slopes including any soiling and grass seeding.
- d. Provision and laying of sub grade/capping layers and sub-base material to new or widened carriageways.
- e. Provision and laying of new kerbs to lines and levels.
- f. Provision, laying of new surface water drains, manholes, and alterations to existing surface water drains and manholes.

- g. Provision and installation of new gully pots, grates, frames and connections to new and existing surface water drains.
- h. Provision and laying of kerbs including all radius, tapered or dropped kerbs, quadrants, and including cutting into existing road construction as required.
- i. Provision and laying of road base, basecourse and wearing course to new or widened carriageway and including regulating, planing of existing carriageways to suit new layout.
- j. Provision and laying of ST1 concrete in narrow widenings, roadbase, basecourse and wearing course to widened carriageways.
- k. Provision and laying of footway edgings.
- l. Provision and laying of sub-base, basecourse and wearing course to new footways including the regrading of any existing footways as required.
- m. Provision and erection of new street lighting columns and re-erection of existing columns.
- n. Provision of sewer CCTV survey to new highway drains.
- o. Provision and erection of new highway signs.
- p. Provision and laying of ducts and cables to the above lighting columns, and highway signs including connections to the public electricity supply.
- q. Provision and laying of all carriageway markings including centre, lane, edge, stop line markings.
- r. Carry out any necessary protections, diversions or relaying of any statutory undertakers plant as may be required. Such works to be identified and agreed with the appropriate undertaker. It is the responsibility of the developer to notify and liaise with the appropriate undertakers and agree with them any necessary works.
- s. All fencing protection traffic control, watching and lighting of the works. Traffic safety and management to be in accordance with the "Traffic Signs Manual" Chapter 8 "Traffic Safety Measures and signs for Roadworks and Temporary Situations.
- t. Replacement of any fences, hedges and railings to new alignments.


- u. Removal of any trees.
- v. Carry out amendments to the design and implementation of the works as a consequence of safety audit requirements and Safety Audit post opening minor alterations.
- w. Provision of 'As Built' drawings.

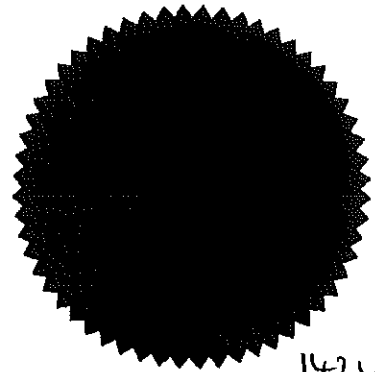
THE SECOND SCHEDULE

(Items to be delivered by the Developer to the County Council under the provisions of Clause 6.14)

1. An as-built general plan;
2. An as-built drainage plan, including manhole details (including cover and invert levels) and pipe sizes;
3. An as-built lighting and cabling layout plan, including details of illuminated traffic signs and duct locations and sizes;
4. An inventory of electrical equipment removed and of newly-installed equipment;
5. Electrical Test Certificates for all lighting and cabling.

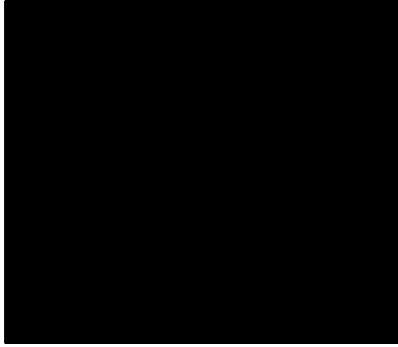
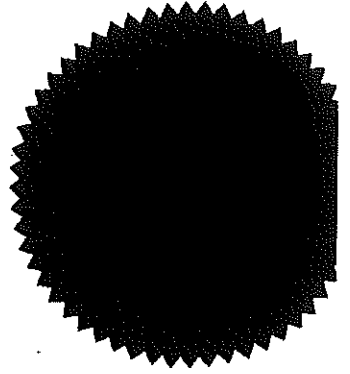
THE COMMON SEAL of **THE LANCASHIRE COUNTY COUNCIL**
was affixed to this Deed pursuant to
the Scheme of Delegation to Chief
Officers in the presence of:


Authorised Signatory



14244

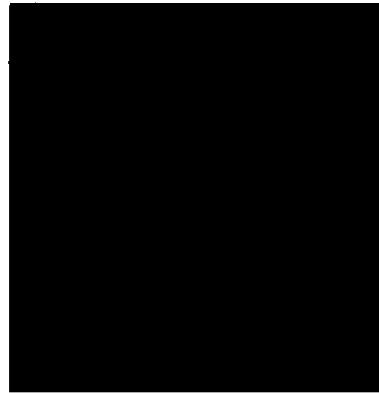
THE COMMON SEAL of
MCDERMOTT DEVELOPMENTS
LIMITED was affixed to this its Deed
in the presence of:



Director

Secretary

SIGNED AS A DEED by CLIFFORD
DEVELOPMENTS LIMITED in the
presence of:



Director
Secretary

FIDSEC LIMITED

.....
Authorised Signatory