

DATED 17th March 2010

RIBBLE VALLEY BOROUGH COUNCIL

– and –

GEORGE WIMPEY CITY 2 LIMITED

A G R E E M E N T

Under Section 106 Town and Country Planning Act 1990

relating to property known as the

Land at Calderstones Hospital

Mitton Road, Whalley

D J CROUCH
Taylor Wimpey UK Limited
Chase House
Park Plaza
Cannock
Staffordshire
WS12 2DD

THIS AGREEMENT is made the 17th day of March Two thousand and ten **B E T W E E N** **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (hereinafter called "the Council") of the first part and **GEORGE WIMPEY CITY 2 LIMITED** (company number 718742) whose registered office is situate at 80 New Bond Street London W1S 1SB (hereinafter called "the Owner") of the other part

1. DEFINITIONS

In this Deed the following words and phrases shall where the context so admits have the following meanings:

- 1.1 **"the Act"** means the Town and Country Planning Act 1990 (as amended)
- 1.2 **"Affordable Housing Provider"** means a Registered Social Landlord or a local or similar authority or a housing association or similar organisation or a social landlord or such other body or organisation whose main object is the provision of affordable housing (and "AHP" shall be construed accordingly)
- 1.3 **"Affordable Units"** means the Units to be erected on the Property the tenure and mix of which shall be in accordance with clause 3 of the First Schedule of this Agreement and "Affordable Unit" shall be construed accordingly
- 1.4 **"the Application"** means the application for Planning Permission for the erection on the Property of 39 Dwellings made to the Council on 19 May 2009 and numbered 3/2008/0826/P
- 1.5 **"Commence"** means the carrying out of a material operation as defined by section 56(4) of the Act (excluding any act of demolition, remediation, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, diversion and laying of services, erection of any temporary means of

enclosure, the temporary display of site notices or advertisements) in accordance with the Planning Permission and the expression "Commencement" shall have a corresponding meaning

- 1.6 **"Commutated Payment"** means the sum equal to 40% of the Open Market Value of the relevant Low Cost Market Unit sold by the Developer pursuant to clause 7 of the First Schedule to be used for the provision of affordable housing in the borough of Ribble Valley
- 1.7 **"the Development"** means the residential and ancillary development of the Property for 39 dwellings in accordance with the Planning Permission
- 1.8 **"Disposal"** means each and every means by which the right of occupation of an Affordable Unit is given or transferred to another person, body or company and "Dispose" and "Disposed" shall be construed accordingly
- 1.9 **"Highways Contribution"** means the sum of ten thousand pounds (£10,000) to finance the provision of the Highway Works by Lancashire County Council
- 1.10 **"Highway Works"** means the installation and provision of a bus shelter on Mitton Road
- 1.11 **"Low Cost Market Units"** means the Affordable Units that are built by the Owner and sold to the Approved Persons (as hereinafter defined) at a 40% discount to the Open Market Value and subject to a restrictive covenant placed upon the title of such Units to ensure that they are available to subsequent occupiers on the same basis
- 1.12 **"the Off Site Open Space Contribution"** means the sum of £81,925 (Eighty one thousand nine hundred and twenty five pounds) to be paid towards the cost of upgrading the area of open space adjacent to the Property and for the provision of a

children's play area off Fell View and ongoing maintenance of the open space and
childrens play area

- 1.13 **"Open Market Value"** means the market value of the relevant Low Cost Market Unit assessed in accordance with the Appraisal and Valuation Manual of the Royal Institute of Chartered Surveyors (the Red Book) current for the time being
- 1.14 **"Open Market Units"** means the Units to be erected on the Property (excluding the Affordable Units) which shall be available for sale on the open market
- 1.15 **"Plan"** means the plan annexed hereto
- 1.16 **"Planning Permission"** means the planning permission to be granted pursuant to the Application substantially in the form attached hereto
- 1.17 **"Rented Affordable Units"** means the Affordable Units to be rented by an AHP in accordance with paragraph 5.1 of the First Schedule
- 1.18 **"Shared Ownership"** means a method of acquiring part ownership of an Affordable Unit by purchasing a share of the freehold or long leasehold then paying rent on the non-purchased share to an AHP where occupiers can purchase additional shares
- 1.19 **"Property"** means land at Calderstones Hospital, Mitton Road, Whalley for the purpose of identification only shown edged in red on the Plan
- 1.20 **"Unit"** means a dwelling to be constructed pursuant to the Planning Permission

2. INTERPRETATION

In this Agreement

- 2.1 words importing one gender shall be construed as importing any other gender

- 2.2 words importing the singular shall be construed as importing the plural and vice versa
- 2.3 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa
- 2.4 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons
- 2.5 the clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation
- 2.6 any reference to a clause or a paragraph or a schedule is to one in this Agreement so numbered
- 2.7 any reference to a colour or letter is to one on the Plan
- 2.8 in the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it and any and every order instrument regulation direction or plan made or issued under the statute or deriving validity from it
- 2.9 references to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its functions as local planning authority and local housing authority as appropriate

3. RECITALS

- 3.1 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Property is situated

- 3.2 The Owner is seized of the fee simple in possession of the Property free from incumbrances and the Owner's title to the Property is registered at HM Land Registry under title number LA864367
- 3.3 The Owner on the 19 May 2009 made the Application to the Council
- 3.4 The Council is satisfied that the Development is such as may be approved by it under the Act but subject to the Owner entering into this Agreement with the Council under the provisions of Section 106 of the Act
- 3.5 By a Planning Obligation dated 19th February 1999 made between (1) the Council, (2) Lancashire County Council, (3) The Secretary of State for Health and (4) Calderstones National Health Service Trust the Property is bound by the restriction set out in clause 4.4 which prohibits the construction on the Property of dwellings but this Agreement now overrides the aforesaid Planning Obligation dated 19th February 1999 in the manner herein set out and thus this Agreement supersedes the Planning Obligation dated 19th February 1999 in respect of the Property

4. OPERATIVE PROVISIONS

- 4.1 This Agreement is a Deed made under the provisions of Section 106 of the Act with the intention that the obligations contained herein are planning obligations for the purposes of that section in respect of the Property which may be enforced by the Council against the Owner or any person deriving title under it
- 4.2 This Agreement is conditional upon the grant of the Planning Permission and the implementation of the same in whole or in part
- 4.3 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 Property or the relevant part of the Property in respect of which such breach occurs

(but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest)

4.4 This Agreement shall cease to have effect if:-

4.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

4.4.2 the Planning Permission shall expire prior to the Commencement of the Development

4.4.3 the Council or any other competent authority shall at any time after the date hereof grant a new planning permission under which development of the Property is initiated for the purposes of section 56 of the Act

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

4.6 It is not intended that any person(s) who (but for the provisions of the Contract (Rights of Third Parties) Act 1999) would not acquire any interest hereunder should do so by virtue of such Act

4.7 The Owner hereby covenants with the Council to perform the obligations specified in the First Schedule of this Agreement

4.8 The Council hereby covenants with the Owner to perform the obligations specified in the Second Schedule of this Agreement

4.9 The Council will within fourteen days of this Agreement grant the Planning Permission for the Development referred to in the form annexed hereto

4.10 Wherever 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

- 4.11 Any dispute between the parties as to any matter the subject of this Agreement shall be referred to an appropriate independent expert (who shall either be agreed between the parties or failing agreement appointed on the application of any of the parties by the President for the time being of the Royal Institution of Chartered Surveyors (or any person acting with his authority)) and the decision of the expert shall be final and binding (save in case of manifest error) and his costs shall be borne as he shall direct
- 4.12 If any sum due under this Agreement shall remain unpaid after the same has become due interest shall be paid thereon from the date the sum becomes due to the date of payment at the rate 2% above the base lending rate for the time being of National Westminster Bank Plc
- 4.13 The Owner shall pay the Council's legal fees incurred in relation to this Agreement on the date of this Agreement in the sum of £330 (three hundred and thirty pounds)
- 4.14 Any notice or other communication given or made in accordance with this Agreement shall be in writing and may (in addition to any other effective mode of service) be sent by recorded delivery or registered post to the Housing Strategy Officer for the time being of the Council at the address of the Council shown on the first page of this Agreement or at such other address as may from time to time have been notified to the sender as being the address for service of the relevant party for the purposes of this Agreement

FIRST SCHEDULE

Owner's Obligations

1. To notify the Council in writing of the Commencement of the Development, such notice to include details of which Units within the Development are to be the Affordable Units and such notice shall be served on the Council within 7 days of the Commencement of the Development

2. **Off Site Open Space and Highways Contributions**

- 2.1 Prior to the first legal completion of sale of a Unit at the Development to pay the Off Site Public Open Space Contribution and the Highways Contribution to the Council

3. **Affordable Housing**

Construction and transfer of the Affordable Units

The Affordable Units shall be designed and constructed to a specification no less favourable than the Open Market Units and shall comprise:

- A. **Rented Affordable Units the indicative positions of which are shown coloured pink on the Plan**

2 2 bed houses

2 3 bed houses

and

B. Low Cost Market Units the indicative positions of which are shown coloured blue on the Plan

4 2 bed houses

4 3 bed houses

- 3.1 To Dispose of the Rented Affordable Units to an AHP approved by the Council (such approval not to be unreasonably withheld or delayed) on or before completion of the construction of the Affordable Units and to notify the Council in writing accordingly
- 3.2 Not to allow the first occupation of more than 60% of the Open Market Units (unless otherwise agreed in writing by the Council) until the Affordable Units have been built ready for immediate occupation and are capable of being transferred
- 3.3 To dispose of the Low Cost Market Units to Approved Persons who meet the Eligibility Criteria (as defined in clause 5.2 of this First Schedule) or as otherwise provided herein
- 3.4 Unless otherwise agreed in writing by the Council the build of the Affordable Units shall be in accordance with the phasing programme being the direction of build shown in the numbered order and direction as shown in blue on the Plan

Mechanism for dealing with the Affordable Units

4. The Affordable Units shall be subject to each and every one of the restrictions regulating the development as are contained in this Agreement and the purpose and

intent of such restrictions shall be registered at HM Land Registry upon the title relating to the Affordable Units

5. The said restrictions referred to in the preceding clause are as follows:

5.1 Rented Affordable Units

- (i) that the Rented Affordable Units be available for rent
- (ii) that on completion of the Rented Affordable Units they will be allocated by 100% nomination arrangements or first let to approved persons nominated by the Council in accordance with the Council's allocations policy
- (iii) that subsequent lets will be on a 50% nomination arrangement to approved persons by the AHP
- (iv) that rents to be charged on the Rented Affordable Unit will be in accordance with the Governments Guidance on Formulae rent as issued by the Homes and Communities Agency which governs the rents to be charged by all social landlords whether they be registered social landlords or local authorities or AHPs

5.2 Low Cost Market Units

- (i) that the Low Cost Market Units are offered for sale on a long leasehold interest (being at least 99 years) for not more than 60% of the Open Market Value in accordance with the provisions set out herein.
- (ii) that in order that the future ownership and selling price of the Low Cost Market Units shall be controlled so as to ensure that the Low Cost Market Units will remain as affordable housing the Owner shall include within the lease of each Low Cost Market Unit the clauses set out in the Third Schedule.

- (iii) that the Low Cost Market Units shall initially be offered to Approved Persons who meet the Eligibility Criteria as set out below:

Approved Persons

Approved persons for the purposes of this scheme, and in the order of priority are detailed below:

- (a) First time buyers who can demonstrate a housing need requirement for the property type they are purchasing where none of the family own or have ever owned a property (whether residential or otherwise) and who were either
- living in Ribble Valley or
 - working in Ribble Valley or
 - who have lived in Ribble Valley for any five of the last ten years having left to find suitable accommodation elsewhere and who also have close family living in the Ribble Valley or
 - persons moving to Ribble Valley to offer support or receive support from a close family member who is living in Ribble Valley
- (b) Secondly people who are not first time buyers who can meet one or other of the local connections detailed in (a) and can demonstrate a housing needs requirement for the property type they are purchasing
- (c) Eligibility criteria: financial

The Owner will ensure purchasers of all Affordable Units demonstrate that they have

- sufficient income to purchase the property but that they could not afford to purchase on the open market
- a satisfactory credit history
- sufficient funds to cover the legal costs involved in purchase

(d) Eligibility criteria: income

The Owner will ensure that the Low Cost Market Units are allocated to those who meet the requirements of this Agreement and will

- impose upper income brackets for purchasers of each Low Cost Market Unit type
- ensure income levels are verified via wage slips/P60s
- ensure local connection is established by reference to the electoral roll at a specific date in time. The onus will be on the approved person to provide proof of residence eg utility bills if they are not on the electoral roll

(e) Eligibility criteria: local connection

- verify local connection based on employment by way of references/confirmation of employment history confirmation of permanence of employment will be required from employer
- verify five out of last ten years connection by placing the onus on the approved person to provide suitable supporting evidence eg council tax records, electoral roll records

6. If any of the Low Cost Housing Units have not been sold within 12 weeks of their release for sale the Developer shall be entitled to dispose of such Low Cost Market Units to any persons.
7. If any of the Low Cost Market Units have not been sold within 16 weeks of their release for sale the Developer shall be entitled to dispose of such Low Cost Market Units to any person on the open market but free of the restrictions contained in clause 5.2 of this First Schedule Provided That within 7 days of completion of the sale of each such unit the Developer shall pay the Commuted Payment to the Council in respect of each unit sold.
8. At any time the Owner may make a written request to the Council for approval to dispose of some or all of the Low Cost Market Units to an AHP for sale by the AHP on the basis of Shared Ownership

If the Council gives approval to such request then the provisions of clause 3 and 4 of this First Schedule shall apply to such housing and the following restrictions shall apply:

- (i) that on completion of the Affordable Units (for Shared Ownership) or as soon as possible thereafter the AHP shall dispose of the Affordable Units intended for Shared Ownership
 - (a) at Open Market Value on a Shared Ownership basis with the rental element being discounted by the AHP
 - (b) to an approved person who shall purchase the Affordable Unit for occupation by the approved person and in accordance with the requirements of this Agreement

(c) in consultation with the Council and having first obtained the Council's consent to the Disposal to the approved person

(ii) the approved person shall be required to purchase a minimum share of the Affordable Unit which share shall be as follows:

2 bed house	-	minimum 50%
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3 bed house	-	minimum 50%
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(iii) the approved person shall be allowed to purchase additional shares in increments of no less than 10% up to a maximum of 100% provided that at the point of purchase of each additional share they continue to occupy the Affordable Unit in compliance with the requirements of this Agreement

9. The provisions of Clauses 3 to 8 of this First Schedule shall not be binding on a mortgagee in possession of the whole or any part of the Affordable Units or a bona fide purchaser for value thereof from such a mortgagee in possession

10. The AHP shall maintain records enabling them to supply to the Council (within two weeks of the Council's written request to do so) such information as the Council may reasonably require in order to determine whether the covenants herein are being observed

SECOND SCHEDULE

Council's Obligations

Repayment of contributions

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose
- 2 The Council covenants with the Owner that it will refund all such sums received to the person who paid such sums received by the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Council of such sum together with interest for the period from the date of payment to the date of refund
- 3 The Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of such sums paid under this Agreement.

Discharge of obligations

- 4 When requested in writing the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.
- 5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

6. The Council shall respond definitively to the Owner within 15 working days of any written request by the Owner as to whether nominated purchasers for the Low Cost Market Units are Approved Persons who satisfy the Eligibility Criteria

THIRD SCHEDULE

Standard Lease Provisions for Low Cost Market Units

1.1 In this clause the following further expressions have where the context admits the following meaning:-

1.1 "the Assumptions" are:

1.1.1.2 that prior to the date of valuation the premises were freely exposed to the market and there has been a reasonable period within which to negotiate the sale (having regard to the nature of the premises and the state of the market) and that values remained static throughout that period and

1.1.1.3 that no account is taken of any bid by any prospective purchaser with a special interest and

1.1.1.4 that both parties to the transaction had acted knowledgeable prudently and without compulsion; and

1.1.1.5 that the premises are in their existing state of repair and sold with vacant possession

1.1.1.6 that the deed of assignment or transfer does not contain any provisions that are not standard or usual in residential leasehold or freehold transactions

1.2 The "Council" means Ribble Valley Borough Council of Council Offices Church Walk Clitheroe Lancashire BB7 2RA

1.1.3 "the Council's Affordable Housing Register" means the list maintained by the Council for the purpose of providing access to properties at less than market value to Approved Persons (or any successor to the list that may be introduced by the Council)

1.1.4 the "Discounted Price" means no more than 60% of the Open Market Value of the premises

- 1.1.5 "Independent Valuer" means a member of the Royal Institution of Chartered Surveyor appointed by the tenant at his own cost but first approved by the Council
- 1.1.6 "Open Market Value" means the value as determined by an Independent Valuer to be the price at which the lease can reasonably be sold on the date of valuation taking into account the Assumptions
- 1.1.7 "Qualifying Person" means a person or persons on the Council's Affordable Register or in the circumstances set out in clause 1.2.3.5 of this lease such other person that may qualify for the purposes of that clause
- 1.1.8 A "Sale" of the premises occurs in every case where there is a transfer or assignment in the premises except when the transfer or assignment is:
- (i) executed in pursuant of an order of a court on granting in respect of the parties a decree of marriage or judicial or
 - (ii) executed in pursuant of an order of a court which is made in connection with the dissolution of annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree or
 - (iii) executed at any time in pursuant of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution of annulment of the marriage or their judicial separation or
 - (iv) executed by personal representative of the tenant for the purpose of transferring or assigning into the sole ownership of the spouse of the tenant or
 - (v) executed by personal representatives of a joint tenant and the surviving tenant for the purpose of transferring or assigning the premises into the sole ownership of the surviving tenant
- 1.2 Subject to provisions of clause 1.6 the tenant hereby covenants with:
- 1.2.1 the Council and

1.2.2 as a separate covenants with the landlord (but not so as to render the liable to the landlord after the tenant shall have parted with his interest in the premises) and

1.2.3.1 any Sale of the premises shall only be for the Discounted Price

1.2.3.2 subject to clause 1.2.3.5 any sale of the premises shall be to a Qualifying Person

1.2.3.3 the premises shall at all times be the sole residence of the tenant

1.2.3.4 the tenant shall not effect a Sale unless at least seven days prior to the marketing of the premises the tenant obtains the written approval of the Council to the proposed sale

1.2.3.5 the Council shall forward details of applicants on the Council's Affordable Housing register to the marketing agent and AHP prior to the completion of the affordable housing units

1.2.3.6 the tenant shall not sell the premises without

1.2.3.6.1 procuring that any transferee or assignee enters into a covenant with the Council to observe and perform the covenant set out in this clause 1 and

1.2.3.6.2 delivering to the Council the covenant referred to in clause 1.2.3.6.1 on the Sale of the premises

1.3 To intent that no transfer or assignment of this lease shall take place otherwise than in accordance with clause 1.2 of this lease the tenant shall at the tenant's expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the lease such restriction to remain on the Register during its subsistence:

"No disposition of the registered estate (other than a charge) by the Registered Proprietor is to be registered without a Certificate addressed to HM Land Registry and signed by Ribble Valley Borough

Council of Council Offices Church Walk Clitheroe Lancashire that
the disposition complies with clause [] of a lease dated []
[] made between [] (1) and []
[] (2)"

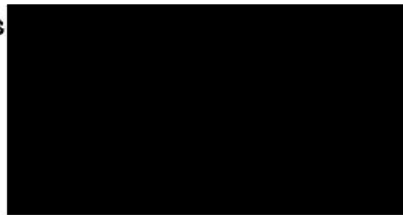
- 1.4 The Council shall have the benefit of the right to enforce the covenants contained in this lease pursuant to the Contracts (Rights of Third Parties) Act 1999
- 1.5 If this lease becomes vested in a mortgagee in possession of the whole of the premises the provisions of clause 1.2 shall cease to apply to the residue of the term of the lease

IN WITNESS whereof the Council and the Owner have hereunto caused their respective Common Seals to be hereunto affixed and executed as a Deed the day and year first before written

THE COMMON SEAL of RIBBLE VALLEY)

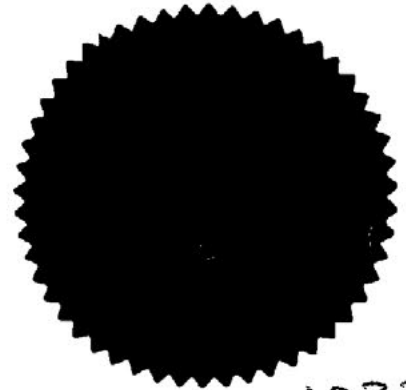
BOROUGH COUNCIL was hereunto affixed to)

this Deed in the pres



Mayor

Chief Executive



1033

executed as a Deed by
~~THE COMMON SEAL~~ of GEORGE WIMPEY)

CITY 2 LIMITED was hereunto affixed to this)

Deed in the presence of: *acting by*)

Di

Director/Secretary/Authorised Signat

