

DATED 22. November 2012

MR. N.G. le G. STARKIE

UNILATERAL UNDERTAKING

S. 106 Town & Country Planning Act 1990

relating to

land at Milton Avenue, Clitheroe, Lancashire



SMITH SUTCLIFFE
SOLICITORS
BURNLEY AND PADIHAM

THIS UNILATERAL UNDERTAKING is given the 22 day of November 2012

BY:

(1) NICHOLAS GUY le GENDRE STARKIE c/o Ingham & Yorke, Huntroyde Estate Office, Padiham, Burnley, Lancashire BB12 7QX ('the Owner') and

TO:

(2) RIBBLE VALLEY BOROUGH COUNCIL of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA ('the Council') and

(3) LANCASHIRE COUNTY COUNCIL of PO Box 78; County Hall, Preston, Lancashire PR1 8XJ ('the County Council')

RECITALS

- (1) The Council and the County Council are the local planning authorities for the purposes of the 1990 Act for the area in which the Site is situated and by whom the obligations in this Undertaking are enforceable.
- (2) The County Council is the local highway authority and the education authority for the area in which the Site is situated.
- (3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- (4) The Owner submitted the Application to the Council on 25th October 2011.
- (5) The Council resolved on 20th July 2012 to refuse planning permission and the Owner has submitted the Appeal for determination by the Secretary of State.
- (6) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates and that the obligations contained in this Undertaking may be enforced by the Council and the County Council against the Owner and any person or persons deriving title from him.
- (7) It is intended that the obligations in this Undertaking will bind the interest of the Owner and his successors in title and assigns.

NOW THIS DEED WITNESSES as follows:

1. Definitions and Interpretation

1.1 Definitions

For the purposes of this Deed the following expression shall have the following meanings:

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990;
- 1.1.2 'Affordable Housing' means subsidised housing that will be available to an Approved Person
- 1.1.3 'the Affordable Housing Units' means the Affordable Housing Land comprising fifteen residential units, of which eight are Shared Ownership Units and seven are affordable units for rent, and 'an Affordable Housing Unit' shall be construed accordingly;
- 1.1.4 'the Appeal' means the appeal to the Secretary of State following the refusal of the Application by the Council and given appeal reference APP/T2350/A/12/2181354
- 1.1.5 'the Applicant' shall mean a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household;
- 1.1.6 'the Application' means the application for outline planning permission for the Development dated the 25th day of October Two Thousand and Eleven submitted to the Council and allocated reference number 3/2011/0892;
- 1.1.7 'Approved Person' means a person who meets the Qualifying Criteria;
- 1.1.8 'Borough' means the Borough of Ribble Valley;
- 1.1.9 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act Section 56(4)) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions,

remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly;

1.1.10 'Contributions' means the Education Contribution and Transport Contribution and Public Open Space off site contribution;

1.1.11 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect;

1.1.12 'the Development' means the development of the Site with fifty Dwellings pursuant to the Outline Planning Permission;

1.1.13 'Discounted Sale Unit' means the sale of an Affordable Housing Unit at a discount of Forty per cent of the Open Market Value in perpetuity;

1.1.14 'Dispose' means each and every means by which the right of occupation of the Affordable Housing is given or transferred to another person body or company and 'Disposal' shall be construed accordingly;

1.1.15 'a Dwelling' means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly;

1.1.16 'the Education Contribution' means the sum set out in Schedule 3;

1.1.17 'Financial Need' means an Applicant whose means are not reasonably sufficient to enable him/her to buy or rent a suitable property in the Locality or the Neighbouring Parish which is reasonably convenient and suitable for the Applicant;

1.1.18 'Financial Need Criteria' means:

- (a) that the Applicant cannot afford to rent suitable accommodation on the open market in the Locality or the Neighbouring Parish;
- or

(b) no suitable alternative affordable accommodation is available in the Locality of the Neighbouring Parish on the open market;

1.1.19 'Homes and Communities Agency' means the Homes and Communities Agency or its statutory successors;

1.1.20 'the Housing Corporation' means the Housing corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors;

1.1.21 'Independent Valuer' means an independent chartered surveyor with not less than ten years post-qualification experience in the valuation of land and developments for use as permitted by the Planning Permission who shall be appointed by the Owner and the Council or in default of agreement within seven working days of either party seeking the agreement of the other, to an appointment at the request of the Owner or the Council by or on behalf of the President for the time being of the Royal Institution of chartered Surveyors;

1.1.22 'Index' means in respect of the Highway Contribution the BCIS All - in Tender Price Index published by the Royal Institute of Chartered Surveyors (RICS) or any successor body (or such other index replacing the same) in respect of the Education Contribution the BCIS General Building Cost Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same);

1.1.23 'Indexation Factor' means the recalculation of a financial contribution to be made under this Undertaking applying the following formula

$$A \times B/C = D$$

A = the contributions payable in accordance with Schedules 3 and 4 to this Deed as the case may be

B = the figure shown in the relevant Index for the month before the date such relevant Contribution is payable

C = the index figure shown in the relevant Index for the month and year of the date of this Undertaking

D = the recalculated sum payable

- 1.1.24 'Interest' means interest at one per cent above the base lending rate of The Royal Bank of Scotland plc from time to time;
- 1.1.25 'the Local Housing Allowance' means the Local Housing Allowance rates for the Borough of Ribble Valley from time to time or any statutory replacement thereof;
- 1.1.26 'Living' means those currently living in the Locality, Neighbouring Parish or Borough (as applicable);
- 1.1.27 'the Market Housing Units; means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;
- 1.1.28 'Next of Kin' means mother, father, brother, sister or adult dependant children;
- 1.1.29 'Nominated Officer' means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place;
- 1.1.30 'Nomination Process' means the process of nominating an Approved Person in accordance with the Council's Allocation Policy;
- 1.1.31 'Notice' means a written notice from the Owner to the Council confirming that the Owner intends to market for sale Shared Ownership Units and in which the Owner invites the Council to agree the Open Market Value of the Shared Ownership Units;
- 1.1.32 'Occupation' means the use of a Market Housing Unit for residential purposes;
- 1.1.33 'Open Market Value' means the best price at which the sale of the freehold interest in the Shared Ownership Unit (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which will still subsist and are capable of taking effect) would have been completed unconditionally for cash consideration by private treaty at the date of the Notice with vacant possession on completion of the sale assuming:

- 1.1.33.1 a willing seller; and
- 1.1.33.2 that prior to the date of the Notice there had been a reasonable period (having regard to the nature of the Shared Ownership Unit and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale; and
- 1.1.33.3 that the state of the market levels of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of the Notice; and
- 1.1.33.4 that no account is taken of any additional bid by a buyer with a special interest; and
- 1.1.33.5 that both parties to the transaction had acted knowledgeably prudently and without compulsion;
- 1.1.34 'the Plan' means the plan attached to this Deed;
- 1.1.35 'the Planning Permission' means the outline planning permission issued by the Secretary of State in determining the appeal;
- 1.1.36 'Qualifying Criteria' means priority in which an Applicant will be allocated a Rental Agreement of a Rented Unit being first in priority order;
 - (a) those currently Living in the Borough for more than ten years;
 - (b) those currently Living in the Borough and have done so continually for between five to ten years;
 - (c) those currently Living in the Borough and have done so continually for a minimum of twelve months; or
 - (d) those currently Working in the Borough to which they have applied for accommodation;
 - (e) those Returning to the Borough; and finally
 - (f) those who are able to justify a requirement for accommodation in the Borough;

- 1.1.37 'the RSL' means a registered social landlord as defined in Part 1 of the Housing Act 1996, who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act, and who is approved by the Council (such approval not to be unreasonably withheld or delayed);
- 1.1.38 'the Regulations' means the Community Infrastructure Levy Regulations 2010 no.948
- 1.1.39 'Rental Agreement' means a letting agreement for a Rented Unit granted by the RSL on its standard terms and conditions to an Approved Person in accordance with the Nomination Process as shall be appropriate for the site and subject to a rent which is accepted as affordable for the Borough by the Homes and Communities Agency provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so);
- 1.1.40 'Rented Units' are Units which are available for rent only;
- 1.1.41 'Returning' means persons who at least one of the adult Applicants have Next of Kin who currently live in the Borough;
- 1.1.42 'Right of Pre-Emption' is a right contained in the Shared Ownership Lease for the RSL to buy back the Shared Ownership Units;
- 1.1.43 'Shared Ownership Lease' means a lease of a Shared Ownership Unit that contains with it a Right of Pre-Emption and Shared Ownership Leases shall be construed accordingly;
- 1.1.44 'a Shared Ownership Unit' means a unit of Affordable Housing in respect of which a Shared Ownership Lease is granted by the RSL to an Approved Person and Shared Ownership Unit shall be construed accordingly;
- 1.1.45 'the Site' means the land against which this Deed may be enforced shown edged red on the Plan and described in Schedule 1;
- 1.1.46 'a Social Rented Unit' means an Affordable Housing Unit which is let subject to an assured tenancy agreement with the RSL to persons identified in accordance with the nominations requirements of any funding agreement as

approved by the council in writing, at a rent not exceeding the target rent of the Housing corporation;

1.1.47 'Staircase' means the exercise by the occupier pursuant to the Shared Ownership Lease of the right to acquire a greater interest in the Shared Ownership Unit by paying a percentage of the market value to the RSL after which the rent payable on the part retained by the RSL shall be reduced proportionately;

1.1.48 'Transport Contribution' means the sums set out in Schedule 4;

1.1.49 'Units' means the Affordable Housing Units and 'a Unit' shall be construed accordingly;

1.1.50 'Working' means a person who is permanently employed or self-employed for a minimum of eighteen hours per week paid or unpaid in the Borough

1.1.51 'Working Days' means any day of the week excluding Saturdays, Sundays and Bank Holidays. Definitions and interpretation

1.2 Interpretation

1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.

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

1.2.3 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.

1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.

1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.

1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

2.1 This deed is made pursuant to the 1990 Act section 106.

2.2 The terms of this Deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council and the County Council as local planning authorities.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

3.1.1 the grant of the Planning Permission, and

3.1.2 the Commencement of Development save for the provisions of clause 5, Provisions of Immediate Effect, which shall come into effect immediately upon completion of this deed.

3.1.3 the express confirmation by the Secretary of State or his Inspector that the Contributions comply with the provisions of paragraph 122 of the Regulations

3.2 Duration

3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

- 3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

3.3 Other development

Nothing in this deed 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 deed.

3.4 Non-enforcement

This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants, except in respect of Schedule 2 paragraph 5 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed.

- 3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services,
- 3.4.2 the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations,
- 3.4.3 any mortgagee of the Registered Social Landlord or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver,
- 3.4.4 any person to whom the Registered Social Landlord grants a lease of a Unit or any successor in title to any such person,
- 3.4.5 a tenant or any occupant of an Affordable Housing Unit exercising a right to buy, right to acquire or similar statutory right to purchase,
- 3.4.6 any mortgagee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver,

- 3.4.7 any person who by virtue of the terms of the lease of a Shared Ownership Unit is granted a new lease of that Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any successor in title of such person or mortgagee,
- 3.4.8 the owners or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit,
- 3.4.9 any mortgagee of a Shared Ownership Unit or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or receiver; provided that any mortgagee shall be a full member of the Council of Mortgage Lenders, unless otherwise approved in writing by the Council on a case-by-case basis.

4 Owner's covenants

- 4.1 The Owner covenants with the Council as set out in Schedule 2.
- 4.2 The Owner covenants with the County Council as set out in Schedules 3 and 4

5 Provisions of immediate effect

- 5.1 On completion of this deed the Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £320.00 in total.
- 5.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 5.3 The Owner agrees with the Council to give the Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

6 Notices

- 6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the

Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

6.2 The address for any notice or other written communication shall be within the United Kingdom.

6.3 A notice or communication shall be served or given:

6.3.1 on the Owner c/o Ingham & Yorke, Huntroyde Estate Office, Padiham, Burnley, Lancashire BB12 7QX at its registered office from time to time, or such other address as shall be notified in writing to the Council from time to time, marked for the attention of John H. Staples, and

6.3.2 on the Council at Church Walk, Clitheroe, Lancashire BB7 2RA or such other address as shall be notified in writing to the Owner from time to time, marked for the attention of the Housing Strategy Officer, and

6.3.3 on the County Council at PO Box 78, County Hall, Preston, PR1 8XJ.

7 Local land charge

7.1 This deed shall be registered as a local land charge.

7.2 Following the performance and satisfaction of all the obligations contained in this Deed, the Council shall immediately effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

8 Jurisdiction and legal effect

8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

8.2 The Courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising or related to this Agreement.

8.3 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

8.4 No waiver (whether expressed or implied) by the Council (or the County Council or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the County Council or Owner) from enforcing

any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8.5 Subject to clause 8.8, if any dispute arises relating to or arising out of the terms of this agreement, any part (which for the purposes of this clause 8.5 shall include the Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 8.5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.5.1 For the purposes of this clause 8.5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.5.2 Any dispute over the identity of the Specialist is to be referred to at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange this nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

8.6 The Specialist is to act as an independent expert and:

8.6.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

8.6.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

8.6.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.6.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

8.6.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.6.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.

8.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.8 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

8.9 The provisions of this deed (other than this clause 8.9 which shall be effective in any event) shall be of no effect until this deed has been dated.

9 Indexation, interest and VAT

9.1 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

9.2 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

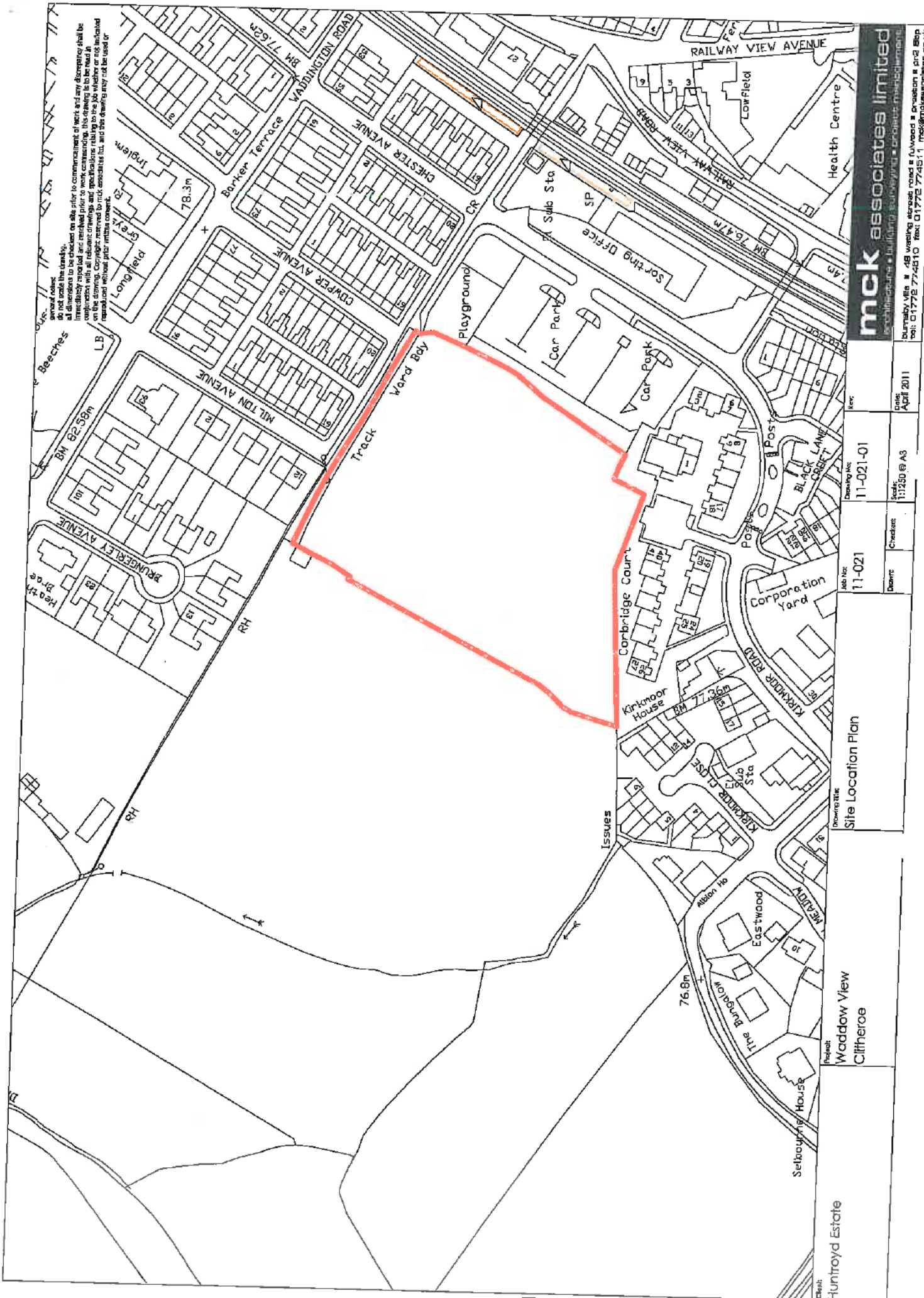
10. Contributions

In the event that any of the Contributions which shall be paid subject to an express trust that they be used for the specified purposes and shall not have been expended or contractually committed to be spent then on expiry of a five year period (to be calculated from the date that the final instalment of the Contributions is paid to the Council and County Council) the Contributions or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen thereon shall be promptly repaid to the Owner.

11. Community Infrastructure Levy

- 11.1 If after the date of this Agreement the Council approves a charging schedule pursuant to the Regulations under the Planning Act 2008 as amended and the same has taken effect and as a consequence thereof any planning obligations under this Agreement change and/or require that the Landowner must pay a sum of money to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any planning obligation of a party under this Agreement, then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date they are entered into.
- 11.2 If having regard to the Regulations as amended it is expressly declared by the Secretary of State or an Inspector appointed by him that any of the Contributions are unlawful or invalid or should not have been taken into account in the determination of the Application as a reason for the grant of planning permission then the clauses of this Agreement relating to the relevant Contribution(s) shall be severed and rendered ineffective as far as possible in accordance with clause 8.3 of this Agreement without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

IN WITNESS whereof the owner has set his hand and delivers this on his deed the day and year first before written



The client hereby releases the drafter from all and any liability in connection with the drawing, and the drafter hereby releases the client from all and any liability in connection with the drawing. This drawing is to be used in connection with the planning application only and is not to be used for any other purpose without the written consent of the drafter.

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Drawn by:	11-021
Checked by:	11-021-01
Date:	April 2011

Project:	Waddow View Clifflerose
Site:	Site Location Plan

Client:	Huntroyd Estate
Project:	Waddow View Clifflerose

SCHEDULE 1

The Owner's Title and Site Description

All that freehold land known as part Chews Farm off Milton Avenue, Clitheroe, and shown edged red on the Plan being part of the land comprised in a Deed of Gift dated the twenty eighth day of April One Thousand Nine Hundred and Eighty Nine made between (1) Ann Starkie and (2) the Owner

SCHEDULE 2

The Owner's Covenants with the Council

The Owner hereby covenants and undertakes to the Council that in the event of the outline Planning permission being granted and upon commencement of Development it will comply with the following obligations:

1. Progress of Development

To give written notice to the Council (via the Nominated Officer) within fifteen Working Days of:

- 1.1 the Commencement of Development; and
- 1.2 the first Occupation of a Dwelling

2. Affordable Housing

- 2.1 To build the Units in accordance with the Planning Permission.
- 2.2 To use its best endeavours to dispose of the Units to a RSL.
- 2.3 To give notice in writing to the Council within fifteen Working Days after the completion of the disposal of the Units to a RSL.

Phasing

- 2.4 Not more than fifty per cent of the market housing shall be occupied before one hundred per cent of the affordable housing has been completed.

3. Obligations of an RSL upon taking an interest in the Affordable Housing

3.1 Upon the Disposal of the Units the RSL shall:-

- 3.1.1 Not Dispose of any interest in the Units or any part thereof prior to the grant of a Shared Ownership Lease save to another RSL who has been approved in writing by the Council (such consent not to be unreasonably withheld or delayed)
- 3.1.2 Ensure that the Units which are available to occupy are Shared Ownership Units and Rental Units made available to an Approved Person where each Shared Ownership Unit is occupied by someone who is part renting and part purchasing the property and where the share initially purchased by each occupier shall not be less than thirty per cent of the interest in the Shared Ownership Unit unless otherwise agreed in writing by the Council
- 3.1.3 Permit any occupier of a Shared Ownership Unit to Staircase to one hundred per cent by increments of no less than ten per cent and to ensure that every Shared Ownership Lease granted contains suitable provisions to secure compliance with this covenant
- 3.1.4 Ensure that the annual rent on the non-purchased share of each Shared Ownership Unit shall be in line with the prevailing normal rental levels for an RSL or such other figure as shall be approved in writing by the Council.
- 3.1.5 Ensure that the Disposal by the RSL (and any subsequent owners) of the Units shall be subject to the nomination rights and qualifications set out in this Schedule.
- 3.1.6 That the RSL shall only transfer a Shared Ownership Unit to an Approved Person

3.1.7 that the RSL shall serve notice in writing on the Council within twenty one Working Days of the Disposal of a Shared Ownership Unit so that the Council is kept fully informed of tenancies and ownerships on the Site.

3.1.8 If the RSL is minded to Dispose of the whole or any part of the Units to any other RSL then it shall serve written notice of its intention on the council and shall obtain the prior written consent of the Council to any Disposal., such consent not to be unreasonably withheld or delayed.

4. Obligations of the Owner if the Affordable Housing Units are not transferred to an RSL

4.1 In relation to the Market Housing Units the obligation of this schedule to convey the Units to a RSL shall at the Owner's discretion cease to have effect upon the expiry of a period of one year from the Date of Practical Completion of the relevant Market Housing Units PROVIDED THAT:

4.1.1 it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with a RSL; and

4.1.2 the Owner shall undertake with the Council that it will comply with the obligations in clause 3.1 of this Schedule as if they were their own so far as the same relates to the Rented Units; and

4.1.3 in relation to the Shared Ownership Units, the following shall apply:-

- (a) they shall be offered for sale for to an Approved Person for a maximum of sixty per cent of the Open Market Value as a Discounted Sale Unit;
- (b) immediately upon service of the Notice the Owner and the Council shall consult together and attempt in good faith to agree the Open Market Value of the Shared Ownership Unit(s); and
- (c) if the Owner and the Council have not agreed the Open Market Value within five working days of the service of the Notice each party shall be entitled to refer the matter for determination by

the Independent Valuer who shall act as an expert (and not as arbitrator).

5. Additional Affordable Provision

- 5.1 The Transfer or letting of the Units to any RSL shall be subject to the following provisions:
- 5.1.1 a covenant providing that the Units shall only be occupied by an Approved Person meeting the Qualifying Criteria and nominated in accordance with the Nomination Process;
- 5.1.2 a Restriction on the title of the Affordable Housing Unit in favour of the Council that no disposition of the registered estate of the property (other than a charge) is to be registered at the Land Registry without a certificate signed by the Solicitor or Conveyancer of the Council and that the requirements of this Agreement made the day of Two Thousand and Twelve between the Owner (1) the Council (2) and the County Council (3) pursuant to Section 106 of the Act have been complied with.
- 5.2 The provisions of paragraph 5.1 of this Schedule shall not be binding on a mortgagee in possession of the whole or any part of a Unit provided that such mortgagee or chargee in possession exercising any power of sale shall first have used reasonable endeavours over a period of four months in consultation with the Council to dispose of the Unit to an Approved Person approved by the Council (such approval not to be unreasonably withheld or delayed);
- 5.3 Any Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than two months' prior notice to the Council of its intention to dispose and:
- (a) in the event that the Council responds within one month from receipt of the 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 then the Mortgagee shall co-operate with

such arrangements and use its best endeavours to secure such transfer

- (b) if the Council does not serve its response to the notice served under paragraph 5.3(a) within the one month then the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 9 to 11 of the First Schedule
- (c) if the Council or any other person cannot within two months of the date of service of its response under paragraph 5.3(a) secure such transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 5.3(a) the Mortgagee shall be entitled to dispose free of the restrictions

PROVIDED THAT at all times the rights and obligations in this paragraph 5.3 shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of moneys outstanding under the charge or mortgage

6. Public Open Space Contribution

The Owner covenants with the Council to pay upon completion of the Development the sum of Thirty Nine Thousand Pounds in respect of the administration and upgrading and management of public open space namely the play area at corner of Milton Avenue and Chester Avenue adjacent to the site and the play area in Clitheroe Castle grounds

SCHEDULE 3

Education Contribution

The Education Contribution shall mean the sum of Two Hundred and Nine Thousand Four Hundred and Eighty Four Pounds adjusted by the Indexation Factor calculated in accordance with the BCIS General Building Cost Index and the Owner covenants with the County Council to pay the Education Contribution in two equal instalments the first of

which will be payable on the occupation of the 30th Dwelling pursuant to the Planning Permission and the remainder on occupation of the 50th Dwelling pursuant to the Planning Permission.

The Owner further covenants to give the County Council written notice of the occupation of the 30th and 50th Dwellings respectively.

SCHEDULE 4

Transport Contribution

The Transport Contribution shall mean:

1. the sum of Seventy Three Thousand Pounds adjusted by the Indexation Factor calculated in accordance with the BCIS All-In TPI Index and the Owner covenants with the County Council to pay the said sum in two equal instalments the first of which will be payable on the occupation of the 30th Dwelling pursuant to the Planning Permission and the remainder on occupation of the 50th dwelling to be constructed pursuant to the Planning Permission.
2. the Owner further covenants with the County Council to pay the costs incurred by the County Council in promoting a Traffic Regulation Order to restrict waiting by vehicular traffic at and around the junction of Milton Avenue and Waddington Road to a maximum of Five Thousand Pounds within 20 working days of a written request for the same from the County Council

EXECUTED as a Deed by Nicholas)

Guy le Gendre Starkie in the presence)

of:)

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

THE COMMON SEAL of Ribble)

Valley Borough Council was hereunto)

affixed to this Deed in the presence of:)

Mayor

Chief Executive

THE COMMON SEAL of Lancashire)

County Council was hereunto affixed)

in the presence of:-)

Authorised Officer