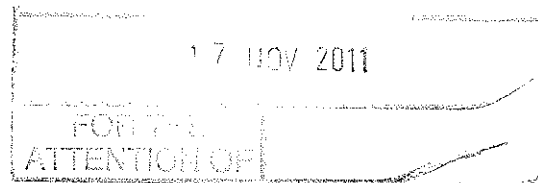


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**Planning obligation by deed of agreement under the
Town and Country Planning Act 1990 Section 106 for
use in conjunction with an application for planning
permission**



THIS AGREEMENT is made the day of

BETWEEN

- (1) RIBBLE VALLEY BOROUGH COUNCIL of Council Offices, Church Walk,
 Clitheroe, BB7 2RA ('the Council')**
- (2) N.G.leG.Starkie c/o Ingham and Yorke, Huntroyde Estate Office
 Padiham Burnley Lancs BB12 7QX ('the Owner')**

RECITALS

- A The Council is the local planning authority for the purposes of the 1990 Act for
 the area in which the Site is situated.**
- B The Owner is the freehold owner of the Site as set out in Schedule 1.**
- C The Owner has submitted the Application to the Council and the Parties have
 agreed to enter into it in order to secure the planning obligations contained in
 it.**
- D The Council resolved on the 2011 to grant the Planning Permission
 subject to the prior completion of this deed.**

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions 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 15 residential units for Shared Ownership Units, and 'an Affordable Housing Unit' shall be construed accordingly,**
- 1.1.4 **'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,**
- 1.1.5 **'the Application' means the application for full planning permission for the Development dated the June 2011 submitted to the Council and allocated reference number 3/2011/0000,**
- 1.1.6 **'Approved Person' means a person who meets the Qualifying Criteria,**
- 1.1.7 **'Borough' means the Borough of Ribble Valley.**
- 1.1.8 **'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,**

- 1.1.9 '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,
- 1.1.10 'the Development' means the development of the Site with 50 Dwellings pursuant to the outline Planning Permission,
- 1.1.11 'Discounted Sale Unit' means the sale of an Affordable Housing Unit at a discount of 30% of the Open Market Value in perpetuity,
- 1.1.12 '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,
- 1.1.13 '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,
- 1.1.14 '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,
- 1.1.15 '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,
- 1.1.16 'Homes and Communities Agency' means the Homes and Communities Agency or its statutory successors,
- 1.1.17 'the Housing Corporation' means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors,
- 1.1.18 'Independent Valuer' means an independent chartered surveyor with not less than 10 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 7

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,

- 1.1.19 'Index' means the 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)
- 1.1.20 'Interest' means interest at 1% above the base lending rate of The Royal Bank of Scotland plc from time to time,
- 1.1.21 '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,
- 1.1.22 'Living' means those currently living in the Locality, Neighbouring Parish or Borough (as applicable),
- 1.1.23 '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,
- 1.1.24 '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,
- 1.1.25 '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,
- 1.1.26 'Occupation' means the use of a Market Housing Unit for residential purposes,
- 1.1.27 '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:

- 1.1.27.1 a willing seller; and**
- 1.1.27.2 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**
- 1.1.27.3 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**
- 1.1.27.4 that no account is taken of any additional bid by a buyer with a special interest; and**
- 1.1.27.5 that both parties to the transaction had acted knowledgeably prudently and without compulsion**
- 1.1.28 'the Plan' means the plan attached to this deed,**
- 1.1.29 'the Planning Permission' means the outline planning permission issued by the Council,**
- 1.1.30 'Right of Pre-Emption' is a right contained in the Shared Ownership Lease for the RSL to buy back the Shared Ownership Units,**
- 1.1.31 '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,**
- 1.1.32 '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,**
- 1.1.33 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1,**
- 1.1.34 '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,

- 1.1.35 'Units' means the Affordable Housing Units and 'a Unit' shall be construed accordingly,
- 1.1.36 'Working Days' means any day of the week excluding Saturdays, Sundays and Bank Holidays.
- 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 planning obligation 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 as local planning authority.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

3.1.1 the grant of the outline 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.

3.2 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

The obligations contained in this deed shall not be binding upon or enforceable against:

- 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 RSL or any receiver appointed by such a mortgagee,**
- 3.4.4 **any person to whom the RSL grants a lease of a Unit to, or any successor in title to any such person,**
- 3.4.5 **any person to whom the RSL grants a Shared Ownership Lease,**
- 3.4.6 **any mortgagee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee,**
- 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 3.

5 Provisions of immediate effect

5.1 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

5.2 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, the 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 at, or such other address as shall be notified in writing to the Council from time to time, marked for the attention of

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 the Housing Strategy Officer, and

7 Local land charge

- 7.1 This deed shall be registered as a local land charge by the Council, and the Council shall immediately after the date of this deed register it as such.
- 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 party (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 type of specialist appropriate to resolve the dispute may be referred to at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.5.3.

8.5.3 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 30 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

320110892P

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.

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

- 10.1 In the event that any of the Contributions shall not have been expended or contractually committed to be spent then on expiry of a three year period (to be calculated from the date that each instalment of the Contributions is paid to the 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 implements the provisions relating to Community Infrastructure Levy pursuant to the Planning Act 2008 as amended and has a charging schedule that has been approved and taken effect and as a consequence thereof any planning obligations under this Agreement or under any condition attached to the Planning Permission change or 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 Community Infrastructure Levy Regulations 2010 No 948 as amended it is declared that any one of the Contributions is unlawful or invalid or should not have been taken into account in the determination of the Application by a court of competent jurisdiction then the clauses of this Agreement relating to the relevant Contribution(s) shall be severed in accordance with clause 7.6 of this Agreement.

IN WITNESS whereof the parties hereto have set their hands and/or seals the day and
year first before written

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SCHEDULE 1

The Owner's Title and Site Description

All that freehold land unregistered title and known as part Chews Farm off Milton Avenue,
Clitheroe, and shown edged red on the Plan.

SCHEDULE 2

Draft Outline Planning Permission

*(where available insert details or attach a copy of the draft outline planning permission
and any conservation area or listed building consent)]*

SCHEDULE 3

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 15 Working Days of:

1.1 the Commencement of Development; and

1.2 the first Occupation of a Dwelling

2 Phasing

2.1 On occupation of 50% of the market housing then 50% of the affordable housing will be completed. The remaining 50% market housing will then be constructed and occupied before the remainder of the affordable units are completed.

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 15 Working Days after the completion of the disposal of the Units to a RSL

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

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

320110892P

- 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 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 30% 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 80% by increments of no less than 10% 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 21 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 in paragraph 2.3 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 60% 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 5 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 an 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 that the requirements of this Agreement made the
day of 2011 between the Council (1)) and the Owner (2)
pursuant to Section 106 of the Act have been fully 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)

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THE COMMON SEAL of
RIBBLE VALLEY BOROUGH COUNCIL

was hereunto affixed to this Deed in the presence of:

Mayor

Chief Executive

EXECUTED as a DEED
by N.G.leG.Starkie acting by:

Owner