

DATED

2012

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**NHS EAST LANCASHIRE**

and

**RIBBLE VALLEY BOROUGH COUNCIL**

and

**[LANCASHIRE COUNTY COUNCIL]<sup>1</sup>**

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**SECTION 106 PLANNING AGREEMENT  
TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO LAND AT CLITHEROE COMMUNITY HOSPITAL**

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<sup>1</sup> Education Contribution to be discussed between NHS & Lancs CC

**THIS AGREEMENT** is made the                    day of                    2012

**BETWEEN**

1.     **NHS EAST LANCASHIRE** of Walshaw House, Regent Street, Nelson BB9 8AS (hereinafter called "the **Landowner**")
  
2.     **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (hereinafter called "the **Council**") and
  
3.     [**LANCASHIRE COUNTY COUNCIL** of County Hall Fishergate Preston Lancashire PR1 8XJ (hereinafter called "the **County Council**")]

**WHEREAS**

- (1)    The Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is situated.
  
- (2)    [The County Council is the local highway authority, the county planning authority and education authority for the area in which the Site is situated.]
  
- (3)    The Landowner is the freehold owners of the Site.
  
- (4)    The Landowner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
  
- (5)    The Council resolved on                    to grant the Outline Planning Permission subject to the prior completion of this Deed.

**IT IS HEREBY AGREED** as follows:

1.     **DEFINITIONS**

- 1.1    In this Agreement unless the context otherwise requires:

**Act** means the Town and Country Planning Act 1990 (as amended)

**Affordable Housing** means housing that is affordable to local persons who cannot afford to rent or buy accommodation generally available on the open market on readily available terms who have need of local housing

**Affordable Housing Number** means 30% (rounded to the nearest number) of the number of Dwellings approved by the Detailed Planning Permission of which [ ] shall be Affordable Rent Housing and [ ] shall be Shared Ownership Housing

**Affordable Rent Housing** means the Dwellings constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as affordable rented housing where the lettings shall be made under a form of tenancy prescribed by the Homes and Communities Agency and at a rent equal to or less than the prevailing affordable rent (inclusive of applicable service charges) permitted by the Homes and Communities Agency which shall normally be 80% of the open market rental value. The Affordable Rent Housing shall comprise [ ] of the Affordable Housing Number

**Affordable Housing Unit** means each unit of Affordable Housing to be constructed pursuant to the Planning Permission on Mearley Croft to no less a standard than the Market Dwellings and which in total will comprise the Affordable Rent Housing units and the Shared Ownership Housing units

**Application** means the application for Outline Planning Permission submitted to the Council under reference number [ ] for residential use on the Property

**“Approval of Reserved Matters”** means an Approval of Reserved Matters granted in respect of the Outline Planning Permission approving the number of Dwellings to be constructed on the Property pursuant to the Planning Permission

**Development** means such development as may be authorised by the Planning Permission pursuant to the Application

**Dispose** means in relation to the transfer of an interest in property the transfer of a freehold interest or of a Leasehold interest of 99 years or more

**Dwelling** means any unit including house, flat or maisonette to be constructed on the Property pursuant to the Planning Permission primarily for the purpose of residential occupation

**[Education Contribution** means the sum of £[            ] to be paid in accordance with the provisions of Schedule 3]

**Implementation** means the carrying out of any of the material operations listed in Section 56 of the Act provided that for the purposes of determining whether or not the material operation has been carried out there shall be disregarded property surveys and investigations and tests (including drilling bore holes, digging trial pits and taking soil samples) environmental assessments and similar studies (including geological, archaeological and ecological surveys and landscape assessments) site investigations, preparatory works including ground, modelling and contamination remediation works and “**implement**” and “**implemented**” shall be construed accordingly

**Market Dwellings** means Dwellings excluding any Affordable Housing Unit

**Occupation** has the same meaning as defined in the Local Government Finance Act 1988 but for the avoidance of doubt shall not include occupation for the purposes of works carried out prior to or during construction, fitting out, commissioning, advertising, marketing, security or management of land for parking

**Outline Planning Permission** means the Planning Permission granted pursuant to the Application a draft of which is set out in Schedule 5.

**Planning Permission** means a Planning Permission constituted by the Outline Planning Permission and Approval of Reserved Matters together

**Property** means the land edged red on the attached plan

**Registered Provider** means a housing association approved by the Council, (such approval not to be unreasonably withheld), being a registered social landlord or other body recognised by the Homes and Communities Agency (which shall include any successor in title) as a registered provider of Affordable Housing in accordance with the provisions of the Housing and Regeneration Act 2008.

**Shared Ownership Housing** means the Dwellings constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as Shared Ownership Housing. Each occupier may acquire an interest in the Dwelling of between 25% and 80% and may staircase up to 100% of the Open Market Value of the Dwelling in increments at times of his/her election the balance of the equity in the Dwelling being let to the occupier at a rent equal to or less than that permitted by the Homes and Communities Agency. The Shared Ownership Housing shall comprise [ ] of the Affordable Housing Number

#### **Interpretation**

- 1.2 The headings in this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever
- 1.3 Unless the context requires otherwise references in this Agreement to a recital clause schedule or paragraph are references respectively to a recital clause schedule of paragraph of this Agreement
- 1.4 Where any party to this Agreement comprises two or more persons any obligation on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include reference to each or any of those persons
- 1.5 A reference to any statute or statutory section shall be taken to include a reference to any statutory, amendment, modification or re-enactment of it for the time being in force
- 1.6 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

## **2 Enforceability**

- 2.1 This Agreement is made as a Deed 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 once such obligations have arisen and become effective, be enforced by the Council against the Landowners and any person deriving title under them.
- 2.2 This Agreement is conditional upon the grant of Planning Permission and the Implementation of the same in whole or in part.
- 2.3 No person shall be liable for a breach of covenant conditions or restrictions contained in this Agreement after he shall have parted with his interest in the Property or the part in respect of which such a breach occurs but without prejudice to liability for any existing breach of covenant prior to parting with such interest
- 2.4 This Agreement shall not be binding or enforceable against any mortgagee or chargee exercising a power of sale
- 2.5 The provisions of this Agreement are not intended to be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor or authority to the Council or the County Council or successors in the title to the Owners) pursuant to the Contract (Rights of Third Parties) Act 1999
- 2.6 For the avoidance of any doubt all provisions of this Deed relate solely to the Property and the residential development approved in outline by the Outline Planning Permission and have no relevance or effect on or in respect of the proposed development of the Clitheroe Community Hospital on land adjoining the Property for which detailed planning permission will also be granted by the Outline Planning Permission.

### **3 Expiry Modification Variation or Amendments of Planning Permission**

- 3.1 If the Planning Permission shall expire before Implementation or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect
- 3.2 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement and this Agreement shall not apply to development carried out under any planning permission other than the Planning Permission

### **4 Registration**

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

**5 Service of Notices**

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered delivery post to that party at the address herein specified or to such other address as may from time to time be notified for the purposes of notice in writing

**6 Reasonableness**

Where any agreement, certificate, consent, permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed

**7 Covenants**

- 7.1 The Landowner covenants with the Council to perform the obligations as specified in Schedule 1
- [7.2 The Landowner covenants with the County Council to perform the obligations as specified in Schedule 3]
- 7.3 The Council covenants to perform the obligations as specified in Schedule 2
- [7.4 The County Council covenants to perform the obligations as specified in Schedule 4]

**8 Miscellaneous**

- 8.1 Nothing in this Agreement shall affect, bind or be enforceable against any individual person in respect of any completed Market Dwelling on the Property acquired or leased by them for residential occupation or land held by any of the statutory utilities for their operational purposes
- 8.2 Nothing in this Agreement is intended to restrict the exercise by the Council or the County Council of any of their respective powers
- 8.3 If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

- 8.4 This Agreement is a Deed and is enforceable by the Council [and the County Council]
- 8.5 The Council [and the County Council] will upon written request of the Landowners at any time after the obligations of the Landowners under this Agreement have been fulfilled issue written confirmation thereof
- 8.6 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in anyway arising out or connected with this Agreement shall except as otherwise expressly provided be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or enactment for the time being in force
- 8.7 The Landowner shall pay the Council's [and the County Council's] reasonable legal fees incurred in relation to this Agreement on the date of this Agreement in the sum of £[ ] [and £[ ] respectively].



**SCHEDULE 1**

The Landowner covenants with the Council as follows:

**1. Affordable Housing**

- 1.1 that all Affordable Housing Units and shall be completed and transferred to a Registered Provider before completion of the construction of the Market Dwellings
- 1.2 that the Affordable Housing Units shall be made available as Affordable Rented Housing units and the Shared Ownership Housing units as Shared Ownership Housing units (or such other type or mix of tenure as the Council may approve in writing) to approved persons as defined in paragraph 4 (**Approved Persons**).
- 1.3 to construct the Affordable Housing in accordance with the Planning Permission and to no less a standard than the Market Dwellings.

**2. Affordable Rent Housing Dwellings**

- 2.1 that the Affordable Rent Housing be available for rent
- 2.4 that on completion of the Affordable Rent Housing 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
- 2.5 that subsequent lets will be on a 50% nomination arrangement to Approved Persons by the Registered Provider
- 2.6 that rents to be charged on the Affordable Rent Housing units will be in accordance with the Government's Guidance on affordable rent as issued by the Homes and Communities Agency which governs the rents to be charged by all social landlords whether they be registered providers or local authorities

**3. Shared Ownership Affordable Housing Dwellings**

- 3.1 that on completion of the Shared Ownership Housing Dwellings or as soon as possible thereafter the Registered Provider shall dispose of the Shared Ownership Housing
  - (a) at open market value on a Shared Ownership basis with the rental element being discounted by the Registered Provider

(b) to an Approved Person who shall purchase the Affordable Housing Unit for occupation by the Approved Person and in accordance with the requirements of this Agreement

3.2 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

#### 4. **Approved Persons**

4.1 that each and every Affordable Housing Unit shall not be occupied or purchased by any person except an Approved Person

4.2 **Approved Persons** for the purposes of the Affordable Housing Scheme and in order of priority are detailed below:

4.2.1 first time buyers who can demonstrate a housing need requirement for the type of Affordable Housing Unit who are either

(a) currently living in the Borough of Ribble Valley for more than 10 years or

(b) currently living in the Borough of Ribble Valley and have done so continually for between 5 to 10 years or

(c) currently living in the Borough of Ribble Valley and have done so continually for a minimum of 12 months or

(d) currently permanently employed in the Borough of Ribble Valley for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or

4.2.2 persons where at least one of the adult applicants have next of kin who have lived in the Borough of Ribble Valley continually for a minimum of five years. Next of kin for the purposes of this clause shall be defined as mother, father, brother, sister or adult dependent children.

4.2.3 persons who are former residents of the Borough of Ribble Valley who have moved from the Borough because of a lack of affordable housing in the Borough

4.2.4 non first time buyers who can meet one of the qualification provisions set out in paragraphs (a)-(d) above

- 4.3 In the event that having offered for rent or sale any of the Affordable Housing Units either initially or where applicable subsequently for a period of not less than 6 months there are no Approved Persons meeting the criteria set out in paragraph 4.2 who wish to rent or buy the Affordable Housing Unit in question the Registered Provider shall be entitled to rent or sell the Affordable Housing Unit to any other persons identified by it as being in need of local housing who cannot afford to rent or buy accommodation generally on the open market
- 4.4 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 2 months' prior notice to the Council of its intention to dispose and:
- 4.4.1 in the event that the Council responds within 1 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
- 4.4.2 if the Council does not serve its response under paragraph 4.4.1 within the stipulated month period then the mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 1 to 4 of this Schedule
- 4.4.3 if the Council or any other person cannot within 2 months of the date of service of its response under paragraph 4.4.1 secure such transfer then provided that the mortgagee shall have complied with its obligations under paragraph 4.4.1 the mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 1 to 4 of this Schedule

Provided That at all times the rights and obligations in this paragraph 4.4 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

## **SCHEDULE 2**

The Council covenants with the Landowner as follows:

1 **Grant of Planning Permission**

Forthwith to grant the Outline Planning Permission

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[SCHEDULE 3

The Landowner covenants with the County Council as follows:

1. **Education Contribution**

to pay the County Council the Education Contribution. The initial 50% of this commuted sum shall be paid prior to the sale of more than one half of the number of Market Dwellings approved by the Planning Permission with the remaining balance to be paid prior to the sale of the final Market Dwelling on the Property.

## SCHEDULE 4

The County Council covenants with the Landowner:

1. **Use and return of the Education Contribution**
- 1.1 not to use the Education Contribution other than for the purpose of a contribution towards the costs of the provision of an additional [x] pupils within the local primary schools
- 1.2 to hold the Education Contribution in an interest bearing account pending use for the purpose set out in paragraph 1.1 above.
- 1.3 If on the day 5 years after the day on which the last payment from the Landowner under this deed was received any part of the sum paid or of the interest earned on it has not been used by the County Council in accordance with paragraph 1.1 of this Schedule, the County Council shall return the unspent portion to the party who made such payment together with any interest earned on it.
- 1.4 to provide to the Landowner upon request reasonable evidence as to the expenditure of the sums paid by the Landowner under this Agreement.]

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**SCHEDULE 5  
DRAFT PLANNING PERMISSION**

**IN WITNESS** whereof this Deed has been duly executed by the parties the day and year first before written