

# Gateley

DATED 22nd March 2015

- (1) LANCASHIRE COUNTY COUNCIL
- (2) CO-OPERATIVE GROUP LIMITED
- (3) BELLWAY HOMES LIMITED

## SUPPLEMENTAL AGREEMENT

Pursuant to section 106A of the Town and Country  
Planning Act 1990 relating to land to the north of Ridings  
Lane, Whalley

Planning ref. 3/2014/0815

THIS DEED OF AGREEMENT is made on the 22<sup>nd</sup> day of May

2015

BETWEEN

- (1) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (the County Council);
- (2) **CO-OPERATIVE GROUP LIMITED** (a registered Society number 526R) of 1 Angel Square, Manchester, M60 0AG (the Group); and
- (3) **BELLWAY HOMES LIMITED** (Company registration number 870176) whose registered office is situate at Seaton Burn House, Seaton Burn, Newcastle upon Tyne, NE13 6BE (the Developer).

#### INTRODUCTION

1. The County Council is the Local Highway Authority for the purposes of the Highways Act 1980 and the Local Education Authority and is also a Local Planning Authority for the purposes of the Act for the area within which the Property is situated.
2. The Group is the registered proprietor of the Property with freehold title absolute registered together with adjoining land at the Land Registry under title number LA624354.
3. The Developer is interested in the Property pursuant to a contract entered into with the Group to purchase the Property.
4. The Principal Agreement dated 16 August 2011 made pursuant to Section 106 of the Act and all other powers was entered into between the County Council and the Group in respect of the Property.
5. In the Principal Agreement, the Group agreed to pay Highway Contributions and Education Contributions.
6. The Principal Agreement was entered into in connection with the Application for the Proposed Development which resulted in Planning Permission 3/2010/0820 granted on appeal dated 16 September 2011 being outline planning permission for the erection of up to 80 residential units in the Property.
7. The Developer and the Group submitted the Planning Application for the Development on the Property to Ribbles Valley Borough Council and this was approved by Ribbles Valley Borough Council on 11<sup>th</sup> February 2015.
8. As a result of the grant of the Second Planning Permission, the parties have agreed to change one of the provisions in the Principal Agreement relating to Education Contributions.

#### IT IS AGREED

##### 1. DEFINITIONS

- 1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby prescribed to them:

1.2

##### BCIS

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), where;

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

Where

A = The contribution payable in accordance with this Deed

B = The figure shown in the BCIS General Buildings Cost Index for the period immediately prior to the date of payment under this Deed

C = The figure shown in the BCIS General Buildings Cost Index for the period last published before the date of this Deed

D = the recalculated sum under this Deed

**The Development**

The development of 71 dwellings and roads

**The Planning Application**

The application for approval of reserved matters for the Development pursuant to the Planning Permission and allocated reference number 3/2014/0815

**Plan 1**

The plan marked 'Plan 1' attached to this Deed

**Primary Education Contribution**

The sum of £192,474 towards the provision of 16 additional primary school places within three miles of the Property, adjusted by BCIS from the date of this Deed to the date of payment

**The Principal Agreement**

An agreement dated 16 August 2011 made between the County Council and the Group pursuant to section 106 of the Act

**The Property**

The land shown edged red on Plan 1

**Second Planning Permission**

Planning permission granted pursuant to the Planning Application and dated 11<sup>th</sup> February 2015

**Secondary Education Contribution**

The sum of £128,885 towards the provision of 7 additional secondary school places within three miles of the Property, adjusted by BCIS from the date of this Deed to the date of payment

- 1.2 Wherever the context so admits the definitions set out in the Principal Agreement shall apply to this Deed as if herein set out.

2. **INTERPRETATION**

Unless the context otherwise requires:

- 2.1 Words incorporating the singular include the plural and vice versa and words importing any gender include every gender
- 2.2 References to natural persons are to include corporations and vice versa
- 2.3 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.4 References in this Deed to statutes shall include any statute amending re-enacting or made pursuant to the same as current and enforced from time to time.
- 2.5 If any provisions of this Deed shall be held to be invalid illegal or unenforceable, the validity legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected unpaired or called into question.
- 2.6 References to "the parties" shall mean the parties to the Deed and reference to "party" shall mean any one of the parties.
- 2.7 The Interpretation Act 1978 shall apply to this Deed
- 2.8 The clause and paragraph headings and the recitals are purely to aid interpretation, are for reference purposes only, and have no binding legal effect.
- 2.9 Where in this deed a party includes more than one person any obligations of that party shall be joint and several.

- 2.10 The expressions "the County Council" "the Group" and "the Developer" shall include their respective successors in title and assigns and in the case of the Council shall include any successor in function.

3. **STATUTORY AUTHORITY AND LEGAL EFFECT**

This Deed is made pursuant to section 106 of the Act and all other powers enabling which may be relevant for the purpose of giving validity to this Deed.

4. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contract (Rights of Third Parties) Act 1999 nothing in this Deed shall confer on any third party any right to enforce any benefit or any terms of this Deed

5. **LOCAL LAND CHARGES**

This Deed is a local land charge and shall be registered as such for the purposes of the Local Land Charges Act 1975

6. **SUPPLEMENTAL**

- 6.1 The Principal Agreement shall be amended as follows but subject solely to the Second Planning Permission being implemented:

6.1.1 by the deletion of the words "for the Property" on line 4 of recital (1) and the substitution of the words "for the land".

6.1.2 by the deletion of recital (2) and by the inclusion of the following words as new recital (2):

"The Group is the proprietor of the freehold estate of the land to the north of Ridings Lane Whalley which is part of the land comprised in Title Number LA624364 and which is shown edged red on the Plan ("the Property")

6.1.3 by the deletion of paragraphs 3 and 4 from Schedule 1; and

6.1.4 by the inclusion of the following words as new paragraphs 3 and 4 of Schedule 1:-

"To pay to the County Council acting as local education authority the Primary Education Contribution for the provision of 16 additional primary school places within 3 miles of the Property calculated at £12,029.62 per place making a total of £192,474 payable and to be paid in 2 instalments with 50% of the contribution payable prior to first occupation of a dwelling on the Property pursuant to the Second Planning Permission and 50% of the contribution payable before first occupation of the 40<sup>th</sup> dwelling on the Property pursuant to the Second Planning Permission"

"To pay to the County Council acting as local education authority the Secondary Education Contribution for the provision of 7 additional secondary school places within 3 miles of the Property calculated at £18,126.38 per place making a total of £126,885 payable and to be paid in 2 instalments with 50% of the contribution payable prior to first occupation of a dwelling on the Property pursuant to the Second Planning Permission and 50% of the contribution payable before first occupation of the 40<sup>th</sup> dwelling on the Property pursuant to the Second Planning Permission".

7. **EFFECT**

- 7.1 The Principal Agreement (as amended) shall continue to have full force and effect in relation to the Property and will continue to bind the Property in relation to all matters remaining to be performed

- 7.2 For the avoidance of doubt, the Group confirms that it will perform and comply with its obligations in the Principal Agreement only insofar as they remain to be satisfied subject to the provisions of the Principal Agreement.

**JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales.



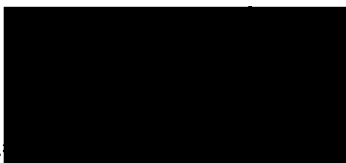
IN WITNESS whereof the County Clerk, John G. Smith, and the Deputies have executed this Deed the day and year first above written.

THE COMMON SEAL OF  
LANCASHIRE COUNTY COUNCIL  
was hereunto affixed in the presence of



JOHN G. SMITH,

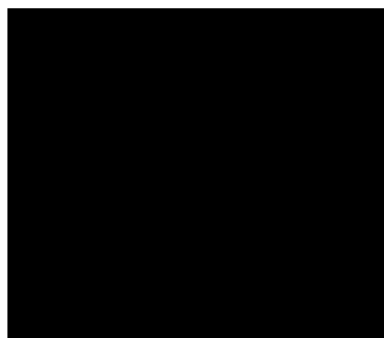
EXECUTED as DEED by the signing of the said Deed by  
MID-CO-OPERATIVE GROUP LIMITED  
in the presence of



Notary Public for the County of Lancashire



EXECUTED as DEED by  
BELLWAY HOMES LIMITED  
acting by



♦ Gateley

DATED 22nd May 2015

- (1) LANCASHIRE COUNTY COUNCIL
- (2) CO-OPERATIVE GROUP LIMITED
- (3) BELLWAY HOMES LIMITED

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**SUPPLEMENTAL AGREEMENT**

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**INTRODUCTION**

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3. The Developer is interested in the Property pursuant to a contract entered into with the Group to purchase the Property.
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5. In the Principal Agreement, the Group agreed to pay Highway Contributions and Education Contributions.
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7. **EFFECT**

- 7.1 The Principal Agreement (as amended) shall continue to have full force and effect in relation to the Property and will continue to bind the Property in relation to all matters remaining to be performed.

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8. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

## PLAN

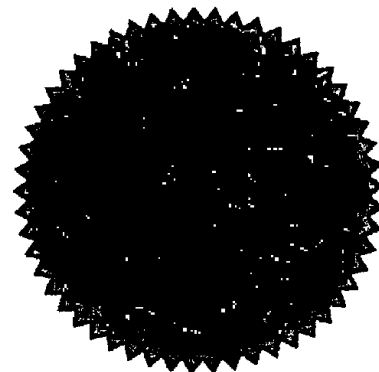
# PLAN 1

|    |         |  |
|----|---------|--|
| 1  | NAME    |  |
| 2  | ADDRESS |  |
| 3  | CITY    |  |
| 4  | STATE   |  |
| 5  | ZIP     |  |
| 6  | PHONE   |  |
| 7  | FAX     |  |
| 8  | EMAIL   |  |
| 9  | DATE    |  |
| 10 | TIME    |  |

|                  |  |
|------------------|--|
| <b>Bellway</b>   |  |
| PROPERTY NAME    |  |
| PROPERTY ADDRESS |  |
| PROPERTY CITY    |  |
| PROPERTY STATE   |  |
| PROPERTY ZIP     |  |
| PROPERTY PHONE   |  |
| PROPERTY FAX     |  |
| PROPERTY EMAIL   |  |
| PROPERTY DATE    |  |
| PROPERTY TIME    |  |

**IN WITNESS** whereof the County Council the Group and the Developer have executed this Deed the day and year first before written

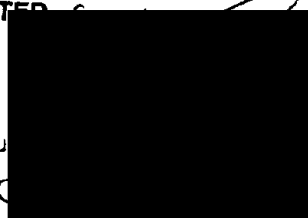
**THE COMMON SEAL of  
LANCASHIRE COUNTY COUNCIL**  
was hereunto affixed in the presence of:



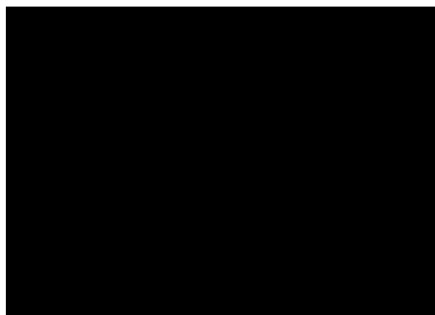
**EXECUTED** as a **DEED** by the affixing of the Common Seal  
of **CO-OPERATIVE GROUP LIMITED**  
in the presence:

.....  
Authorised Sealing Officer

AU



**EXECUTED** as a **DEED** by  
**BELLWAY HOMES LIMITED**  
acting by:



DATED 16<sup>th</sup> AUGUST 2011

LANCASHIRE COUNTY COUNCIL

– and –

CO-OPERATIVE GROUP LIMITED

# **A G R E E M E N T**

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Under Section 106 Town and Country Planning Act 1990  
relating to land to the north of Riddings Lane Whalley



THIS AGREEMENT is made the 16<sup>th</sup> day of AUGUST 2011  
BETWEEN

**LANCASHIRE COUNTY COUNCIL** of PO Box 78 County Hall Fishergate Preston  
Lancashire PR1 8XJ (hereinafter called "the County Council") of the first part and

**CO-OPERATIVE GROUP LIMITED** (Industrial and Provident Society No. IP525R) of PO  
Box 53 New Century House Manchester M60 4ES (hereinafter called "the Group") of the  
second part

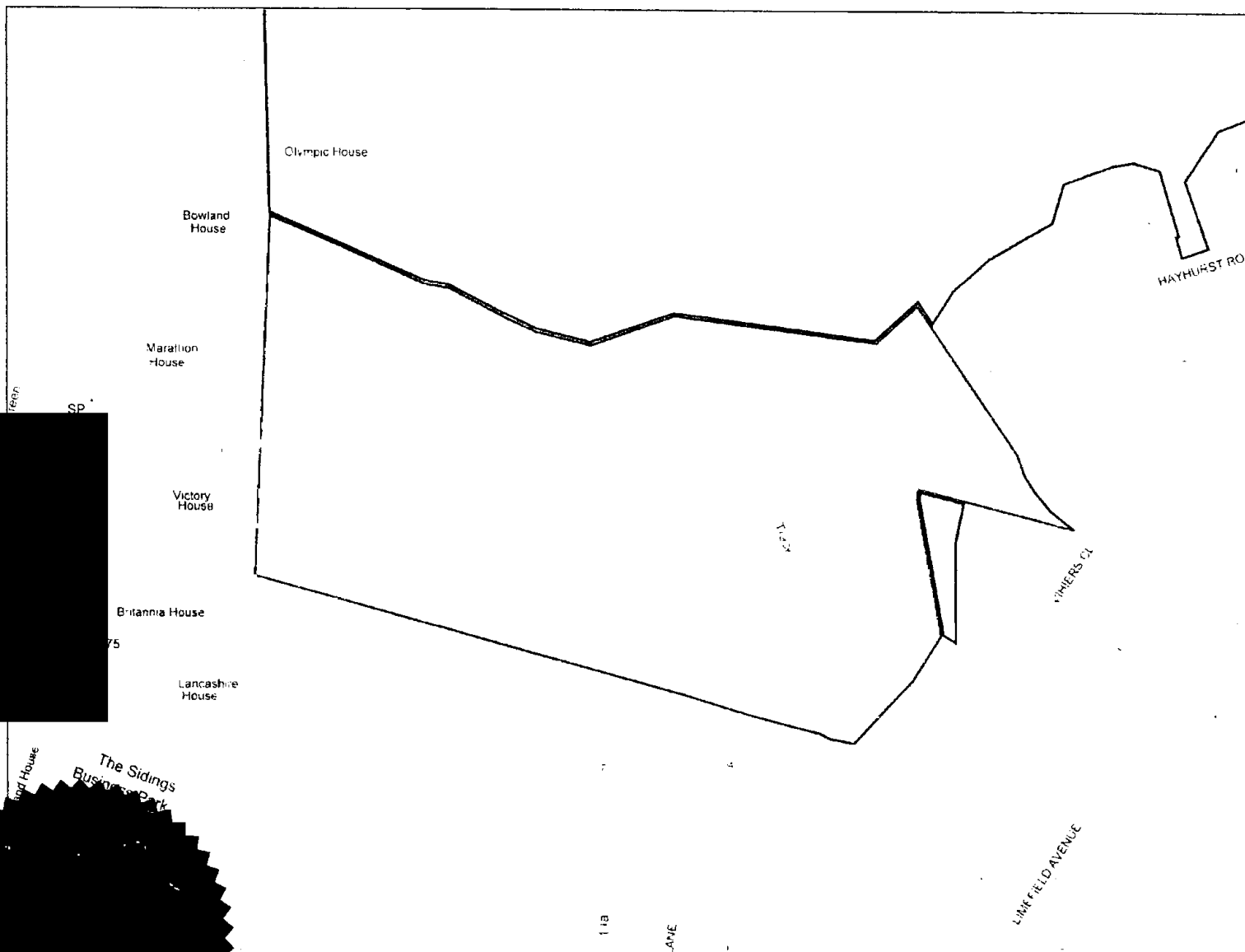
WHEREAS:



- (1) The County Council is the Local Highway Authority for the purposes of the Highway Act 1980 and the Local Education Authority and is also a Local Planning Authority for the purposes of Section 106 of the Town and Country Planning Act 1990 ("the Act") for the Property shown edged red on the plan ("the Plan") annexed to this Agreement
- (2) The Group is the registered proprietor of the Freehold Estate of the Property known as land to the north of Riddings Lane Whalley ("the Property") which is registered with Absolute Title at HM Land Registry under Title Number LA624364
- (3) The Group on the 30 September 2010 applied to Ribble Valley Borough Council ("the Council") for outline planning permission for the erection of a maximum of 80 residential units ("the Proposed Development") more fully shown in the planning application allocated the Council's Planning Application Reference Number 3/2010/0820 ("the Application")
- (4) The County Council is a Local Planning Authority for the purposes of the Act for the Property
- (5) On 20 January 2011 the Council refused to grant Planning Permission for the Proposed Development
- (6) The Group has appealed against the refusal under Section 78 of the Act (reference APP/T2350/A/11/2149940) ("the Appeal")
- (7) The Group enters into this Deed pursuant to section 106 of the Act

# CAPITA

Authorized Signatory

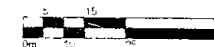
20558



-  Application Site boundary (& within applicant's ownership)
-  Other land owned by the applicant



SCALE 1:1 250



Co-Operative Land, Whalley  
Site Location Plan

CS/045968\_SK06  
Date: September 2010

- (8) In the event the Secretary of State acting by his Inspector grants Planning Permission for the Proposed Development such Planning Permission will only be subject to the imposition of those obligations appearing in this Deed which the Secretary of State acting by his Inspector expressly states in his decision letter are necessary to the grant of Planning Permission for the Proposed Development and meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)
- (9) The Group and the County Council entered into the First Agreement which shall be replaced by this Deed

NOW THIS DEED WITNESSETH as follows:

# **1. DEFINITIONS**

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:-

**"BCIS Index"** means 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)

**"BCIS Indexation Factor"** means the recalculation of a financial contribution to be made under this Agreement by applying the following formula

$$A \div \frac{B}{C} = D \quad \text{where:}$$

A = the contribution payable in accordance with paragraph 2, 3 or 4 of Schedule 1 to this Deed as the case may be

B = the figure shown in the BCIS All-in Tender Price Index for the period immediately prior to the date of payment under this Agreement

C = the figure shown in the BCIS All-in Tender Price Index for the period last published before the date of this Agreement; and

D = the recalculated sum payable under this Agreement

**" Commencement of Development "** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Proposed Development begins to be carried out ;

**"Education Contribution"** means the sum calculated in accordance with paragraph 3 of Schedule 1 increased by the BCIS Indexation Factor as a contribution towards the costs of providing additional primary school places within 3 miles of the Property and the sum calculated in accordance with paragraph 4 of Schedule 1 increased by the BICS Indexation Factor as a contribution towards the costs of providing additional secondary school places within 3 miles of the Property.

**"Eligible Dwellings"** means the total number of dwellings to be constructed on the Property for which reserved matters approval is granted and implemented pursuant to the Planning Permission excluding any dwellings with only one bedroom and excluding any dwellings that are designated as sheltered housing or for occupation exclusively by people aged over 55 years

**"Extant Planning Permissions"** means any planning permission for residential development granted before the date of this Deed where the centre of the application site is within three miles of the centre of the Property and where such permission can still be implemented and has not expired at the time of calculating the amount of the Education Contributions payable under paragraphs 3 and 4 of Schedule 1 to this Deed

**"First Agreement"** means the agreement dated 2 August 2011 entered into by the County Council and the Group pursuant to section 106 of the Act in respect of the Proposed Development on the Property and in respect of the Appeal

**"Planning Permission"** means the planning permission granted by the Council or the Secretary of State for the construction of the Proposed Development on the Property as applied for in the Application

2. THIS Deed is made in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) and the covenants restrictions and obligations herein are planning obligations enforceable by the County Council as a local planning authority for the purposes of that Section with the intent to bind each and every part of the Property and the Group their successors in title and assigns and persons claiming under or through it subject to clauses 6 and 11 below
3. IN consideration of the County Council hereby having agreed to enter into this Deed for the purposes of the said Act the Group covenants with the County Council to observe and perform the covenants restrictions and obligations as set out in Schedule 1 hereto
4. The County Council covenants with the Group as set out in Schedule 2
5. THE expressions "the County Council " and "the Group" shall include their respective successors in title and assigns
6. NO person shall be liable for breach of a covenant in this Deed after they shall have parted with all interest in the Property or the part thereof in respect of which such breach occurs but such release shall be without prejudice to liability for any subsisting breach of covenant arising prior to the parting with such interest
7. THIS Deed is a local land charge and shall be registered as such for the purposes of the Local Land Charges Act 1975
8. NOTHING in this Deed either express or implied shall prejudice or affect the County Council's rights powers duties and obligations in the exercise of its functions as a Local Authority and the rights powers duties and obligations of the County Council under all public and private statutes directives bye-laws and regulations may be fully and effectively exercised as if the County Council had not entered this Deed
9. Unless the context otherwise requires references to statutory provisions include those statutory provisions as amended or enacted; and references to any gender includes all genders; and words denoting the singular shall include the plural and vice versa

10. Save for Clause 16 which shall have immediate effect this Deed is conditional upon and shall not take effect unless and until

- (a) The Planning Permission has been granted;
- (b) the Secretary of State acting by his Inspector expressly states that the obligations contained in this Deed are necessary to the grant of Planning Permission for the Proposed Development; and
- (c) the Commencement of Development pursuant to that Planning Permission

AND for the avoidance of doubt such Planning Permission will only be subject to the imposition of those obligations appearing in this Deed which the Secretary of State acting by his Inspector expressly states in his decision letter are necessary to the grant of Planning Permission for the Proposed Development and meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)

11. The County Council agrees that it will not seek to enforce this Deed against the owners or occupiers of individual residential dwellings constructed on the Property once that completed dwelling has been purchased from the Group or its successors in title but in such case the Group or its successors in title (as the case may be) shall not be released from its obligations under this Deed as provided in Clause 5 above until such obligations have been fully performed.
12. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this agreement
13. Any notice or other communication given or made in accordance with this Deed 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 County Council at the address of the County Council shown on the first page of this Agreement 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

14. The Group shall maintain records enabling them to supply to the County Council (within four weeks of the County Council's written request to do so) such information as the County Council may reasonably require in connection with this Deed

15. **DISPUTE PROVISIONS**

- 15.1 In the event of any dispute or difference arising between the parties to this Deed in respect of the amount of the contributions payable pursuant to paragraphs 3 and 4 of Schedule 1 to this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in

any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

- 15.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
16. It is agreed between the parties to this Deed that the First Agreement shall be discharged and shall cease to have effect from the date hereof

**IN WITNESS** whereof the Parties hereto have executed as a Deed the day and year first before written



## **SCHEDULE 1**

THE Group covenants with the County Council as follows:

### **Highway Contributions**

1. To pay to the County Council the costs incurred by the County Council in advertising and implementing a Traffic Regulation Order relating to offsite highway improvements up to a maximum of £2,500 within 20 working days of receipt of a written request for the same from the County Council
2. To pay to the County Council the sum of £132,000 varied by the BCIS Indexation Factor prior to first occupation of a dwelling on the Property for the provision of additional highway improvement and/or safety measures including but not limited to
  - 2.1 Junction table marking at Clitheroe Road/Hayhurst Road with appropriate illumination
  - 2.2 Interactive signing on Clitheroe Road between Station Road and the change in speed limit north of Wiswell Lane
  - 2.3 Improvements to existing bus stops including improved shelters and street furniture

### **Education Contributions**

3. To pay to the County Council acting as local education authority a contribution to be agreed in writing between the County Council and the Group and not exceeding the total sum calculated in accordance with the following formula and varied by the BCIS Indexation Factor towards the provision of additional primary school places within three miles of the Property and to be paid in 2 instalments with 50% of the contribution payable prior to first occupation of a dwelling on the Property pursuant to the Planning Permission and 50% of the contribution payable before first occupation of the 40th dwelling on the Property pursuant to the Planning Permission :
  - (i) The yield of 0.35 pupil per dwelling shall be multiplied by the total number of Eligible Dwellings to calculate the number of pupil places and the resultant figure

shall then be multiplied by £12,213.86 per pupil place to calculate the maximum sum payable for the primary school contribution; and

(ii) The maximum sum payable shall be reduced to take into account the expected availability of places in existing and any proposed primary schools for the final year for which forecasts are available following a review of the most recent annual pupil forecasts and the expected number of pupils in local schools resulting from the implementation of any Extant Planning Permissions and the number of pupil places to be funded by any such Extant Planning Permissions at the time the first instalment of the contribution is payable

4. To pay to the County Council acting as local education authority a contribution to be agreed in writing between the County Council and the Group and not exceeding the total sum calculated in accordance with the following formula and varied by the BCIS Indexation Factor towards the provision of additional secondary school places within three miles of the Property and to be paid in 2 instalments with 50% of the contribution payable prior to first occupation of a dwelling on the Property pursuant to the Planning Permission and 50% of the contribution payable before first occupation of the 40th dwelling on the Property pursuant to the Planning Permission :

(i) The yield of 0.25 pupil per dwelling shall be multiplied by the total number of Eligible Dwellings to calculate the number of pupil places and the resultant figure shall then be multiplied by £18,404 per pupil place to calculate the maximum sum payable for the secondary school contribution; and

- (ii) The maximum sum payable shall be reduced to take into account the expected availability of places in existing and any proposed secondary schools for the final year for which forecasts are available following a review of the most recent annual pupil forecasts and the expected number of pupils in local schools resulting from the implementation of any Extant Planning Permissions and the number of pupil places to be funded by any such Extant Planning Permissions at the time the first instalment of the contribution is payable

5. The Group shall not permit occupation of any dwelling on the Property pursuant to the Planning Permission until both of the following payments have been made to the County Council:
  - (i) the payment required under paragraph 2 of this Schedule and
  - (ii) the first instalments of the Education Contributions required under paragraphs 3 and 4 of this Schedule
6. The Group shall not permit occupation of more than 40 dwellings on the Property pursuant to the Planning Permission until the second instalments of the Education Contributions required under paragraphs 3 and 4 of this Schedule have been paid to the County Council

## **SCHEDULE 2**

THE County Council covenants with the Group as follows:

1. To hold each contribution payable pursuant to Schedule 1 in an interest bearing account or accounts from its receipt until the said contribution is used or refunded
2. To spend each contribution and any interest earned thereon only for the purposes set out in Schedule 1 to this Deed
3. To refund with any accrued interest any monies not committed for expenditure pursuant to a resolution by the County Council to provide additional places at a school(s) (to include a new school) from the Education Contributions on the third anniversary of the date of the last payment to the party who originally made the payment
4. To refund with any accrued interest any unspent amount from the Highways Contribution on the fifth anniversary of date of its receipt to the party who originally made the payment

THE COMMON SEAL of LANCASHIRE

)

COUNTY COUNCIL was hereunto affixed to

)

this Deed in the presence of:



20858

THE COMMON SEAL of CO-OPERATIVE

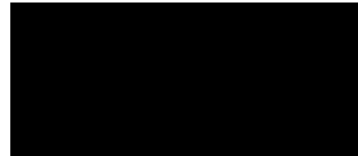
)

GROUP LIMITED was hereunto

)

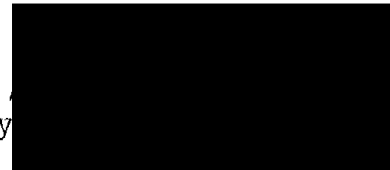
affixed to this Deed in the presence of:

)



Member

Secretary



LANCASHIRE COUNTY COUNCIL

— and —

CO-OPERATIVE GROUP LIMITED

# AGREEMENT

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Under Section 106 Town and Country Planning Act 1990  
relating to land to the north of Riddings Lane Whalley

THIS AGREEMENT is made the 16<sup>th</sup> day of AUGUST 2011  
BETWEEN

LANCASHIRE COUNTY COUNCIL of PO Box 78 County Hall Fishergate Preston  
Lancashire PR1 8XJ (hereinafter called "the County Council") of the first part and

CO-OPERATIVE GROUP LIMITED (Industrial and Provident Society No. IP525R) of PO  
Box 53 New Century House Manchester M60 4ES (hereinafter called "the Group") of the  
second part

WHEREAS:

- (1) The County Council is the Local Highway Authority for the purposes of the Highway Act 1980 and the Local Education Authority and is also a Local Planning Authority for the purposes of Section 106 of the Town and Country Planning Act 1990 ("the Act") for the Property shown edged red on the plan ("the Plan") annexed to this Agreement
- (2) The Group is the registered proprietor of the Freehold Estate of the Property known as land to the north of Riddings Lane Whalley ("the Property") which is registered with Absolute Title at HM Land Registry under Title Number LA624364
- (3) The Group on the 30 September 2010 applied to Ribble Valley Borough Council ("the Council") for outline planning permission for the erection of a maximum of 80 residential units ("the Proposed Development") more fully shown in the planning application allocated the Council's Planning Application Reference Number 3/2010/0820 ("the Application")
- (4) The County Council is a Local Planning Authority for the purposes of the Act for the Property
- (5) On 20 January 2011 the Council refused to grant Planning Permission for the Proposed Development
- (6) The Group has appealed against the refusal under Section 78 of the Act (reference APP/T2350/A/11/2149940) ("the Appeal")
- (7) The Group enters into this Deed pursuant to section 106 of the Act

# CAPITA LOVEJOY

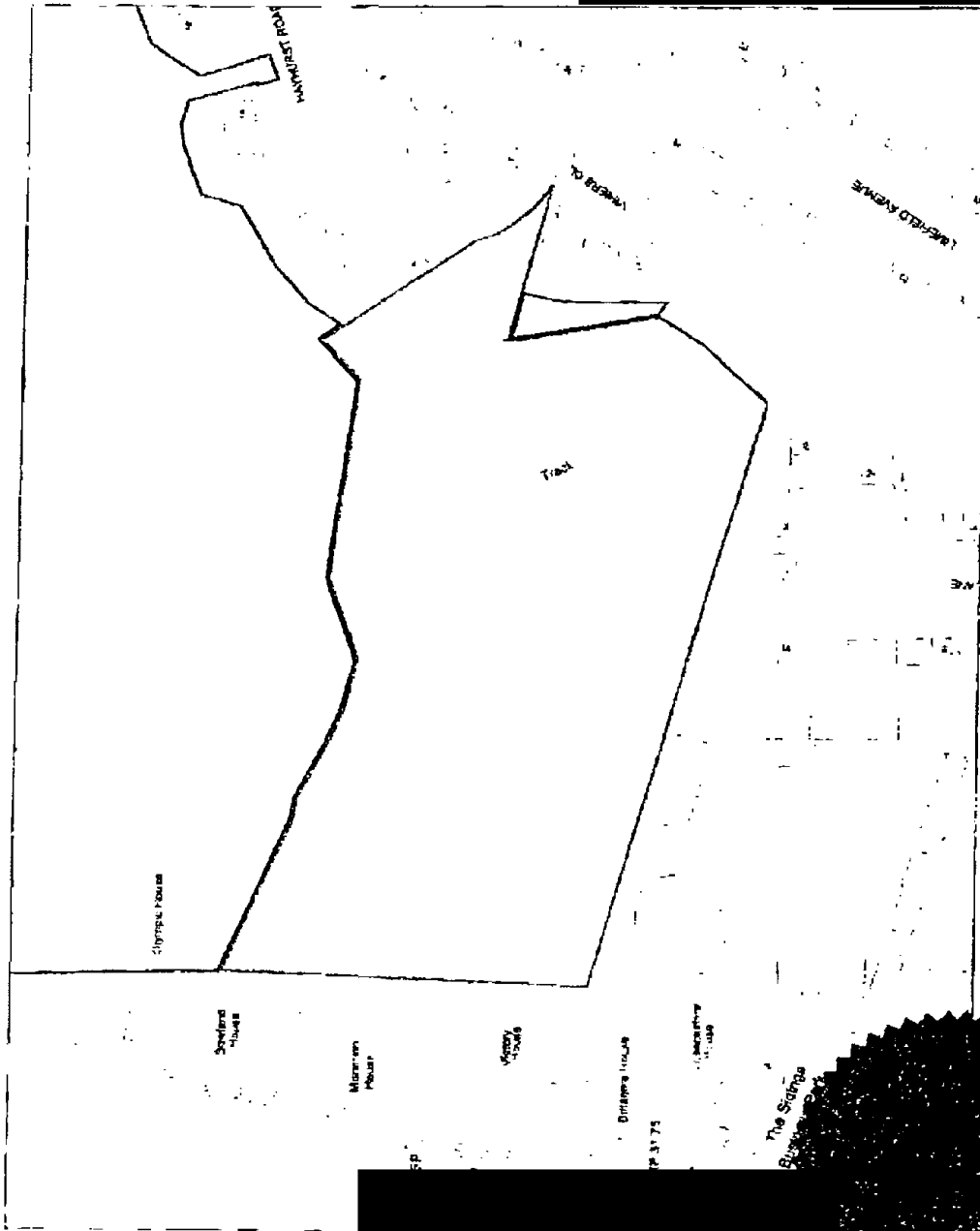
- Application Site boundary (s within applicant's ownership)
- Other land owned by the applicant

SCALE 1:1250



Co-Operative Land, Whalley  
Site Location Plan

CS045968\_SK08  
Date September 2010





- (8) In the event the Secretary of State acting by his Inspector grants Planning Permission for the Proposed Development such Planning Permission will only be subject to the imposition of those obligations appearing in this Deed which the Secretary of State acting by his Inspector expressly states in his decision letter are necessary to the grant of Planning Permission for the Proposed Development and meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)
- (9) The Group and the County Council entered into the First Agreement which shall be replaced by this Deed

NOW THIS DEED WITNESSETH as follows:

**1. DEFINITIONS**

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:-

"BCIS Index" means 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)

"BCIS Indexation Factor" means the recalculation of a financial contribution to be made under this Agreement by applying the following formula

$A \times \frac{B}{C} = D$  where:

A = the contribution payable in accordance with paragraph 2, 3 or 4 of Schedule 1 to this Deed as the case may be

B = the figure shown in the BCIS All-in Tender Price Index for the period immediately prior to the date of payment under this Agreement

C = the figure shown in the BCIS All-in Tender Price Index for the period last published before the date of this Agreement; and

D = the recalculated sum payable under this Agreement

**" Commencement of Development "** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Proposed Development begins to be carried out ;

**"Education Contribution"** means the sum calculated in accordance with paragraph 3 of Schedule 1 increased by the BCIS Indexation Factor as a contribution towards the costs of providing additional primary school places within 3 miles of the Property and the sum calculated in accordance with paragraph 4 of Schedule 1 increased by the BICS Indexation Factor as a contribution towards the costs of providing additional secondary school places within 3 miles of the Property.

**"Eligible Dwellings"** means the total number of dwellings to be constructed on the Property for which reserved matters approval is granted and implemented pursuant to the Planning Permission excluding any dwellings with only one bedroom and excluding any dwellings that are designated as sheltered housing or for occupation exclusively by people aged over 55 years

**"Extant Planning Permissions"** means any planning permission for residential development granted before the date of this Deed where the centre of the application site is within three miles of the centre of the Property and where such permission can still be implemented and has not expired at the time of calculating the amount of the Education Contributions payable under paragraphs 3 and 4 of Schedule 1 to this Deed

**"First Agreement"** means the agreement dated 2 August 2011 entered into by the County Council and the Group pursuant to section 106 of the Act in respect of the Proposed Development on the Property and in respect of the Appeal

**"Planning Permission"** means the planning permission granted by the Council or the Secretary of State for the construction of the Proposed Development on the Property as applied for in the Application

2. THIS Deed is made in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) and the covenants restrictions and obligations herein are planning obligations enforceable by the County Council as a local planning authority for the purposes of that Section with the intent to bind each and every part of the Property and the Group their successors in title and assigns and persons claiming under or through it subject to clauses 6 and 11 below
3. IN consideration of the County Council hereby having agreed to enter into this Deed for the purposes of the said Act the Group covenants with the County Council to observe and perform the covenants restrictions and obligations as set out in Schedule 1 hereto
4. The County Council covenants with the Group as set out in Schedule 2
5. THE expressions "the County Council " and "the Group" shall include their respective successors in title and assigns
6. NO person shall be liable for breach of a covenant in this Deed after they shall have parted with all interest in the Property or the part thereof in respect of which such breach occurs but such release shall be without prejudice to liability for any subsisting breach of covenant arising prior to the parting with such interest
7. THIS Deed is a local land charge and shall be registered as such for the purposes of the Local Land Charges Act 1975
8. NOTHING in this Deed either express or implied shall prejudice or affect the County Council's rights powers duties and obligations in the exercise of its functions as a Local Authority and the rights powers duties and obligations of the County Council under all public and private statutes directives bye-laws and regulations may be fully and effectively exercised as if the County Council had not entered this Deed
9. Unless the context otherwise requires references to statutory provisions include those statutory provisions as amended or enacted; and references to any gender includes all genders, and words denoting the singular shall include the plural and vice versa

10. Save for Clause 16 which shall have immediate effect this Deed is conditional upon and shall not take effect unless and until

- (a) The Planning Permission has been granted;
- (b) the Secretary of State acting by his Inspector expressly states that the obligations contained in this Deed are necessary to the grant of Planning Permission for the Proposed Development; and
- (c) the Commencement of Development pursuant to that Planning Permission

AND for the avoidance of doubt such Planning Permission will only be subject to the imposition of those obligations appearing in this Deed which the Secretary of State acting by his Inspector expressly states in his decision letter are necessary to the grant of Planning Permission for the Proposed Development and meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)

- 11. The County Council agrees that it will not seek to enforce this Deed against the owners or occupiers of individual residential dwellings constructed on the Property once that completed dwelling has been purchased from the Group or its successors in title but in such case the Group or its successors in title (as the case may be) shall not be released from its obligations under this Deed as provided in Clause 5 above until such obligations have been fully performed.
- 12. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this agreement
- 13. Any notice or other communication given or made in accordance with this Deed 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 County Council at the address of the County Council shown on the first page of this Agreement 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

14. The Group shall maintain records enabling them to supply to the County Council (within four weeks of the County Council's written request to do so) such information as the County Council may reasonably require in connection with this Deed

15. **DISPUTE PROVISIONS**

- 15.1 In the event of any dispute or difference arising between the parties to this Deed in respect of the amount of the contributions payable pursuant to paragraphs 3 and 4 of Schedule 1 to this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.2 in the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares
- 15.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in

any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

15.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

16. It is agreed between the parties to this Deed that the First Agreement shall be discharged and shall cease to have effect from the date hereof

IN WITNESS whereof the Parties hereto have executed as a Deed the day and year first before written

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THE COMMON SEAL of LANCASHIRE

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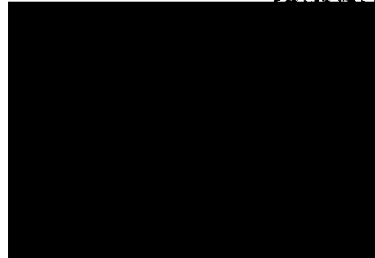
COUNTY COUNCIL was hereunto affixed to

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this Deed in the presence of:



20858



THE COMMON SEAL of CO-OPERATIVE

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GROUP LIMITED was hereunto

affixed to this Deed in the presence of:

