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DATED

2017

**RIBBLE VALLEY BOROUGH COUNCIL**

and

**CHIPPING HOMES LTD**

and

**SCPI BOWLAND LTD**

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**DEED OF VARIATION**

pursuant to section 106 and section 106A of the Town and Country Planning Act 1990 relating to  
Land lying to the south of Malt Kiln Brow, Chipping, Preston

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THIS DEED is made the

day of

2017

**BETWEEN**

1. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe BB7 2RA ("**Council**");
2. **CHIPPING HOMES LTD** a company registered and incorporated in England and Wales with company number 09164137 whose registered office is at Stephenson House, Moorside Road, Turton, Bolton BL7 0JY ("**Owner 1**"); and
3. **SCPI BOWLAND LTD** a company registered and incorporated in England and Wales with company number 6432590 care of Land Law LLP, 10-14 Market Street, Altrincham WA14 1QB ("**Owner 2**").

**BACKGROUND**

- A The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is located and is the authority by which the planning obligations herein contained are enforceable.
- B Owner 1 is registered as the freehold owner of the part of the Site which is registered at Land Registry under Title Number LAN110557.
- C Owner 2 is registered as the leasehold owner of the part of the Site which is registered at Land Registry under Title Number LAN104997.
- D On 23 March 2016 Owner 2 provided planning obligations to the Council by way of a unilateral undertaking under section 106 of the 1990 Act (the "**Original Agreement**") in respect of an appeal of the Application (as defined in the Original Agreement) which was made pursuant to the Council's resolution to refuse the Application (as defined in the Original Agreement).
- E Owner 1 has submitted a reserved matters application in accordance with the Planning Permission (as defined in the Original Agreement).
- F The parties hereto have agreed to vary the terms of the Original Agreement in the manner set out herein.

**1. DEFINITIONS AND INTERPRETATIONS**

The words and expressions in this Deed shall where the context so requires or admits and except as otherwise provided or required by this Deed have the meanings as given to them in the Original Agreement.

**2. OPERATIVE PROVISIONS**

- 2.1. The parties to this Deed agree that the Original Agreement shall be varied as set out in **clause 5** of this Deed with immediate effect.
- 2.2. The Original Agreement remains valid and in force subject to the variations contained in **clause 5** of this Deed and this Deed is supplemental and collateral to the Original Agreement.

2.3. If any provisions of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not be in any way deemed thereby to be affected or impaired.

2.4. This Deed is a local land charge and shall be registered as such.

### 3. STATUTORY BASIS

3.1. This Deed is made pursuant to the provisions of section 106 and section 106A of the 1990 Act and the covenants contained in this Deed are planning obligations for the purposes of those sections.

3.2. Insofar as any of the covenants contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3.3. The parties hereto agree that the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 relating to planning obligations are satisfied.

### 4. APPLICATION OF THE ORIGINAL AGREEMENT

For the avoidance of doubt any steps taken pursuant to the Original Agreement by the Owner for the time being and/or the Council in respect of the Site shall be deemed to have been taken also for the purposes of this Deed.

### 5. VARIATION

5.1. Delete the definition of "the Affordable Housing Units" from Clause 1.1.4 of the Original Agreement and replace with the following:

"the Affordable Housing Units" means the 7 Dwellings to be provided on the Affordable Housing Land of which a minimum of 4 Dwellings are to be Discounted Sale Units with the remaining Dwellings to be provided as either Rented Units and/or Discounted Sale Units and as may be agreed in writing with the Council;"

5.2. To insert new definition "Affordable Housing Contribution" as new Clause 1.1.3 of the Original Agreement as follows (with the numbering of subsequent sub-clauses in Clause 1.1 updated to reflect the insertion of this new sub-clause):

"Affordable Housing Contribution" means the sum of £60,000 (sixty thousand pounds) and payable to the Council for the purposes of providing off-site Affordable Housing in the administrative district of the Council;"

5.3. To insert new definition "Parcel 3" as new Clause 1.1.39 of the Original Agreement as follows (with the numbering of subsequent sub-clauses in Clause 1.1 updated to reflect the insertion of this new sub-clause):

"Parcel 3" means the land shown edged red on Plan 1;

5.4. To insert new definition "Parcel 4" as new Clause 1.1.40 of the Original Agreement as follows (with the numbering of subsequent sub-clauses in Clause 1.1 updated to reflect the insertion of this new sub-clause):

"Parcel 4" means the land shown edged red on Plan 2;

- 5.5. To insert new definition "Play Area Contribution" as new Clause 1.1.47 of the Original Agreement as follows (with the numbering of subsequent sub-clauses in Clause 1.1 updated to reflect the insertion of this new sub-clause):

**"Play Area Contribution"** means the sum of £[XXX] ([XXX]) and payable to the Council for the purposes of providing an off-site play area in the vicinity of the Development;

- 5.6. To delete Schedule 2 of the Original Agreement in its entirety and replace with the new Schedule 2 attached as the Appendix to this Deed.

**IN WITNESS** whereof the Council, Owner 1 and Owner 2 have executed this Deed on the date first above written.

**EXECUTED AS A DEED** by the  
**RIBBLE VALLEY BOROUGH COUNCIL**  
By affixing its **COMMON SEAL**  
In the presence of:

Authorised Signatory

**EXECUTED AS A DEED** by  
**CHIPPING HOMES LTD**  
Acting by a Director  
In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

**EXECUTED AS A DEED** by  
**SCPI BOWLAND LTD**  
Acting by a Director  
In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

**APPENDIX**  
**NEW SCHEDULE 2**

## **SCHEDULE 2**

### **The Owner's Covenants with the Council**

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

#### **1 Progress of development**

1.1 To give written notice to the Council (via the nominated Officer) within 15 Working Days of:

1.1.1 the Commencement of Development; and

1.1.2 the First Occupation of a Dwelling.

#### **2 Affordable Housing**

2.1 To build the Affordable Housing Units in accordance with the Planning Permission.

2.2 To build the Over 55s Provision in accordance with the standards published in the Lifetime Homes Design Guide current at the date of this Agreement.

2.3 To use all reasonable endeavours to Dispose of the Rented Units to an RP PROVIDED THAT this obligation shall cease to have effect upon the expiry of one year from the Date of Practical Completion of the Rented Units and FURTHER PROVIDED THAT it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with an RP.

2.4 That no more than 50% of the Market Housing Units shall be Occupied until 50% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of that has been made to the Council.

2.5 That no more than 90% of the Market Housing Units shall be Occupied until 100% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of that has been made to the Council.

2.6 To give notice in writing to the Council within 15 Working Days after the completion of the disposal of the Rented Units to an RP.

2.7 To pay to the Council the Affordable Housing Contribution as follows:

2.7.1 fifty per cent (50%) prior to the Occupation of the first Dwelling in Parcel 3; and

2.7.2 the remaining fifty per cent (50%) prior to the Occupation of the first Dwelling in Parcel 4.

### **3 Obligations of an RP upon taking an interest in the Rented Units**

#### **3.1 Upon the Disposal of the Rented Units the RP shall:-**

- 3.1.1** not Dispose of any interest in the Rented Units or any part thereof prior to the grant of a Rental Agreement save to another RP.
- 3.1.2** ensure that the Rented Units are available to rent by an Approved Person unless otherwise agreed in writing by the Council.
- 3.1.3** not permit any occupier of a Rented Unit to acquire the freehold interest of that unit and to ensure that every Rental Agreement granted contains suitable provisions to secure compliance with this covenant.
- 3.1.4** ensure that the rental levels to be charged in relation to each Rented Unit shall be approved by the Council and shall not exceed those accepted by the Homes and Communities Agency as being affordable for the Borough by the Homes and Communities Agency provided that the rental levels shall not exceed the Local Housing Allowance.
- 3.1.5** ensure that the Disposal by the RP (and any subsequent owners) of the Rented Units shall be subject to the nomination rights and qualifications set out in this Schedule.
- 3.1.6** within 1 month of the transfer to the RP of the Rented Units invite in writing and permit the Council to nominate potential occupiers of the Rented Units as they become available. If the Council shall fail to nominate an Approved Person within 28 Working Days of the invitation from the RP then the RP shall be free to grant a Rental Agreement to an Approved Person provided always that the Council and the RP shall in any event co-operate in the nomination process and the RP shall consider sympathetically the Council's suggested nominations event if put forward after the aforesaid date,
- 3.1.7** serve notice in writing on the Council within 21 Working Days of the Disposal of a Rented Unit so that the Council is kept fully informed of tenancies on the Site.
- 3.1.8** if the RP is minded to Dispose of the whole or any part of the Rented Units to any other RP 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 and to be deemed given if not refused within 28 Working Days of the date the written notice is served.

### **4 Obligations of the Owner for the Disposal of the Discounted Sale Units**

- 4.1** The Discounted Sale Units shall be sold by the Owner to an Approved Person (subject as provided below) and only at a discount to Open Market Value of the relevant Discounted Sale Unit of forty per cent (40%).
- 4.2** Any Disposal of a Discounted Sale Unit shall include covenants by the Buyer to ensure that such Dwelling may only subsequently be disposed of to an Approved Person (subject as provided below) and only at a Discount to Open Market Value of that Dwelling of 40% in perpetuity.



4.3 In the event that the Owner is unable to Dispose of any Discounted Sale Unit to an Approved Person because it is unable to find a person willing and able to buy the same having marketed the relevant Discounted Sale Unit for a period of at least 2 months, the Owner may Dispose of the relevant Discounted Sale Unit to a person who is not an Approved Person.

4.4 In the event that the Owner is unable to Dispose of any Discounted Sale Units pursuant to paragraphs 4.1 or 4.3 the Owner shall agree in writing with the Council an alternative tenure and method of Disposal of the relevant Discounted Sale Units.

## **5 Additional Affordable Housing Units Provisions**

5.1 The transfer or letting of the Rented Units to any RP or the transfer of the Discounted Sale Units by the Owner shall be subject to the following provisions.

5.1.1 a covenant providing that the Rented 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 covenant providing that the Discounted Sale Units shall only be Disposed at a price which has a discount to Open Market Value of the relevant Discounted Sale Unit of 40% and only to an Approved Person PROVIDED THAT in the event that a subsequent owner of a Discounted Sale Unit is unable to Dispose of a Discounted Sale Unit to an Approved Person because it is unable to find a person willing and able to buy the same having marketed the relevant Discounted Sale Unit for a period of at least 2 months, the owner may Dispose of the relevant Discounted Sale Unit to a person who is not an Approved Person.

5.1.3 a Restriction on the title of the Discounted Sale Units 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 Undertaking made the 23 day of March 2016 by the Owner pursuant to Section 106 of the Act have been fully complied with.

5.2 Any chargee or 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 1 months' prior notice to the Council of its intention to Dispose and:

5.2.1 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 chargee or mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer.

5.2.2 if the Council does not serve its response to the notice served under paragraph 5.2.1 within 1 month then the chargee or mortgagee shall be entitled to Dispose free of the restrictions set out in this Schedule 2.

5.2.3 If the Council or any other person within 2 months of the date of service or its response under paragraph 5.2.1 secure such transfer then provided that the chargee or mortgagee shall have complied with its obligations under paragraph 5.2.1 the chargee or mortgagee shall be entitled to Dispose free of the restrictions set out in this Schedule 2,

PROVIDED THAT at all times the rights and obligations in this Clause 5.2 shall not require the chargee or 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 chargee or mortgagee in respect of monies outstanding under the charge or mortgage.

- 5.3 The obligations and restrictions in this Schedule 2 shall not be binding on any successor in title to any chargee or mortgagee pursuant to any Disposal referred to in paragraph 5.2 above.

## **6 Replacement Cricket Field**

The Owner agrees with the Council:

- 6.1 To provide layout and equip the Replacement Cricket Field in accordance with a specification attached to this Agreement to ensure that the facilities on the Replacement Cricket Field are of an equivalent or better standard than the facilities current provided on the Current Cricket Field.
- 6.2 To complete the works of provision and laying out of the Replacement Cricket Field in accordance with paragraph 6.1 prior to the Commencement of Development on the Site.
- 6.3 To use reasonable endeavours to grant to the trustees of Chipping Cricket Club (or if the trustees so require any community interest company set up by them for the purpose of running Chipping Cricket Club) a right on reasonable terms to use the Replacement Cricket Field such grant so far as practicable to be completed within 2 months of completion of the works referred to in paragraph 6.1. In the event of the trustees of Chipping Cricket Club refusing to accept the right offered by the Owner within 2 months of completion of the works to offer use of the Replacement Cricket Field on reasonable terms to other local teams, clubs and schools.
- 6.4 Not to allow the Replacement Cricket Facility to be used as anything other than a community sports facility without the prior approval of the Council.

## **7 The Works**

The Owner agrees with the Council:

- 7.1 Not to begin the construction of the Dwellings without first procuring that a suitably qualified professional prepares a schedule of the works described in Schedule 3 and submits the schedule to the Council and obtains their approval of it (such approval not to be unreasonably withheld or delayed).
- 7.2 Not to occupy or permit occupation of any Dwelling until a suitably qualified professional has confirmed that the works covered by the schedule referred to at 7.1 have been completed and a notice confirmed that has been submitted to the Council.

## **8 Marketing Strategy**

The Owner further agrees with the Council:

- 8.1 Not to begin the construction of the Dwellings without first preparing a marketing programme aimed at secure a leisure operator or leisure operators to run or purchase the Mill and Kirk Mill Complex and obtaining the written approval of the Council to such programme, such approval not to be unreasonably withheld or delayed and to be deemed given if the Council

do not give written notice refusing approval within 10 Working Days of the schedule being served upon them. If refusing approval the Council shall provide the full details of why it finds the marketing proposal unacceptable. In the event that the Owner and the Council cannot agree the programme it will be determined in the application of either of them by a Specialist pursuant to clause 8 of this Deed.

- 8.2 To use reasonable endeavours to implement the programme approved, deemed approved or determined pursuant to paragraph 8.1 above as soon as reasonably practicable.

**9 Play Area Contribution**

- 9.1 To pay to the Council the Play Area Contribution as follows:

9.1.1. fifty per cent (50%) prior to the Occupation of the first Dwelling in Parcel 3; and

9.1.2 the remaining fifty per cent (50%) prior to the Occupation of the first Dwelling in Parcel 4.

