

**DATED** 11th December 2017

**RIBBLE VALLEY BOROUGH COUNCIL (1)**

and

**LANCASHIRE COUNTY COUNCIL (2)**

and

**STONYHURST (3)**

and

**HILLCREST HOMES (HURST GREEN) LIMITED (4)**

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**SUPPLEMENTAL PLANNING OBLIGATION BY AGREEMENT**  
pursuant to Section 106A of the Town and Country Planning Act 1990  
relating to Land to the north of Whalley Road, Hurst Green, Clitheroe BB7 9QH

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## SUPPLEMENTAL PLANNING OBLIGATION BY AGREEMENT

THIS AGREEMENT is dated the 11th day of December 2017

### BETWEEN:

- (1) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA (the "Council");
- (2) **LANCASHIRE COUNTY COUNCIL** of PO Box 78 County Hall, Fishergate, Preston PR1 8XJ (the "County Council"); and
- (3) **STONYHURST** (Company Registration No 6632303) of Stonyhurst College, Stonyhurst, Hurst Green, Clitheroe BB7 9BZ (the "Owners").
- (4) **HILLCREST HOMES (HURST GREEN) LIMITED** (Company Registration No.10558140) of Mynshull House, 14 Cateaton Street, Manchester M3 1SQ (the "Developer")

### WHEREAS:

- (A) The Owners have the freehold interest in land registered at the Land Registry under Title Number LAN93952 (the "Site").
- (B) For the purposes of the Town and Country Planning Act 1990 (the "1990 Act"), the Council is the local planning authority and the local housing authority for the area in which the Site is situated. The County Council is also a local planning authority and the local education authority for such area.
- (C) The Council, the County Council and the Owners entered into an agreement pursuant to Section 106 of the 1990 Act dated 24 March 2014 (hereinafter called the "Principal Agreement" and annexed as Appendix A) which sets out certain planning obligations related to the development of the Site under planning permission reference 3/2012/0964 granted on 25 March 2014 (the "Planning Permission").
- (D) The Planning Permission approved the erection of 30 dwelling houses, the creation of a new access on to Whalley Road, a new estate road, landscaping, servicing, a replacement school car park, pick-up and drop-off provision and public open space (the "Development").
- (E) Hillcrest Homes (Hurst Green) Ltd (Company Registration No 10558140), of Mynshulls House, 14 Cateaton Street, Manchester M3 1SQ (the "Developer"), has a leasehold interest in the Site and is constructing the Development.
- (F) This Deed is supplemental to and varies the Principal Agreement in the manner hereinafter appearing.

### NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

**1. Interpretation**

- 1.1 In this Deed defined terms shall have the meanings given to them in the Principal Agreement unless otherwise stated herein.
- 1.2 In this Deed words importing the singular include the plural and vice versa.
- 1.3 In this Deed words importing persons include companies and corporations and vice versa.
- 1.4 Wherever in this Deed there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 1.5 Any reference to a Clause, Paragraph, Schedule, Annex or Plan in this Deed is to one in or attached to this Deed unless otherwise stated herein.
- 1.6 In the absence of contrary provision in this Deed any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 1.7 References to any party to this Deed and the Principal Agreement shall include the successors in the title to that party and to any deriving title through or under that party and, in the case of the Council and the County Council, the successors to their functions.
- 1.8 Save as varied by this Deed the provisions of the Principal Agreement shall continue in full force and effect in respect of the Site as if the provisions of the Principal Agreement were repeated herein as so amended.

**2. Legal Powers**

This Deed is made in pursuance of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers enabling the parties to enter this Deed and, to the extent that this Deed includes planning obligations for the purposes of Section 106 of the 1990 Act, those obligations relate to the Site and are enforceable by the Council as the local planning authority for the area within which the Site is situated.

**3. Enforceability and Liability**

- 3.1 The Deed shall take effect on completion.
- 3.2 The parties to this Deed agree that:-
  - 3.2.1 From the date prescribed in clause 3.1 above, the Principal Agreement (as varied by this Deed) shall be varied in accordance with the **Schedule of Variation** forming part of this Deed.

3.2.2 Save as herein varied the Principal Agreement shall continue in full force and effect and shall be enforceable by the Council and County Council (as appropriate).

3.2.3 Nothing in this Deed shall prejudice or affect the rights, discretions, powers, duties or obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions.

**4 Covenants**

The parties to this Deed covenant to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this Deed.

**5 Jurisdiction**

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

**6 Local Land Charge**

This Deed shall be registered as a local land charge by the Council.

**7 Third Party Rights**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

**Schedule of Variation**

The Principal Agreement shall be amended as described or as shown in tracked changes in the table below.

<b>Principal Agreement</b>		<b>Varied Provision</b>
<b>Clause</b>	<b>Existing Provision</b>	
1.1.3	Definition of "Dispose"	means each and every means by which an interest in the Affordable Housing is given or transferred to another person, body or company and "Disposal" shall be construed accordingly.
1.1.35	Definition of "Planning Permission"	means the planning permission granted by the Council on 25 March 2014 under reference 3/2012/0964.
1.1.41	Definition of the "RSL"	means a registered provider of social housing : either  (a) as defined in the Housing and Regeneration Act 2008 and registered with the Homes and Communities Agency; or  (b) such other body approved by the Council to own and/or let the Affordable Housing.
1.1.42	Definition of "Rental Agreement"	means a letting agreement for a Rented Unit:  (a) granted by the RSL to an Approved Person in accordance with the Nomination Process; and  (b) subject to a rent which is acceptable as affordable for the Borough by the Homes and Communities Agency; but  (c) which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so).
1.1.43	Definition of "Rented Unit"	are Units which are available for rent only, including (for the avoidance of doubt) Social Rented Units and Rent-to-Buy Units.
1.1.44	None	Insert new definition of "Rent-to-Buy Unit" (and re-numbering of other provisions as appropriate), as follows:  means a unit of affordable housing in respect of which a Rental Agreement is granted by the RSL to an Approved Person.
1.1.46	Definition of "Right of Pre-Emption"	is a right contained in the Shared Ownership Lease for any of the Owners' successors in title to buy back the Shared Ownership Units.
1.1.49	Definition of "Shared Ownership Lease"	means a lease of a Shared Ownership Unit that contains within it a Right of Pre-Emption and/or rights to Staircase and "Shared

		Ownership Leases" shall be construed accordingly.
3.4	None	Insert new sub-clause 3.4.3 (and re-numbering of other provisions as appropriate) as follows:  the RSL, other than in relation to paragraphs 2,3 and 5 of Schedule 3.
Sch 3, Para 3.1.1	Obligations of an RSL upon taking an interest in the Affordable Housing	Not Dispose of any interest in the Units or any part thereof prior to the grant of a Rental Agreement or a Shared Ownership Lease save to another RSL .
Sch 3, Para 3.1.4	Rental levels for Rental Units	Ensure that 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
Sch 3, Para 3.1.6	Staircasing	Permit any occupier of a Shared Ownership Unit to Staircase to 100% 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
Sch 3, Para 3.1.8	Nomination of Approved Persons	Ensure that the Disposal by the RSL (and any subsequent owners) of the Units shall be subject to the Nomination Process set out in this Schedule
Sch 3 Para 3.1.9	Nomination of Approved Persons	Within 28 Working Days of the transfer to a RSL of the Units, the RSL shall 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 RSL then the RSL shall be free to grant a Rental Agreement to an Approved Person provided always that the Council and the RSL shall in any event cooperate in the Nomination Process
Sch 3, Para 5.1.2	Requirement for restriction on title	Delete all of Sch 3, Para 5.1.2
Sch 3, Para 5.2	Disposal by chargees/mortgagees	Replace all references to "Chargee" and/or "Mortgagee" in this provision to "chargee and/or mortgagee".

**Appendix A**

**Principal Agreement**

[COPY TO BE INSERTED]



- D The Owner has submitted the Application to the Council and the Parties have agreed to enter into this Agreement made by Deed under Section 106 of the 1990 Act in order to secure the planning obligations contained in it.**
- E The Council resolved on the 14 March 2013 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 Land' means the land that is the part of the Site designated for the construction of the Affordable Housing Units,**
- 1.1.4 'the Affordable Housing Units' means the Affordable Housing Land comprising nine (9) residential units, of which four (4) are Rented Units, five (5) are Shared Ownership Units, and 'an Affordable Housing Unit' shall be construed accordingly,**
- 1.1.5 'the Applicant' shall mean a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household,**

- 1.1.6** 'the Application' means the application for full planning permission for the Development dated the 9th October 2012 submitted to the Council and allocated reference number 3/2012/0964,
- 1.1.7** 'Approved Person' means a person who meets the Qualifying Criteria,
- 1.1.8** 'Borough' means the Borough of Ribble Valley.
- 1.1.9** 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly,
- 1.1.10** '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,
- 1.1.11** 'the Development' means the development of the Site with 30 Dwellings pursuant to the Planning Permission,
- 1.1.12** 'Discounted Sale Unit' means the sale of an Affordable Housing Unit at a discount of 40% of the Open Market Value in perpetuity,
- 1.1.13** '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,

- 1.1.14 '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,**
- 1.1.15 "Elderly Person Units" means the Dwellings on the site which are subject to a restriction limiting the main occupier to a person with a minimum age of 55 years.**
- 1.1.16 '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,**
- 1.1.17 '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,**
- 1.1.18 "GBCI" means the BCIS General Building Cost Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same).**
- 1.1.19 'Homes and Communities Agency' means the Homes and Communities Agency or its statutory successors,**
- 1.1.20 'the Housing Corporation' means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors,**
- 1.1.21 'Independent Valuer' means an independent chartered surveyor with not less than 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,**

- 1.1.22 "Interest" means interest at 4 per cent above the base lending rate of the Bank of England from time to time.**
- 1.1.23 'the Locality' means the parish of Aighton Bailey and Chaigley,**
- 1.1.24 '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,**
- 1.1.25 'Living' means those currently living in the Locality, Neighbouring Parish or Borough (as applicable),**
- 1.1.26 '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,**
- 1.1.27 'Neighbouring Parish' means the parishes which have a neighbouring common boundary with the Locality,**
- 1.1.28 'Next of Kin' means mother, father, brother, sister or adult dependant children,**
- 1.1.29 'Nominated Officer' means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place,**
- 1.1.30 'Nomination Process' means the process of nominating an Approved Person as set out in Schedule 3,**
- 1.1.31 'Notice' means a written notice from the Owner to the Council confirming that the Owner intends to market for sale Shared Ownership Units and in which**

**the Owner invites the Council to agree the Open Market Value of the Shared Ownership Units,**

**1.1.32 'Occupation' means the use of a Market Housing Unit for residential purposes,**

**1.1.33 'Open Market Value' means the best price at which the sale of the freehold interest in the Shared Ownership Unit (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which will still subsist and are capable of taking effect) would have been completed unconditionally for cash consideration by private treaty at the date of the Notice with vacant possession on completion of the sale assuming:**

**1.1.33.1 a willing seller; and**

**1.1.33.2 that prior to the date of the Notice there had been a reasonable period (having regard to the nature of the Shared Ownership Unit and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale; and**

**1.1.33.3 that the state of the market levels of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of the Notice; and**

**1.1.33.4 that no account is taken of any additional bid by a buyer with a special interest; and**

**1.1.33.5 that both parties to the transaction had acted knowledgeably prudently and without compulsion**

**1.1.34 'the Plan' means the plan attached to this deed,**

**1.1.35 'the Planning Permission' means the planning permission issued by the Council,**

1.1.36 "Primary Cost Per Place" means  $\text{£}12,257 \times 0.9 \times \text{GBCI} / 288.4$

1.1.37 "Primary Education Contribution" means the sum equating to the number of Primary Pupil Places Required x Primary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional primary school places;

1.1.38 "Pupil Places Required" means the number of primary or secondary Pupils Expected to be Resident in the Development less any Spare Places expected to be available to cater for the Development;

1.1.39 "Pupils Expected to be Resident" means the sum of the number of Dwellings less Elderly Person Units with a given number of bedrooms x corresponding Pupil Yield Figure for primary or secondary education (rounded to the nearest whole number);

"Pupil Yield Figure" means

	Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling				
	one	two	three	four	five
<i>Primary</i>	0.01	0.07	0.16	0.38	0.44
<i>Secondary</i>	0	0.03	0.09	0.15	0.23

1.1.40 'Qualifying Criteria' means priority in which an Applicant will be allocated a Rental Agreement of a Rented Unit being first in priority order:

- (a) those currently Living in the Locality for more than 10 years;
- (b) those currently Living in the Locality and have done so continually for between 5 to 10 years;
- (c) those currently Living in the Locality and have done so continually for a minimum of 12 months or

- (d) those currently Working in the Locality to which they have applied for accommodation;
- (e) those Returning to the Locality;
- (f) those currently Living in a Neighbouring Parish for more than 10 years;
- (g) those currently Living in a Neighbouring Parish and have done so for between 5 to 10 years;
- (h) those currently living in a Neighbouring Parish and have done so continually for a minimum of 12 months;
- (i) those currenty Working in a Neighbouring Parish to which they have applied for accommodation;
- (j) those Returning to the Neighbouring Parish;
- (k) those currently Living in the Borough for more than 10 years;
- (l) those currently Living in the Borough and have done so continually for between 5 to 10 years;
- (m) those currently living in the Borough and have done so continually for a minimum of 12 months;
- (n) those Working in the Borough;
- (o) those Returning to the Borough; and finally
- (p) those who are able to justify a requirement for accommodation in the Borough,

**1.1.41 'the RSL' means a registered social landlord as defined in Part 1 of the Housing Act 1996, who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act, and who is approved by the Council (such approval not to be unreasonably withheld or delayed),**

**1.1.42 'Rental Agreement' means a letting agreement for a Rented Unit granted by the RSL on its standard terms and conditions to an Approved Person in accordance with the Nomination Process as shall be appropriate for the site and subject to a rent which is accepted as affordable for the Borough by the**

Homes and Communities Agency provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so),

- 1.1.43 'Rented Units' are Units which are available for rent only,
- 1.1.44 "Reserved Matters Consent(s)" means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Site which permits residential development and specifies the number of Dwellings and number of bedrooms permitted on that part of the Site;
- 1.1.45 'Returning' means persons who at least one of the adult Applicants have Next of Kin who currently live in the Locality, Neighbouring Parish or Borough (as applicable),
- 1.1.46 'Right of Pre-Emption' is a right contained in the Shared Ownership Lease for the RSL to buy back the Shared Ownership Units,
- 1.1.47 "Secondary Cost Per Place" means  $\text{£}18,469 \times 0.9 \times \text{GBCI}/288.4$
- 1.1.48 "Secondary Education Contribution" means the sum equating to the number of secondary Pupil Places Required x Secondary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional secondary school places within three miles of the Site;
- 1.1.49 '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,
- 1.1.50 '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,

- 1.1.51 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1,**
- 1.1.52 'a Social Rented Unit' means an Affordable Housing Unit which is let subject to an assured tenancy agreement with the RSL to persons identified in accordance with the nominations requirements of any funding agreement as approved by the Council in writing, at a rent not exceeding the target rent of the Housing Corporation,**
- 1.1.53 "Spare Places" means the number of primary or secondary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 4 hereto;**
- 1.1.54 '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,**
- 1.1.55 'Units' means the Affordable Housing Units and 'a Unit' shall be construed accordingly,**
- 1.1.56 'Working' means a person who is permanently employed or self employed for a minimum of 18 hours per week paid or unpaid in the Locality, Neighbouring Parish or Borough (as applicable),**
- 1.1.57 '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 and County Council as local planning authorities.**

**3 Conditions, duration and enforcement**

**3.1 Conditions precedent**

**This deed is conditional upon:**

**3.1.1 the grant of the Planning Permission, and**

**3.1.2 the Commencement of Development**

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

**3.2 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, or any person deriving title through such a mortgagee or receiver,**
- 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 or any person deriving title through any such mortgagee or receiver,**
- 3.4.7 any person who by virtue of the terms of the lease of a Shared Ownership Unit is granted a new lease of that Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any successor in title of such person or mortgagee,**
- 3.4.8 the owners or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit,**

**3.4.9 any mortgagee of a Shared Ownership Unit or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or receiver;**

**provided that any mortgagee shall be a full member of the Council of Mortgage Lenders, unless otherwise approved in writing by the Council on a case-by-case basis.**

#### **4 Owner's covenants**

**4.1 The Owner covenants with the Council as set out in Schedule 3.**

**4.2 The Owner covenants with the County Council as set out in Schedule 4**

#### **5 Provisions of immediate effect**

**5.1 On completion of this deed the Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £330.00 and £300.00 respectively.**

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

**5.3 The Owner agrees with the Council and County Council to give the Council and County 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 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

**6.3.2** on the County Council at PO Box 78 County Hall, Fishergate, Preston PR1 8XJ marked for the attention of the County Secretary & Solicitor

**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.

**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 County Council 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 County Council 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 and County 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 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**

**Any sum referred to in this Deed including any instalment where any sum is paid by instalments shall be increased by the amount equivalent to the increase in the GBCI from the date hereof until the date of payment.**

## **10. Interest**

**If any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date of payment**

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

**SCHEDULE 1**

**The Owner's Title and Site Description**

**All that freehold land registered at HM Land Registry under title number LAN93952 and known as land at Whalley Road, Hurst Green, Clitheroe and shown edged red on the Plan.**

**SCHEDULE 2**

**Draft Planning Permission**

***(where available insert details or attach a copy of the draft 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 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 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 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 Not to Dispose of:**

**2.3.1 more than 50% of the Market Housing Units until 100% of the Units have reached the Date of Practical Completion and have been transferred to a RSL**

**2.4 To give notice in writing to the Council within 15 Working Days after the completion of the disposal of the Units to a RSL**

**2.5 The Owner may nominate its employees and staff who shall have first priority for the occupation of not more than four of the Affordable Housing Units providing they meet the Qualifying Criteria.**

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

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

**3.1.1 Not Dispose of any interest in the Units or any part thereof prior to the grant of a Rental Agreement or 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 four (4) 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 two of 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
- 3.1.6 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
- 3.1.7 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
- 3.1.8 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
- 3.1.9 Within 1 month of the transfer to a RSL of the Units the RSL shall 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 RSL then the RSL shall be free to grant a Rental Agreement to an Approved Person

provided always that the Council and the RSL shall in any event cooperate in the nomination process and the RSL shall consider sympathetically the Council's suggested nominations even if put forward after the aforesaid date

- 3.1.10** That the RSL shall only transfer a Shared Ownership Unit to an Approved Person
- 3.1.11** That the RSL shall serve notice in writing on the Council within 21 Working Days of the Disposal of a Rental Unit or a Shared Ownership Unit so that the Council is kept fully informed of tenancies and ownerships on the Site
- 3.1.12** 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 paragraphs 2.3 and 2.4 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                      2014 between the Council (1) the County Council (2) and the Owners (3) 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 [ 2 ] months' prior notice to the Council of its intention to dispose and:**

**(a) in the event that the Council responds within [ 1 ] months 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 best endeavours<sup>1</sup> to secure such transfer**

**(b) if the Council does not serve its response to the notice served under paragraph 5.2.(a) within the [ 1 ] months then the Chargee or Mortgagee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 3**

**(c) if the Council or any other person cannot within [ 2 ] months of the date of service of its response under paragraph 5.2 (a) secure such transfer**

**then provided that the Chargee shall have complied with its obligations under paragraph 5.2 (a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 3**

**PROVIDED THAT at all times the rights and obligations in this Clause 5 shall not require the Chargee 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 in respect of moneys outstanding under the charge or mortgage**

**6. Public Open Space Contribution**

**The Owner covenants with the Council to pay the Council a commuted sum of £25,000 (twenty five thousand pounds) in respect of the improvement and maintenance of the existing village green area in the village of Hurst Green. The payment shall be made prior to the sale of the 5th Market Dwelling**

## SCHEDULE 4

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

#### **1 Education Contribution**

##### **The Owner covenants:**

- 1.1 Within 20 working days following the grant of a Reserved Matters Consent to notify the County Council that a Reserved Matters Consent has been granted and request that the County Council calculates the Primary Education Contribution and the Secondary Education Contribution relating to the said Reserved Matters Consent in accordance with this Deed.**
- 1.2 prior to Occupation of the 10<sup>th</sup> Dwelling to pay to the County Council 50% of the Primary Education Contribution and 50% of the Secondary Education Contribution.**
- 1.3 prior to Occupation of the 20<sup>th</sup> Dwelling to pay to the County Council the remaining 50% of the Primary Education Contribution and the remaining 50% of the Secondary Education Contribution.**

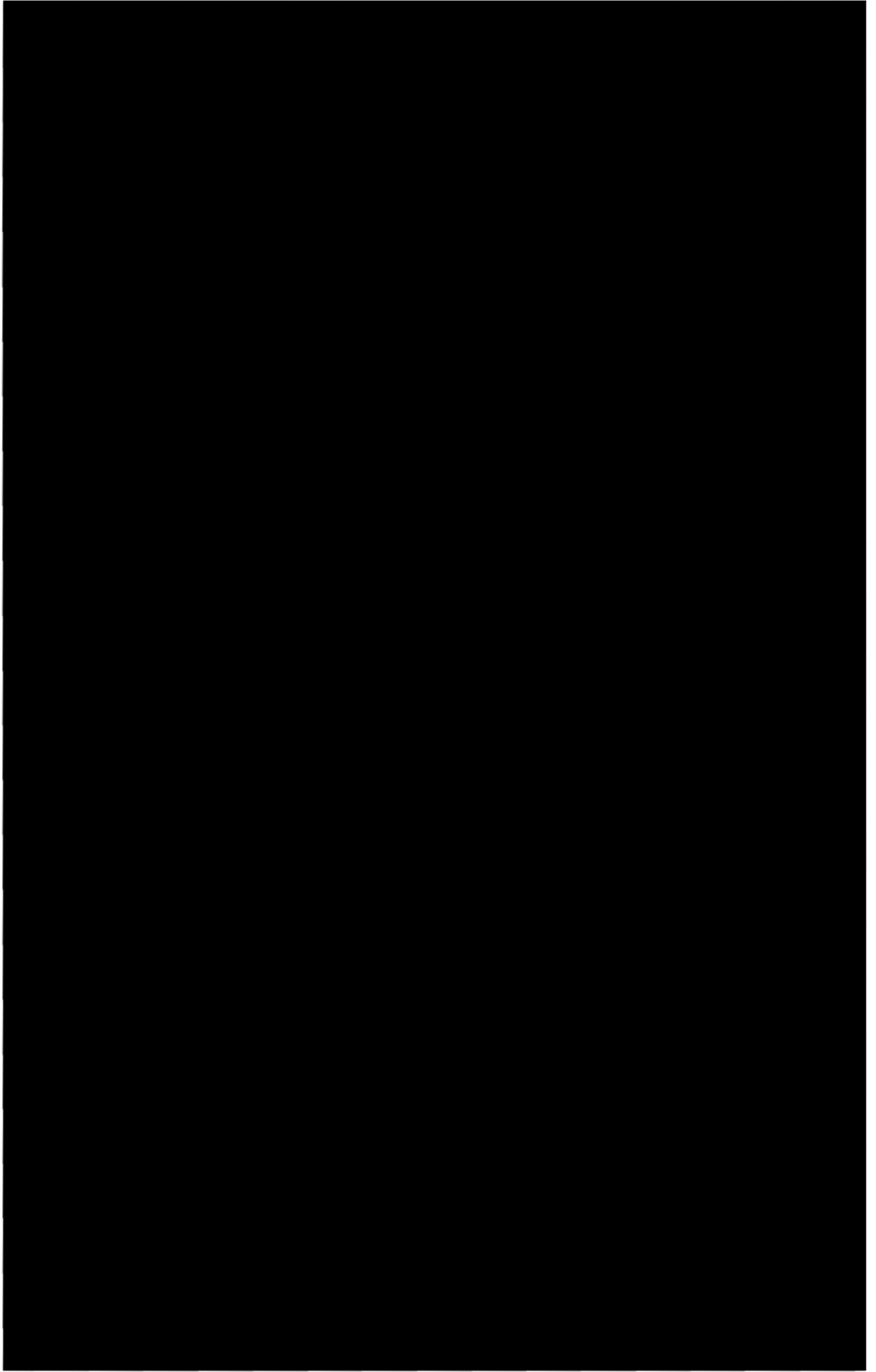
### Calculation of the Education Contributions

- 1 The calculation of the Primary Education Contribution and the Secondary Education Contribution generally and of Spare Places shall be undertaken in the same manner as demonstrated in the County Council's Education Methodology (Appendix 1)**
- 1.1 The County Council's pupils projections that are current at the time of the calculation shall be used.**
- 1.3 For the avoidance of doubt, if the County Council's calculations show that the number of primary or secondary places available is expected to exceed the calculated pupil yield from the Development as per this Schedule then no Primary Education Contribution or Secondary Education Contribution (as the case may be) shall be payable.**

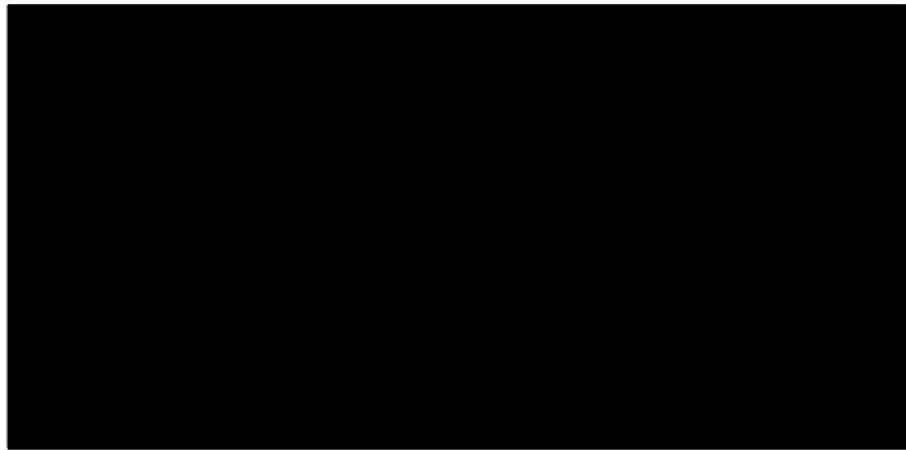


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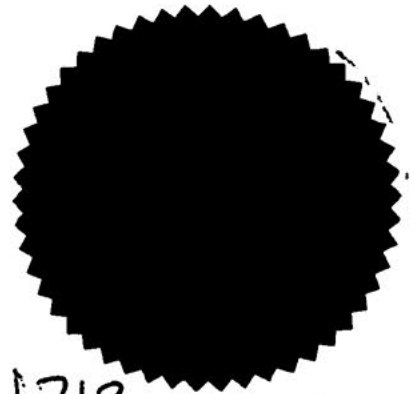
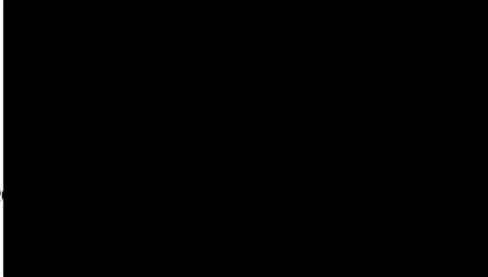


EXECUTED as a DEED by the parties hereto and delivered on the date set out at the head of this Deed

THE COMMON SEAL of RIBBLE VALLEY BOROUGH COUNCIL was hereunto affixed In the presence of:

Mayor

Chief Executive

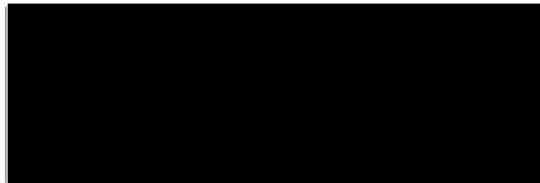


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THE COMMON SEAL of LANCASHIRE COUNTY COUNCIL was here unto affixed in the presence Of :

Authorised Signatory



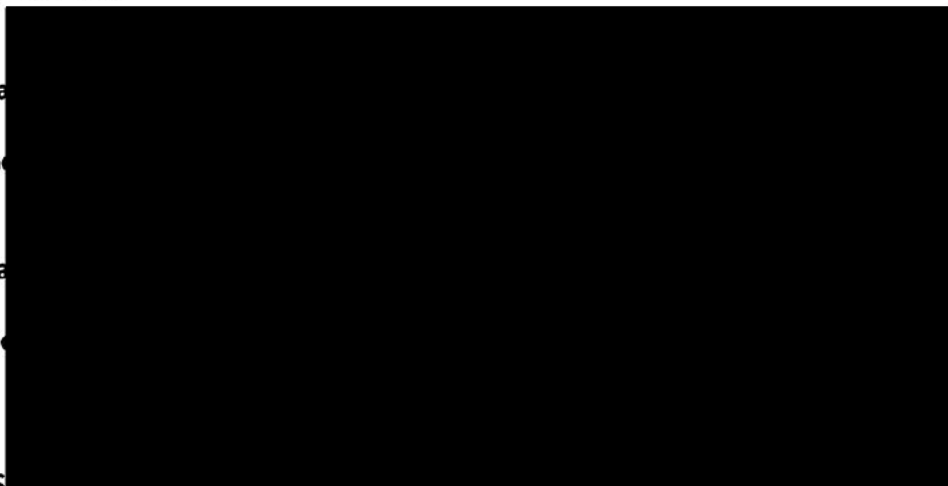
EXECUTED AS A DEED by STONYHURST Acting by ~~two~~ Directors

Director signature

Director name

~~Director signature~~  
witness

~~Director name~~  
witness



EXECUTED AS A DEED by HILLCREST HOMES (HURST GREEN) LIMITED acting by two Directors

Director signature

Director name

In the presence of

~~Director signature~~  
witness

~~Director name~~  
witness

Witness address

