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PM DRAFT 18/10/17
SUBJECT TO CLIENT INSTRUCTIONS

DATED _____ 2017

RIBBLE VALLEY BOROUGH COUNCIL (1)

and

LANCASHIRE COUNTY COUNCIL (2)

and

STONYHURST (3)

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

SUPPLEMENTAL PLANNING OBLIGATION BY AGREEMENT

THIS AGREEMENT is dated the _____ day of _____ 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**").

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.

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Schedule of Variation

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

Principal Agreement		Varied Provision
Clause	Existing Provision	
1.1.13	Definition of "Dispose"	means each and every means by which the right of occupation of 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 issued 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 landlord; either (a) as defined in Part 1 of the Housing and Regeneration Act 2008-1996, and who is registered with the Homes and Communities Agency; or (b) such other body approved by the Council to own and/or let the Affordable Housing 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	Definition of "Rental Agreement"	means a letting agreement for a Rented Unit; (a) 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 (b) subject to a rent which is acceptable as affordable for the Borough by the Homes and Communities Agency; provided that it does not exceed the Local Housing Allowance 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:

		<u>means a unit of affordable housing in respect of which a Rental Agreement is granted by the RSL to an Approved Person.</u>
1.1.46	Definition of "Right of Pre-Emption"	is a right contained in the Shared Ownership Lease for <u>any of the Owners' successors in title</u> the RSL 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 with <u>in</u> it a Right of Pre-Emption <u>and/or rights to Staircase</u> 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: <u>the RSL, other than in relation to paragraphs 2,3 and 5 of Schedule 3.</u>
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 <u>who has been approved in writing by the Council</u> (such consent not to be unreasonably withheld or delayed).
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 <u>by the Homes and Communities Agency provided that the rental levels shall not exceed the Local Housing Allowance</u>
Sch 3, Para 3.1.6	Staircasing	Permit any occupier of a Shared Ownership Unit to Staircase to <u>100%</u> 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
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 <u>N</u> omination <u>Process</u> rights and qualifications set out in this Schedule
Sch 3, Para 3.1.9	Nomination of Approved Persons	Within <u>28 Working Days</u> 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 <u>N</u> omination <u>P</u> rocess <u>and the RSL shall consider sympathetically the Council's suggested nominations even if put forward after the aforesaid date</u>
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".
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Appendix A

Principal Agreement

[COPY TO BE INSERTED]

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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

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