

DATED

2019

JOHN ANDREW FERGUSON and THOMAS NICHOLAS JOHN ASPINALL

- and -

GLADMAN DEVELOPMENTS LIMITED

PLANNING OBLIGATION BY DEED OF UNDERTAKING

SECTION 106 OF THE

TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO LAND KNOWN AS

LAND AT HENTHORN ROAD, CLITHEROE

THIS UNILATERAL UNDERTAKING is given the _____ day of _____
2019

1. **JOHN ANDREW FERGUSON** of 7 Winckley Square Preston PR1 3JD and **THOMAS NICHOLAS JOHN ASPINALL** of 20 Ducie Street London SW4 7RW (hereinafter called “the **Owners**”)

2. **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (hereinafter called “the **County Council**”) and

WITH THE CONSENT OF:

4. **GLADMAN DEVELOPMENTS LIMITED** (company number 03341567) whose registered office is at Gladman House Alexandria Way Congleton Business Park Congleton Cheshire CW12 1LB (hereinafter called the “**Promoter**”)

WHEREAS

- (1) The Owners are the freehold owners of land at Henthorn Road, Clitheroe the title of which land is registered at HM Land Registry under title number LA953336 which land is shown edged red on the Plan attached hereto (“the **Property**”)
- (2) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which the Property is situated and by whom the obligations contain in this Deed are enforceable

- (3) The County Council is the County Planning Authority and the local highway authority for the area in which the Property is situated by whom the obligations in Schedule 1 are enforceable
- (4) The County Council is the County Planning Authority and education authority for the area within which the Property is situated by whom the obligations contained in Schedule 3 are enforceable
- (5) The Owners and the Promoter have entered into the Promotion Agreement
- (6) The Promoter has registered a restriction against the title to the Property to protect its interest under the Promotion Agreement and on the 7 August 2018 applied to the Council for planning permission for a residential development including the erection of up to 110 dwellings with public open space, landscaping and sustainable drainage system (SUDs) and vehicular access point from Henthorn Road with all matters reserved except for means of access on the Property as detailed in the plans and particulars deposited with Council under reference 3/2018/0688.
- (7) The Council resolved on the 11 January 2019 that the application be refused by it under the Act of 1990 (as amended)
- (8) The Owners are prepared to enter into this Planning Obligation Deed in accordance with Section 106 of the Town and Country Planning Act 1990 ("the **1990 Act**") in order to secure the planning obligations it creates in the event that Planning Permission is granted pursuant to the Appeal

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

In this Deed unless the context otherwise requires:

Affordable Housing

"Affordable Housing" has the meaning given to it in Annex 2 of the NPPF.

Affordable Housing Provider

"Affordable Housing Provider" means a registered provider of social housing as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Acts) and registered with Homes England or any company or other body approved by Homes England for receipt of social housing grant.

Affordable Housing Scheme

"Affordable Housing Scheme" means the scheme for the provision of the Affordable Housing Units to be submitted to and approved by the Council pursuant to paragraph 1.2 of Schedule 2.

Affordable Rent

"Affordable Rent" means such rent (inclusive of service charges where applicable) as is set by the Affordable Housing Provider in line with such standard recommendations and guidelines as may from time to time be published by the Regulator in relation to affordable costs being at the date hereof an initial maximum rental level of a maximum of the Local Housing Allowance rate calculated by the Department of Work and Pensions.

Affordable Rented Housing

"Affordable Rented Housing " means the Residential Unit constructed pursuant to the Planning Permission and transferred to a Affordable Housing Provider for allocation as affordable rented housing where the lettings shall be made under a form of tenancy prescribed by Homes England and at a rent equal to or less than the prevailing affordable rent (inclusive of applicable service charges) permitted by Homes England which shall normally be 80% of the open market rental value (or the maximum amount of local housing allowance payable for the Dwelling if this is lower than the calculated 80% figure). The Affordable Rented Housing shall comprise not more than 50% of the Affordable Housing Units.

Affordable Housing Units

"Affordable Housing Units" means those Dwellings which are to be provided as Affordable Housing which shall be 30% of the total number of Dwellings to

be provided on the Site (such number to be rounded up or down to the nearest whole number) and which units shall constitute 50% Affordable Rented Housing and 50% Affordable Home Ownership Housing and/or Discount Sale Units and “Affordable Housing Unit” shall be construed accordingly.

Affordable Home Ownership Housing

“Affordable Home Ownership Housing” means shared ownership housing where an occupier may acquire an interest in an Affordable Housing Unit of between 25% and 80% and may be up to 100% ownership of the Open Market Value of the Dwelling at his or her election.

Appeal

“Appeal” means the appeal to the Secretary of State following the refusal of the Application by the Council given appeal reference APP/T2350/W/19/3221189

Application

“Application” means the application for outline Planning Permission submitted to the Council reference number 3/2018/0688 for residential development including residential use and associated amenities on the Property.

Bungalow

“Bungalow” means a unit of accommodation that provides a principle bedroom and bathroom at ground floor, in addition to and without compromising kitchen/dining and living room provision, all of which shall be designed to meet national space standards. All internal and external arrangements of the unit of accommodation / dwelling shall also accord with specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building Regulations 2010 (or any subsequent revisions). For the avoidance of doubt the ground floor accommodation shall possess the ability to be habitable without necessitating the need for access to upper floor accommodation by the user.

Bungalow (Over 55 Occupation only)

A unit of accommodation/dwelling that shall not be occupied by a person under the age of 55 years except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age.

The unit of accommodation/dwelling shall provide a principle bedroom and bathroom at ground floor, in addition to and without compromising kitchen/dining and living room provision , all of which shall be designed to meet national space standards. The internal and external arrangements of the unit of accommodation shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building Regulations 2010 (or any subsequent revisions).

For the avoidance of doubt the ground floor accommodation shall possess the ability to be habitable without necessitating the need for access to upper floor accommodation by the user.

BCIS All-in Tender Price Index

“BCIS All-in Tender Price Index” means the BCIS All-in Tender Price Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same) for the quarter in which the contribution (or any part of it) is paid.

Charging Schedule

“Charging Schedule” means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations

CIL Regulations

“CIL Regulations” means the Community Infrastructure Levy Regulations 2010 (as amended)

Commencement of Development

“Commencement of Development” means the carrying out as part of the Development of a material operation (within the meaning ascribed in Section 56 of the Act) other than an operation in connection with:

- (a) site clearance;
- (b) demolition;
- (c) archaeological investigation;
- (d) advanced habitat creation;
- (e) investigation for the purposes of assessing contamination and minor or temporary general maintenance works or works of repair;
- (f) remedial action in respect of contamination;
- (g) diversion and provision of services and drainage;
- (h) the erection of means of enclosure for the purpose of site security and/or the display of advertisements;
- (i) tree works;
- (j) construction of temporary access.

Contractual Commitment

“Contractual Commitment” means a legally binding obligation under which the Council or County Council (as the case may be) is or will at some future date be obliged to expend money from a Commuted Sum.

Contribution

“Contribution” means all or any of the Education Contribution, the Highway Contribution and the Off Site Leisure Contribution.

Decision Letter

“Decision Letter” means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed

Development

“Development” means such development as may be authorised by the Planning Permission.

Discount Sale Unit

“Discount Sale Unit” means a dwelling sold at a maximum sale price of 70% of Open Market Value

Dispose

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

Dwelling

“Dwelling” means a dwelling (including a house, bungalow, flat or maisonette) which is to be constructed as part of the Development pursuant to the Planning Permission.

Education Acts

“Education Acts” has the meaning given in section 578 of the Education Act 1996

Education Contribution

“Education Contribution” means the Primary Education Contribution and the Secondary Education Contribution as determined under this Deed.

Education Indexation

“Education Indexation” means the recalculation of a financial contribution to be made under this Deed applying the following formula:

$$\begin{array}{l} \text{Education Contribution} \end{array} \times \begin{array}{l} \text{BCIS All in Tender Price Index for the period immediately prior to the date of payment under the S106 agreement} \end{array} \div \begin{array}{l} \text{BCIS All in Tender Price Index for the period last published before the date of agreement} \end{array}$$

Homes England

"Homes England" means Homes England or any successor government agency that funds and is responsible for the delivery of new Affordable Housing and the regulation of the Affordable Housing Providers in England.

Implementation

"Implementation" means the carrying out of any of the material operations listed in Section 56 of the 1990 Act pursuant to the Planning Permission provided that for the purposes of determining whether or not the material operation has been carried out there shall be disregarded property surveys and investigations and tests (including drilling bore holes, digging trial pits and taking soil samples) environmental assessments and similar studies (including geological, archaeological and ecological surveys and landscape assessments). Site investigations preparatory works including ground, modelling and contamination remediation works and "implement" and "implemented" shall be construed accordingly.

Local Housing Allowance

"Local Housing Allowance" means the maximum housing benefit amount that can be paid and maximum rent that can be charged. The Local Housing Allowance is set by the Department of Work and Pensions for the East Lancashire area

Management Company

"Management Company" means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space and the SUDS

Management Plan

'Management Plan' means a scheme to be submitted to and approved in writing by the Council, which identifies:

- (i) the future management and maintenance requirements of the Open Space and the SUDS

- (ii) the proposed ongoing maintenance operations for the Open Space and the SUDS, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space and the SUDS
- (iii) the proposed means of funding the ongoing maintenance and management of the Open Space and the SUDS in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company
- (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan

Market Dwelling

“Market Dwelling” means those Dwellings which comprise general market housing for sale on the open market and which are not Affordable Housing.

Market Rent

“Market Rent” means the estimated amount for which a Dwelling should lease (let) on the open market on the date of valuation between a willing lessor and a willing lessee, in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and assuming that any restrictions imposed on the Dwelling by reason of this Deed are disregarded on appropriate lease terms.

Mortgagee

“Mortgagee” means any mortgagee or charge of the Affordable Housing Provider or any administrator, fixed charge receiver (including an administrative receiver appointed pursuant to the Law of Property Act 1925) administrative receiver or any other person appointed under any security documentation to enable such mortgagee to realise its security or their successors in title or persons deriving title therefrom exercising a power of sale in respect of the Affordable Housing Units.

Nominated Officer

“Nominated Officer” means the Council’s Housing Strategy Officer.

NPPF

“NPPF” means the Department for Communities and Local Government document entitled “National Planning Policy Framework” (February 2019) or any replacement or modification thereof in force from time to time.

Occupation

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

Occupation and Occupied

“Occupation” and “Occupied” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and “**Occupy**” shall be construed accordingly.

Off Site Leisure Contribution

“Off Site Leisure Contribution” means a sum payable for Off Site Leisure facilities in Clitheroe comprising a new play/activity area (including a green gym) at Clitheroe Castle calculated at reserved matters by reference to the number of bedrooms of a Dwelling

Open Market Value

“Open Market Value” means the estimated amount for which a Dwelling should sell on the open market for cash consideration on the date of valuation assuming:-

- a willing buyer and a willing seller in an arm’s length transaction
- that prior to the date of valuation there had been a reasonable period (having regard to the nature of the Dwelling and the state of the market) for the proper marketing of the Dwelling for the agreement of price and terms and for the completion of the same;

- that the state of the market level of values and other circumstances were on any other earlier assumed date of exchange of contracts the same as on the date of valuation;
- that no account is taken of any additional bid by a purchaser with a special interest; and
- that each party had acted knowledgeably prudently and without compulsion

“Open Space”

“Open Space” means the informal open space and landscaping including the Play Area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification

“Open Space Works Specification”

“Open Space Works Specification” means a specification for the laying out of the Open Space to be agreed in writing between the Owners and the Council before the Commencement of Development

Over 55 Accommodation

For the purposes of this agreement the definition of over 55's Housing provision is as follows:

A unit of accommodation/dwelling that shall not be occupied by a person under the age of 55 years except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age.

The internal arrangements of the unit of accommodation/dwelling shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building Regulations 2010 (or any subsequent revisions).

Phase of Development

“Phase of Development” means a phase of development which shall be in

accordance with the planning conditions to which the Planning Permission is subject

Plan

“Plan” means the Property location plan annexed hereto.

Planning Inspector

“Planning Inspector” means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal

Planning Permission

“Planning Permission” means the Planning Permission issued by the Secretary of State or the Planning Inspector in determining the Appeal.

Play Area

“Play Area” means an area for play for use by the general public to be provided on the Site in accordance with the Planning Permission

Practical Completion

“Practical Completion” means the issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by that other party’s architect and “Practically Completed” shall be construed accordingly.

Primary Cost Per Place

“Primary Cost Per Place” means $[\pounds 12,257 \times 0.97 \times 318/240 = \pounds 15,753.31]$

Primary Education Contribution

“Primary Education Contribution” means the sum equating to the number of primary Pupil Places Required multiplied by 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 at Clitheroe Edisford Primary School.

Priority Order

“Priority Order” means the following cascading order of persons to whom an Affordable Housing Unit must be offered in accordance with paragraph 1.9 of Schedule 2:

- In the first instance where at least one ordinarily resident member of a household is a person who in the reasonable opinion of the Affordable Housing Provider is in housing need and who:
 - i. were born in the Borough of Ribble Valley;
 - ii. currently live within the Borough of Ribble Valley and have done so for at least the past 12 months (proof of residence for the relevant period must be provided in the form of the electoral roll or (if such persons are not on the electoral roll) utility and council tax bills);
 - iii. used to live in the Borough of Ribble Valley for not less than three years but was forced to move away because of the lack of Affordable Housing;
 - iv. currently work in the Borough of Ribble Valley and have done so for at least the past 12 months for more than 18 hours per week;
 - v. currently has a close family member (mother, father, brother, sister, son, daughter) living in the Borough of Ribble Valley and who have done so for not less than three years.
 - vi. is the wife, husband or civil partner (as defined in the Civil Partnership Act 2004) or is the resident dependent (such as a child) of such a person specified in (i) to (vi) above.

Public Transport Contribution

“Public Transport Contribution” means a sum of £200,000 payable in accordance with the provisions of this deed towards sustaining and promoting local public transport .

Pupils Expected to be Resident

"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 education or secondary education (rounded to the nearest whole number)

Pupil Places Required

"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

Pupil Yield Figure

"Pupil Yield Figure" means

	Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling				
	One	two	three	Four	five or more
<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

Relevant Agreement

"Relevant Agreement" means an agreement to secure planning obligations under section 106 of the 1990 Act and which relates to planning permission granted for development where such agreement has been entered into on or after 6 April 2010 and 'Relevant Agreements' shall be construed accordingly

Reserved Matters Consent

Means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Property which permits residential development and specifies the number of Residential Units and

number of bedrooms permitted on that part of the Property

Secondary Cost Per Place

“Secondary Cost Per Place” means $[\pounds 18,469 \times 0.97 \times (287/240) = \pounds 21,423.27]$

Secondary Education Contribution

“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 at Bowland High School or any subsequent name or designation by which it is known;

Secretary of State

“Secretary of State” means the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under Sections 77, 78 and 79 of the 1990 Act

Spare Places

The number of secondary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 3 hereto

SUDS

“SUDS” means the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme

SUDS Scheme

“SUDS Scheme” means a sustainable urban drainage system scheme for the Development which is to be submitted to and approved in writing by the Council prior to the Commencement of the Development, and which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during

the Development, and the timescales for when the said works features and measures are to be carried out

Interpretation

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

2. Enforceability

- 2.1. This Deed is a planning obligation with the intent to bind the Property and the Owners and successors in title to observe and perform the covenants herein
- 2.2. The obligations of this Deed are conditional on the grant of the Planning Permission and the Commencement of the Development by the Implementation of the relevant part of the Development pursuant to the Planning Permission
- 2.3. No person shall be liable for a breach of covenant contained in this Deed after

he shall have parted with his interest in the Property or the part in respect of which any liability has arisen which is the subject of a breach but without prejudice to liability for any existing breach of covenant prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Property in any transfer of the Property will constitute an interest for the purposes of this clause 2.3.

- 2.4 This Deed shall not be binding or enforceable against any mortgagee or chargee exercising a power of sale but shall be binding on a purchaser from a mortgage in possession and for the avoidance of doubt, any legal charge taken over the Property in the future shall take effect subject to this deed PROVIDED THAT any new mortgagee shall have no liability under this deed unless it becomes a mortgagee in possession in which case it too will be bound by the planning obligations in this Deed as if it were a person deriving title from the Owners
- 2.5 The provisions of this Deed are not intended to be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor or authority to the Council or the County Council or successors in the title to the Owners) pursuant to the Contract (Rights of Third Parties) Act 1999
- 2.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a Planning Permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 2.7 The Promoter consents to this Deed being entered into with the intention that the Property will be bound by the terms of this Deed provided always that such consent is given on the basis that the Promoter will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes the freehold owner of the Property (or any part thereof) or obtains a long leasehold interest in the Property (or any part thereof).

3 Expiry Modification Variation or Amendments of Planning Permission

- 3.1 If the Planning Permission shall expire before Implementation of Development or shall at any time be revoked this Deed shall forthwith determine and cease

to have effect

- 3.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed and this Deed shall not apply to development carried out under any planning permission other than the Planning Permission

4 Registration

This Deed is a Local Land Charge and shall be registerable as such by the Council

5 Service of Notices

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

6 Reasonableness

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

7 Covenants

- 7.1 The Owners hereby covenant with the Council to perform the obligations as specified in paragraphs 1 and 2 of Schedule 1 and paragraphs 1, 2 and 3 of Schedule 2
- 7.2 The Owners hereby covenant with the County Council to perform the

obligations as specified in Schedule 1 and Schedule 3

8 Miscellaneous

- 8.1 Nothing in this Deed shall affect, bind or be enforceable against any individual person in respect of any completed Dwelling and its curtilage acquired or leased by them for residential Occupation on the Property.
- 8.2 Nothing in this Deed is intended to restrict the exercise by the Council or County Council of any of their powers, statutory rights, discretions and responsibilities
- 8.3 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 8.4 This Deed is a Deed and is enforceable by the Council and the County Council in relation to the obligations respectively entered into with each of them.
- 8.5 At any time after the obligations of the Owners under this Deed have been fulfilled (and subject to the payment of the Council and County Council's reasonable and proper costs and charges) the Owners may request that the Council and the County Council issue written confirmation thereof
- 8.6 The Owners shall pay the Council's legal fees incurred in relation to this Deed the sum of £512.20 (five hundred and fifteen pounds twenty pence) and the County Council's legal fees of £300 (three hundred pounds).
- 8.7 Any Contribution under this Deed shall be subject to Education Indexation.
- 8.8 This Deed and any dispute or claim arising out of it in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

9 Affordable Housing Mortgagee Protection

9.1 In respect only of the Affordable Housing provided pursuant to this Deed nothing contained within this Deed shall bind any Mortgagee exercising a power of sale in respect of the Affordable Housing Units provided that:

- a.) It shall have given not less than two (2) months' prior written notice to the Council of its intention to exercise such power of sale;
- b.) If the Council responds within one (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 the Mortgagee shall co-operate with such arrangements and use reasonable endeavours to secure such transfer PROVIDED THAT such Mortgagee shall not be under any obligation to dispose of the Affordable Housing Units for a sum less than the monies outstanding pursuant to the legal charge or mortgage; and
- c.) If the Council or any other person cannot complete a transfer of the Affordable Housing Units within two (2) months of the date of service of its response under paragraph 9.1(b) above then provided that the Mortgagee shall have complied with its obligations under paragraph 9.1(a) above the Mortgagee shall be entitled to dispose free of the restrictions set out in Paragraph 1 of Schedule 2 for that sale only future sales revert to all affordable housing restrictions

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of any monies outstanding under the charge or mortgage.

9.2 The provisions of this Deed shall:

- a.) cease to apply to any completed Affordable Housing Units where an Affordable Housing Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as

amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or substitute right applicable;

b.) cease to apply any completed Affordable Housing Units where an Affordable Housing Provider sells to a Tenant through Social Homebuy funded pursuant to Section 19(3) of Housing and Regeneration Act 2008 or any amendment or replacement thereof.

10 Indemnity

The Promoter (to the extent that the Owners have not been released from the planning obligations set out in this Deed pursuant to clause 2.3 of this deed) hereby indemnifies and shall keep indemnified the Owner during the term of the Promotion Agreement against all or any actions, judgements, penalties, damages, losses, costs, claims, expenses, liabilities and demands arising from the obligations of the Owners under this Deed and any breach or non-performance of those obligations PROVIDED THAT this clause shall not be for the benefit of any successor in title to the Owners pursuant to a Disposal as defined in the Promotion Agreement.

11 CIL Regulations

11.1 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation contained in this deed:

- 11.1.1 is not a material planning consideration; or
- 11.1.2 can be given no or little weight in determining the Appeal; or
- 11.1.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations; or
- 11.1.4 requires funding or provision towards a project or towards a type of Infrastructure where the Council and /or the County Council have entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of Infrastructure,

then subject to clause 8.3 of this deed such Planning Obligation shall not be enforceable pursuant to this deed and shall cease to have effect within this deed save as set out in the Decision Letter.

- 11.2 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any Contribution payable under the terms of this deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable.

SCHEDULE 1
Owners' obligations

1. Notice of Commencement

To give written notice to the Council (via the Nominated Officer) and the County Council within 15 Working Days of the Commencement of Development confirming that the Development has begun.

2. Notice of Occupations

Within 15 Working Days of each date to give written notice to the Council (via the Nominated Officer) and the County Council of the following:

- 2.1 the practical completion of the first Affordable Housing Unit
- 2.2 the date of First Occupation of a Dwelling
- 2.3 the date of each other Occupation that triggers a payment or other obligation or which is otherwise referred to under the terms of this Deed

SCHEDULE 2

The Owners' Covenants with the Council

The Owners covenant with the Council in the following terms:-

1. Affordable Housing

- 1.1. The Owners shall provide Affordable Housing as part of the Development in accordance with the provisions of this Schedule 2.
- 1.2. The Owners shall not Commence Development until the Owner has submitted and the Council has approved in writing an Affordable Housing Scheme.
- 1.3. An Affordable Housing Scheme submitted shall provide 30% (thirty per cent) of the total number of Dwellings to be constructed within the Development (rounded up or down to the nearest Dwelling on a "round half up" basis) as Affordable Housing Units of which 50 % (fifty per cent) of the Affordable Housing Units shall be Affordable Rented Housing and 50% (fifty per cent) of the Affordable Housing Units shall be Affordable Home Ownership Housing and/or Discount Sale Units.
- 1.4. To meet the identified need for Over 55 Accommodation as part of the 30% Affordable Housing Units on the Development 15% of the of the total number of Dwellings shall be of a Bungalow construction and the remainder of the Affordable Housing Units shall be of an Affordable Housing Unit none Bungalow construction.
- 1.5. The Owners shall be entitled to invoke paragraph 1.2 of this Schedule 2 as many times as is necessary in order to secure an approval in respect of an Affordable Housing Scheme submitted to the Council pursuant to paragraph 1.2 of this Schedule 2.
- 1.6. No more than 50% (fifty per cent) of the Market Dwellings within the Development shall be Occupied before the Owners have offered the Affordable Housing Units within Development (excluding any Discount Sale Units) to an Affordable Housing Provider in accordance with the approved

Affordable Housing Scheme and the terms of this Deed

- 1.7. From the date the Affordable Housing Units within the Development are first offered to an Affordable Housing Provider pursuant to paragraph 1.6 of this Schedule 2 (above) the Owners shall use reasonable endeavours in seeking to transfer the relevant Affordable Housing Units to the Affordable Housing Provider in accordance with the terms of this Deed PROVIDED THAT for the avoidance of doubt there shall be no obligation on the Owners to have commenced construction of the relevant Affordable Housing Units at the point when the said Affordable Housing Units are offered in accordance with this paragraph 1.7
- 1.8. No more than 75% (seventy five per cent) of the Market Dwellings within the Development shall be Occupied before 100% (one hundred per cent) of the Affordable Housing Units within the Phase of Residential Development have been Practically Completed in accordance with the approved Affordable Housing Scheme for that Phase of Residential Development, subject to such variations as may be agreed between the Council and the Owners from time to time
- 1.9. From the date of Practical Completion each Affordable Housing Unit shall be used only as Affordable Housing and shall (unless otherwise agreed in writing with the Council) only be offered for Occupation in accordance with the Priority Order unless otherwise agreed in writing with the Council save that this obligation shall not be binding upon:
 - 1.9.1. any Chargee;
 - 1.9.2. any mortgagee of an individual Affordable Housing Unit exercising its power of sale in respect of any such Affordable Housing Unit and any purchaser of an Affordable Housing Unit or any person deriving title from such a person or any successor in title thereto and their respective mortgagees and chargees from such mortgagee PROVIDED THAT:

1.9.2.1.any such mortgagee shall prior to seeking to dispose of the Affordable Housing Unit 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:

1.9.2.2.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 Unit can be made in such a way as to safeguard them as Affordable Housing whilst redeeming the outstanding sum of the mortgage plus the mortgagee's costs then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

1.9.2.3.if the Council does not serve its response to the notice served under paragraph 1.9.2.1 within the 1 month then the Mortgagee shall be entitled to dispose free of the restrictions set out in this paragraph 1.9 of this Schedule 2

1.9.2.4.if the Council or any other person cannot within 2 months of the date of service of its response under paragraph 1.9.2.2 secure such transfer then provided that the mortgagee shall have complied with its obligations under paragraph 1.9.2.1 the mortgagee shall be entitled to dispose free of the restrictions set out in this paragraph 1.9 of this Schedule 2

BUT FURTHER PROVIDED THAT at all times the rights and obligations of the mortgagee in this 1.9 shall not require the mortgagee to act contrary to its duties under the charge or mortgage nor oblige the mortgagee to dispose of an Affordable Housing Unit at a sum which is insufficient to redeem the outstanding sum of the mortgage plus costs.

- 1.9.3. any Protected Tenant or any mortgagee or chargee of a Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
- 1.9.4. A disposal (and any subsequent occupation) required by:
 - 1.9.4.1. any statutory provisions now or hereafter in force; or
 - 1.9.4.2. Homes England; or
 - 1.9.4.3. a court order
- 1.10. The Owners shall ensure that any transfer of an Affordable Housing Unit to an Affordable Housing Provider shall contain the following provisions:
 - 1.10.1. A covenant that the Affordable Housing Provider shall not use the Affordable Housing Unit otherwise than for Affordable Housing;
 - 1.10.2. A covenant that the Affordable Housing Unit shall only be offered for Occupation in accordance with the Priority Order (unless otherwise agreed in writing with the Council); and
 - 1.10.3. A covenant that those Affordable Housing Units which are Affordable Rented Housing Units shall be made available for letting at a rent level not exceeding the Local Housing Allowance Rent
- 1.11. In the event that:
 - 1.11.1. the Affordable Housing Provider to whom an offer is made by the Owners in accordance with paragraph 1.6 of this Schedule 2 declines to accept a transfer of some or all of the Affordable Housing Units within the Development: or
 - 1.11.2. no sale of some or all of the Affordable Housing Units within the

Development has been effected within six months from either the Commencement of Development of the Development or the date the Affordable Housing Units were offered to the Affordable Housing Provider in accordance with paragraph 1.6 of this Schedule 2 (whichever is the later)

1.11.3. then paragraph 1.12 of this Schedule 2 (below) shall apply in respect of such Affordable Housing Units.

1.12. Where this paragraph 1.12 applies then:

1.12.1. the Owners may at any time serve notice upon the Council stating that this paragraph 1.12 applies and providing evidence as to why despite complying with paragraph 1.6 of this Schedule 2 the Owner has been unable to transfer the Affordable Housing Units to the Affordable Housing Provider, together with evidence from the Affordable Housing Provider that they are not willing to so purchase the Affordable Housing Units (if such evidence is available);

1.12.2. upon receipt of the Owners' written notice served pursuant to sub-paragraph 1.12.1 above the Council shall consider the evidence and confirm in writing within 10 Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 1.6 of this Schedule 2 the Owners have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider and in the event that the Council disagrees the Council shall set out its full reasons for such disagreement

1.13. In the event that the Council confirms in writing pursuant to sub-paragraph 1.12.2 that it disagrees that despite complying with paragraph 1.6 of this Schedule 2 the Owners have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider then the Owners may

1.13.1. make a further offer to transfer the relevant Affordable Housing

Units to the Affordable Housing Provider or another Affordable Housing Provider in accordance with paragraph 1.7 of the Schedule 2 (in which case the Owners shall be entitled to invoke the procedure set out in this paragraph 1.13 in the event that some or all of the Affordable Housing Units have still not been transferred to an Affordable Housing Provider at the end of a further period of 20 Working Days beginning with the date of the making of such an offer); or

1.13.2. submit further evidence and submissions to the Council in order to address the Council's reasons for disagreement (in which case sub-paragraphs 1.13.1 to 1.13.3 of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or

1.13.3. In the event that despite complying with paragraph 1.6 of this Schedule 2 the Owners have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider and have provided evidence of this to the Council then the Owners shall be entitled to dispose of the relevant Affordable Housing Units free from the restrictions in this Schedule 2

2. Off Site Leisure Contribution

To pay to the Council the Off Site Leisure Contribution calculated at the grant of reserved matters consent in accordance with the following formula for occupancy ratios

The sum of £216.90 per person calculated as follows:-

One bedroom Dwelling = 1.3 persons

Two bedroom Dwelling = 1.8 persons

Three bedroom Dwelling = 2.5 persons

Four bedroom Dwelling = 3.1 persons

Five or more bedroom Dwelling = 3.5 persons

Not to Occupy or permit or allow Occupation of 75% of the Dwellings until the Off Site Leisure Contribution has been paid to the Council

3. Open Space Transfer and Works

- 3.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan.
- 3.2 Prior to Commencement of Development to submit to the Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space and the SUDS.
- 3.3 Not to permit or allow the Occupation of more than 75% of the Dwellings on any Phase of Development until any Open Space to be located on that Phase of Development has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.
- 3.4 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the Council of completion and to request that the Council inspects the Open Space within thirty Working Days of such notification.
- 3.5 If upon inspection of the Open Space the Council identifies any works which are necessary to bring the Open Space up to the standard required by the approved Open Space Works Specification to complete such works as soon as reasonably practicable.
- 3.6 To maintain the Open Space in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 3.7 below has been completed.

- 3.7 Not to permit the Occupation of more than 95% of the Dwellings that form part of the Development until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 5.
- 3.8 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the approved Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.8 (i) and 3.8 (ii) of Schedule 2.
- 3.9 Not to amend the approved Management Plan without the Council's written consent.
- 3.10 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.

SCHEDULE 3
The Owners' covenants to the County Council

The Owners hereby covenant with the County Council as follows:

1. Education Contribution

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 Education Contribution relating to the said Reserved Matters Consent in accordance with this Deed

2 Calculation of the Education Contribution

- 2.1 The calculation of the Education Contribution generally and of the Spare Places shall be undertaken in the same manner as demonstrated in the County Council's Education Methodology May 2016 (attached at Schedule 4 to this Deed)
- 2.2 The County Council's pupil projections that are current at the time of the calculation shall be used
- 2.3 For the avoidance of doubt, if the County Council's calculations show that the number of Spare Places in primary and secondary schools has increased then there may be a reduction in the payment due in accordance with the recalculated shortfall, if however the recalculated number of Spare Places is expected to exceed the calculated pupil yield from the Development then no Primary Education Contribution or Secondary Education Contribution as appropriate shall be payable

3 Education Contribution Triggers

- 3.1 Not to Occupy nor permit the Occupation of 25% of the Dwellings until 50% of the Education Contribution has been paid to the County Council.
- 3.2 Not to Occupy nor permit the Occupation of 50% of the Dwellings until a

further 50% of the Education Contribution has been paid to the County Council.

PROVIDED THAT the County Council shall not use

- (a) the Primary Education Contribution other than for Clitheroe Edisford Primary School ; or
- (b) the Secondary Education Contribution other than for the provision of additional Secondary school places at Bowland High School or any subsequent name or designation by which it is known

4. Notification

- 4.1 To notify the County Council at the address shown in this Deed within 10 working days of the above trigger points in paragraph 3 to this Schedule 3 having been reached.

5. Public Transport Contribution

- 5.1 To pay to the County Council the Public Transport Contribution in the following instalments:
 - 5.1.1 £40,000 prior to Occupation of the Development
 - 5.1.2 £40,000 on the first anniversary of the payment made pursuant to paragraph 5.1.1
 - 5.1.3 £40,000 on the second anniversary of the payment made pursuant to paragraph 5.1.1
 - 5.1.4 £40,000 on the third anniversary of the payment made pursuant to paragraph 5.1.1
 - 5.1.5 £40,000 on the fourth anniversary of the payment made pursuant to paragraph 5.1.1
- 5.2 The Owners shall not Occupy nor permit the Occupation of the Development until the first instalment of the Public Transport Contribution has been paid pursuant to paragraph 5.1.1

SCHEDULE 4
COUNTY COUNCIL'S EDUCATION METHODOLOGY

SCHEDULE 5

Provisions relating to the transfer of the Open Space and the SUDS

The transfer of the Open Space and the SUDS to the Management Company shall:

- i. be a transfer of the entire freehold interest of the Open Space and the SUDS
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space and the SUDS
- vii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space and the SUDS
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space or the SUDS
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant for the benefit of the Council that the Management Company will manage and maintain the Open Space and the SUDS in accordance with the approved Management Plan

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

SIGNED as a Deed by)
JOHN ANDREW FERGUSON)
in the presence of:-)

Witness signature.....

Witness name.....

Witness address.....

.....

.....

Witness occupation.....

SIGNED as a Deed by)
THOMAS NICHOLAS JOHN)
ASPIINAL)
in the presence of:-)

Witness signature.....

Witness name.....

Witness address.....

.....

.....

Witness occupation.....

EXECUTED as a deed by **GLADMAN**

DEVELOPMENTS LIMITED acting by

a director

.....

Director

in the presence of:

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness

Signed as a deed by
as attorney for **GLADMAN DEVELOPMENTS
LIMITED** under a power of attorney dated 23
August 2018

.....

as attorney for **GLADMAN DEVELOPMENTS
LIMITED**

in the presence of:

Signature of Witness

.....

Name of Witness

.....

Address of Witness

Gladman Legal Department
Gladman House
Alexandria Way
Congleton Business Park
Congleton Cheshire
CW12 1LB

Occupation of Witness

.....

