

DATED

20<sup>TH</sup> DECEMBER

2021

**LANCASHIRE COUNTY COUNCIL**

- and -

**RIBBLE VALLEY BOROUGH COUNCIL**

- and -

**HAWTHORNE FARM LIMITED**

- and -

**PERSIMMON HOMES LIMITED**

**SECTION 106 AGREEMENT**

**TOWN AND COUNTRY PLANNING ACT 1990**

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**RELATING TO LAND AT HAWTHORNE FARM, CLITHEROE**

THIS DEED is made the 20<sup>th</sup> day of DECEMBER 2021

**BETWEEN**

1. **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire PR1 8XJ (hereinafter called "the **County Council**");
2. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA (hereinafter called "the **Council**");
3. **HAWTHORNE FARM LIMITED** (Co. Regn. No. 04867918) of Suites 5 & 6 The Printworks, Hey Road, Barrow, Clitheroe BB7 9WB ("the **Owner**"); and
4. **PERSIMMON HOMES LIMITED** (Co. Regn. No. 04108747) of Persimmon House, Fulford, York YO19 4FE ("the **Developer**").

**WHEREAS**

- (1) The Owner is the freehold owner of the Application Site the title of which land is as at the date of this Deed registered at HM Land Registry under title number LA968636 and LA762060 and is indicatively shown edged red on Plan 1 against which this Deed is enforceable.
- (2) The Council is the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area within which the Application Site is situated and by whom the obligations contained in Schedule 1 and Schedule 2 are enforceable.
- (3) The County Council is the County Planning Authority and Education Authority for the area within which the Application Site is situated and by whom the obligations contained in Schedule 1 and 3 are enforceable.

- (4) The Developer has the benefit of a contract for sale and purchase of the Application Site dated 20 November 2019.
- (5) There are no other interests in the Application Site that would prevent the Owner entering into and complying with this Deed.
- (6) The Developer made the Application to the Council for full planning permission for a residential development including the erection of 57 residential units (including affordable housing) with access arrangements and associated infrastructure as detailed in the plans and particulars deposited with Council under reference 3/2019/1104.
- (7) The Council resolved that the Application be approved subject to the Owner entering into this Planning Obligation Deed in accordance with Section 106 of the 1990 Act.

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS**

In this Deed unless the context otherwise requires:

**1990 Act**

"1990 Act" means the Town and Country Planning Act 1990 (as amended).

**Affordable Housing**

"Affordable Housing" has the meaning given to it in Annex 2 of the NPPF and shall include Affordable Rented Housing Units and Affordable Ownership Housing Units.

**Affordable Housing Provider**

"Affordable Housing Provider" means a not for profit registered provider of affordable housing either:

- (a) as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment) and registered with Homes England (or similar successor body) or any company or other body approved by Homes England for receipt of social housing grant; or
- (b) such other body approved by the Council to own and/or let the Affordable Housing.

#### **Affordable Housing Scheme**

"Affordable Housing Scheme" means the scheme for the provision of the Affordable Housing Units in accordance with the terms of this Deed, the Affordable Housing Unit Mix and Plan 2 to be submitted to and approved by the Council pursuant to paragraph 1.2 of Schedule 2 such scheme to also identify the size of the Affordable Housing Units and also to confirm whether the Affordable Ownership Housing Units shall be provided as Shared Ownership Dwellings and/or Discount Market Sale Dwellings together with the plot numbers for such Dwellings by reference to a plan, subject to such variations as may be agreed between the Council and the Owner from time to time.

#### **Affordable Housing Units**

"Affordable Housing Units" means those 17 (seventeen) Dwellings which are to be provided as Affordable Housing which shall be 30% (thirty per cent) of the total number of Dwellings to be constructed on the Application Site as part of the Development in accordance with the Affordable Housing Scheme, the Affordable Housing Unit Mix and Plan 2 and "Affordable Housing Unit" shall be construed accordingly.

#### **Affordable Housing Unit Mix**

"Affordable Housing Unit Mix" means the mix of Affordable Housing Units which shall comprise:

- (i) 4 (four) Affordable Rented Housing Units (which shall also comprise Over 55 Accommodation) comprising 1-bed



Bungalows to be constructed on plots 13, 14, 15 and 16 as shown shaded blue on Plan 2;

- (ii) 6 (six) Affordable Rented Housing Units comprising 3-bedroom terraced houses to be constructed on plots 7, 8, 9, 17, 18 and 19 as shown shaded red on Plan 2;
- (iii) 7 (seven) Affordable Ownership Housing Units comprising 3-bedroom semi-detached houses to be constructed on plots 5, 6, 53 and 54 and 3-bedroom terraced houses to be constructed on 55, 56 and 57 as shown shaded purple on Plan 2.

#### **Affordable Ownership Housing Unit(s)**

"Affordable Ownership Housing Unit(s)" means Shared Ownership Dwellings and Discount Market Sale Dwellings.

#### **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 Homes England in relation to affordable costs being at the date hereof an initial maximum rental level of a maximum of the Local Housing Allowance rate.

#### **Affordable Rented Housing Unit(s)**

"Affordable Rented Housing Unit(s)" means affordable rented housing constructed pursuant to the Planning Permission and Transferred to an Affordable Housing Provider for allocation as affordable rented housing to Eligible Households where the lettings shall be made under a form of tenancy prescribed by Homes England and at Affordable Rent.

#### **Allocations Scheme**

"Allocations Scheme" means the Council's policy for the allocation of Affordable Rented Housing Units.

**Application**

"Application" means the application for full Planning Permission submitted to the Council and registered by the Council on 17<sup>th</sup> December 2019 and given reference number 3/2019/1104 for the erection of 57 dwellings (including thirty per cent affordable dwellings) with open space infrastructure and associated works on the Application Site.

**Application Site**

"Application Site" means the freehold property comprising the land at Hawthorne Farm, Clitheroe BB7 2HZ as shown indicatively edged red on Plan 1 against which this Deed may be enforced and registered as at the date of this Deed at HM Land Registry under title number LA968636 and LA762060.

**Bungalow**

"Bungalow" means a unit of accommodation that shall provide a principle bedroom and bathroom at ground floor, in addition to and without compromising kitchen/dining and living provision, all of which shall be designed to meet Nationally Described Space Standards, and 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 provisions).

**Commencement of Development**

"Commencement of Development" means the earliest date on which any material operation (as defined by Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purposes) operations consisting of:

- (i) site clearance;
- (ii) demolition;
- (iii) archaeological investigation;

- (iv) advanced habitat creation;
  - (v) investigation for the purposes of assessing contamination and minor or temporary general maintenance works or works of repair;
  - (vi) remedial action in respect of contamination;
  - (vii) diversion and provision of services and drainage;
  - (viii) the erection of means of enclosure for the purpose of site security and/or the display of advertisements;
  - (ix) tree works; or
  - (x) construction of temporary access
- and "Commence Development" shall be construed accordingly.

#### **Contribution**

"Contribution" means all or any of the Primary Education Contribution the Secondary Education Contribution and the Off Site Recreation Contribution.

#### **Council's Monitoring Fee**

"Council's Monitoring Fee" means the sum of £1,326.87 (one thousand three hundred and twenty six pounds and eighty seven pence) to be paid by the Owner to the Council to cover the Council's costs in monitoring compliance with this Deed.

#### **Development**

"Development" means the development on the Application Site as approved by the Planning Permission.

#### **Discount Market Sale Dwelling**

"Discount Market Sale Dwelling" means any units of the Affordable Housing which are to be sold to Eligible Households at the Discount Market Sale Price.

#### **Discount Market Sale Price**

"Discount Market Sale Price" means no more than 70% (seventy per

cent) of the Market Value of that Dwelling.

#### **Discount for Sale Restriction**

"Discount for Sale Restriction" means the restriction to be entered in the proprietorship register at the Land Registry in relation to each Discount Market Sale Dwelling in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a written consent by the solicitor of the disponent or the disponent or Ribble Valley Borough Council that the provisions of paragraph 1.12, 1.13.2 and 1.17 of Schedule 2 of a Section 106 Agreement dated [20.12.21] and made between (1) Lancashire County Council (2) Ribble Valley Borough Council (3) Hawthorne Farm Limited and (4) Persimmon Homes Limited have been complied with or do not apply to the disposition".

#### **Dwelling**

"Dwelling" means any building or residential unit within a building intended to be occupied as a dwelling (including a house, flat, bungalow or maisonette) to be constructed on the Application Site as part of the Development pursuant to the Planning Permission.

#### **Eligible Households**

"Eligible Households" means a person or household that the Council has confirmed in writing as being in need of Affordable Housing because their needs are not met by the market as determined with regard to housing need, local incomes, local house prices and:

- (i) in the case of Affordable Rented Units, identified in accordance with the provisions of the Allocations Scheme or other criteria adopted by the Council from time to time;
- (ii) in the case of Shared Ownership Dwellings, a household with an income of £80,000.00 (eighty thousand pounds) or less and a first-time buyer, or someone who owns an existing home where they are unable to afford to buy a home suitable for meeting the

- housing needs on the open market; and
- (iii) in the case of Discount Market Sale Dwelling a household with an income of £80,000.00 (eighty thousand pounds) or less and a first-time buyer, or someone who owns an existing home but they are unable to afford to buy a home suitable to meet their housing needs on the open market.

#### **Education Contribution**

"Education Contribution" means together the Primary Education Contribution and the Secondary School Contribution.

#### **Education Contribution Assessment**

"Education Contribution Assessment" means the assessment dated 15 July 2021 and annexed hereto at Appendix 3.

#### **Education Indexation**

"Education Indexation" 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.

#### **Expert**

"Expert" means an independent person appointed in accordance with clause 13 to determine a dispute.

#### **First Occupation**

"First Occupation" means the date on which a Dwelling is first Occupied.

#### **Index**

"Index" means the All Items Index of Retail Prices issued by the Office for National Statistics or in the event of discontinuance any replacement thereof or such alternative index as may be proposed by the Owner and agreed by the Council.

**Indexation**

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

$$\text{Contribution} \times \frac{\text{Index for the period immediately prior to the date of payment under the S106 agreement}}{\text{Index for the period last published before the date of the Planning Permission}}$$

**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.

**Interest**

"Interest" means interest at 4% (four per cent) above the base lending rate of Barclays Bank Plc from time to time.

**Local Housing Allowance**

"Local Housing Allowance" means the list of rents set by the Valuation Office Agency for the area in which the Application Site is situated.

**Maintenance Period**

"Maintenance Period" means in respect of the Open Space Works a period of 12 (twelve) months from the date of completion of the Open Space Works to the Council's satisfaction.

**Management Company**

"Management Company" means a limited company with the purpose of managing the Open Space within the Development.

**Market Dwelling**

"Market Dwelling" means those Dwellings which comprise general market housing for sale between a willing seller and a willing buyer in an arm's length transaction wherein the parties had each acted knowledgeably, prudently and without compulsion on the open market and which are not Affordable Housing.

**Market Over 55 Accommodation**

"Market Over 55 Accommodation" means those five (5) units of Over 55 Accommodation that are not Affordable Housing Units as set out in paragraph 2.2.2 of Part 2 of Schedule 2 and subject to the provisions in paragraphs 2.6 – 2.10 of Part 2 of Schedule 2.

**Market Value**

"Market Value" means the estimated amount for which a Dwelling should sell on the open market for cash consideration on the date of valuation as agreed by the Council (or in the absence of agreement by an Expert) assuming:-

- (i) a willing buyer and a willing seller in an arm's length transaction;
- (ii) 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;
- (iii) 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;
- (iv) that no account is taken of any additional bid by a purchaser with a special interest; and
- (v) that each party had acted knowledgeably prudently and without compulsion.



**Nationally Described Space Standards**

"Nationally Described Space Standards" means the standards published by the Ministry of Housing Communities and Local Government setting out the minimum gross internal floor space requirements for the Affordable Housing Units at a defined level of occupancy.

**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" 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 "Occupied" and "Occupy" shall be construed accordingly.

**Off Site Recreation Contribution**

"Off Site Recreation Contribution" means the sum of £32,686.83 (thirty two thousand, six hundred and eighty six pounds and eighty three pence) calculated by reference to the number of bedrooms of a Dwelling to be paid to the Council in accordance with the terms of this Deed for the Off Site Recreation Facilities.

**Off Site Recreation Facilities**

"Off Site Recreation Facilities" means the off-site leisure facilities within Clitheroe including but not limited to the Clitheroe Castle Grounds and the Castle and Hawthorn Place Play Area.



**Off Site Recreation Improvements**

"Off Site Recreation Improvements" means the improvements to Hawthorne Place play area in accordance with the Off-Site Scheme submitted to and approved by the Council.

**Off Site Scheme**

"Off Site Scheme" means a written specification for the Off Site Recreation Improvements containing details of the proposed improvements and management and maintenance thereof.

**Open Space**

"Open Space" means areas of onsite public open space including all landscaping, grassed areas and roadside verges within the Development as shown indicatively on Plan 2.

**Open Space Management Plan**

"Open Space Management Plan" means a management plan for the ongoing management and maintenance of the Open Space to be submitted and approved in writing by the Council.

**Open Space Specification**

"Open Space Specification" means the specification for the carrying out of the Open Space Works on the Open Space, detailed plans of which shall be submitted to the Council for approval and shall include landscaping proposals.

**Open Space Works**

"Open Space Works" means the works to be carried out on the Open Space in accordance with the Open Space Specification.

**Over 55 Accommodation**

"Over 55 Accommodation" means a 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) and the unit of accommodation shall provide a principal 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 Nationally Described Space Standards and 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) and 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.

#### **Over 55 Accommodation Units**

"Over 55 Accommodation Units" means the 9 (nine) Dwellings to be constructed and provided on the Application Site as part of the Development as Over 55 Accommodation in accordance with the provisions of this Deed and "Over 55 Accommodation Unit" shall be construed accordingly.

#### **Plan 1**

"Plan 1" means the plan annexed hereto at Appendix 1 and so marked.

#### **Plan 2**

"Plan 2" means the plan annexed hereto at Appendix 2 and so marked.

#### **Planning Permission**

"Planning Permission" means the full planning permission subject to conditions to be granted pursuant to the Application, a draft of which is set out in Appendix 4 (and including any amendment of it granted pursuant to an application under Section 96A of the 1990 Act).

#### **Practical Completion**

"Practical Completion" means the issue of a cover note by the new home

warranty provider for the relevant Dwelling confirming that the new home warranty provider has inspected the relevant Dwelling and that they are satisfied with the relevant Dwelling and that the new home warranty will be issued and "Practically Completed" shall be construed accordingly.

#### **Primary Education Contribution**

"Primary Education Contribution" means the sum of £217,749.48 (Two Hundred and Seventeen Thousand Seven Hundred and Forty Nine Pounds and Forty Eight Pence) adjusted by Education Indexation to be paid to the County Council in accordance with the terms of this Deed and the Education Contribution Assessment for the provision of additional primary school places at Clitheroe Pendle Primary School and/or Clitheroe Brookside Primary School or any subsequent name or designation by which they are known.

#### **Priority Order**

"Priority Order" means the following cascading order of persons to whom an Affordable Housing Unit must be offered in accordance with paragraph 1.12 of Schedule 2 in the first instance where at least one ordinarily resident member of the Eligible Household is a person who is in housing need and who:

- (i) have lived in the Borough of Ribble Valley for at least 5 (five) years of the last 10 (ten) years;
- (ii) currently live within the Borough of Ribble Valley and have done so for at least the past 12 (twelve) 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 3 (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 (twelve) months for more than 18 (eighteen) 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 3 (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 (v) above.

PROVIDED ALWAYS THAT the Affordable Housing Units shall be provided to Eligible Households and PROVIDED ALWAYS THAT the Affordable Rented Units which comprise Over 55 Accommodation Units shall at all times be offered and Occupied as Over 55 Accommodation.

**Protected Tenant**

"Protected Tenant" means any tenant who:

- (i) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (ii) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (iii) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit.

**ROSPA**

"ROSPA" means the Royal Society for the Prevention of Accidents or such successor organisation.

**Secondary Education Contribution**

"Secondary Education Contribution" means the sum of £161,432.25 (One Hundred and Sixty One Thousand Four Hundred and Thirty Two Pounds and Twenty Five Pence) adjusted by Education Indexation payable to the County Council in accordance with the terms of this Deed and the Education Contribution Assessment for the provision of additional secondary school places at Clitheroe Royal Grammar School and/or St Augustine's RC High School or any subsequent name or designation by which they are known.

**Shared Ownership Dwellings**

"Shared Ownership Dwellings" means housing made available to an Affordable Housing Provider and sold to Eligible Households subject to a Shared Ownership Lease.

**Shared Ownership Lease**

"Shared Ownership Lease" means a lease in the form of the Home England's model shared ownership lease as amended from time to time and on terms that permit part purchase of a minimum of 25% (twenty five per cent) of the equity in a Dwelling together with the rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit up to a value which does not exceed the rent set by Homes England from time to time (or such other rent or form of lease approved in writing by the Council in its absolute discretion) and permits staircasing up to 100% (one hundred per cent) ownership.

**Transfer**

"Transfer" means in relation to the transfer of an interest in property the transfer of a freehold interest.

### **Working Days**

"Working Days" means those days that are not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday.

### **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.
- 1.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the Council and County Council the successors to their respective statutory functions.

## **2. Legal Basis and Enforceability**

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111

of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

- 2.2 This Deed is a planning obligation under Section 106 the 1990 Act with the intent to bind the Application Site and is enforceable by the Council (and where applicable the County Council) as local planning authority against the Owner and successors in title who shall observe and perform the covenants herein.
- 2.3 The Developer enters into this Deed for the purpose of consenting to the Application Site being bound by its terms and (unless expressed otherwise in this Deed) the Developer shall have no liability unless and until it takes a leasehold or freehold interest in the Application Site (or any part thereof) whereupon it shall be bound by this Deed as successor in title to the Owner.
- 2.4 The covenants and obligations of this Deed are conditional on:
- 2.4.1 the grant of the Planning Permission; and
- 2.4.2 the Commencement of the Development

SAVE FOR the provisions of clauses 2.3, 3, 4, 5, 7.1 (only in respect of paragraph 1.1 of Schedule 1, paragraph 1.2 of Schedule 2, paragraph 3.1 of Schedule 2, paragraph 3.3.1 of Schedule 2, paragraph 4.1 of Schedule 2), 9, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

- 2.5 No persons shall be liable for a breach of covenant contained in this Deed after he shall have parted with his interest in the Application Site 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 and/or subsisting 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 Application Site in any transfer of the Application



Site will constitute an interest for the purposes of this clause 2.5.

2.6 This Deed shall not be enforceable against:

2.6.1 individual owner-occupiers or tenants of the Dwellings SAVE THAT the provisions of Part 1 Schedule 2 shall remain binding on owners occupiers and tenants of the Affordable Housing Units and their respective successors in title and their mortgagees and SAVE FURTHER THAT the provisions of Part 2 Schedule 2 shall remain binding on owners occupiers and tenants of the Over 55 Accommodation Units and their respective successors in title and their mortgagees.

2.6.2 an Affordable Housing Provider SAVE THAT the provisions of Part 1 Schedule 2 and Part 2 Schedule 2 (in respect of the Affordable Rented Housing Units which also comprise Over 55 Accommodation) shall remain binding upon an Affordable Housing Provider.

2.6.3 any mortgagee or chargee or any new mortgagee or chargee of a Market Dwelling SAVE THAT if such mortgagee or chargee becomes a mortgagee in possession of the Application Site (or any part thereof) it too will be bound by the planning obligations in this Deed as if it were a person deriving title from the Owner and any legal charge taken over the Application Site in the future will take effect subject to this Deed.

2.6.4 any statutory undertakers or telecommunications provider in respect of any plant, equipment or apparatus installed on the Application Site for the purposes of the Development.

2.7 The provisions of this Deed shall not 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 Owner) pursuant to the Contract (Rights of Third Parties) Act 1999.



### **3 Expiry Modification Variation or Amendments of Planning Permission**

- 3.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure (other than an application made under Section 96A of the Act) or expires prior to the Commencement of Development.
- 3.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site 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**

- 4.1 This Deed is a Local Land Charge and shall be registered as such by the Council.

### **5 Service of Notices**

- 5.1 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**

- 6.1 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 Owner hereby covenants with the Council to perform the obligations as specified in Schedule 1 and 2.
- 7.2 The Owner hereby covenants with the County Council to perform the obligations as specified in Schedule 1 and Schedule 3.
- 7.3 The County Council covenants with the Owner in the terms set out in Schedule 4.
- 7.4 The Council covenants with the Owner in the terms set out in Schedule 5.

## **8 Waiver**

- 8.1 No waiver (whether expressed or implied) by the 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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **9 Change of Ownership**

- 9.1 The Owner agrees with the Council to give the Council within 10 (ten) Working Days written notice of any change in the ownership of any if its interests in the Application Site (save for any transfer in respect of an individual Dwelling) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not)

together with the area of the Application Site purchased by reference to a plan.

## **10 Interest**

- 10.1 If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the actual date of payment.

## **11 VAT**

- 11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

## **12 Indexation**

- 12.1 Any Contribution in this Deed shall be subject to Indexation or Education Indexation as applicable from the date of the Planning Permission until the date on which such sum is payable.

## **13 Dispute Resolution**

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed touching or concerning any matter or thing arising or contained in this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to an Expert being an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England to such qualifications.
- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 13.1 or as to the appropriateness of the professional body then within 14 (fourteen)

Working Days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the Expert to be appointed pursuant to clause 13.1 then such question may be referred by either party to the president for the time being of the Law Society of England and Wales and for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of a manifest error and his costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 13.3 The Expert howsoever appointed shall act as an expert and not as an arbitrator and his reasonable costs shall be at his discretion and the Expert shall be subject to the express requirement that he reaches his decision and communicates it to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 (forty six) Working Days after the date of his appointment to act.
- 13.4 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 15 (fifteen) Working Days in respect of any such submission and material and the Expert's decision shall be given in writing within 21 (twenty-one) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 21 (twenty-one) Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties.
- 13.5 The provisions of this clause shall not affect or fetter the ability of the Council to apply for and be granted any of the following: declaratory

relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

#### **14 Miscellaneous**

- 14.1 Nothing contained or implied in this Deed shall prejudice or affect or restrict the rights, discretions, powers, duties and obligations of the Council and the County Council under all statutes, by-laws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.
- 14.2 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.
- 14.3 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.
- 14.4 The Council and the County Council will upon written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled (and subject to the payment of the Council and County Council's reasonable and proper costs and charges) issue written confirmation thereof.
- 14.5 The Developer shall pay the Council's legal fees incurred in relation to this Deed the sum of £1,800 (one thousand eight hundred pounds) and the County Council's legal fees of £350 (three hundred and fifty pounds) on or before the date of this Deed.
- 14.6 The Owner shall pay to the Council the Council's Monitoring Fee on completion of this Deed.

14.7 This Deed and any dispute or claim arising out of or 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 and Wales (as they apply in England) and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

## **15 DELIVERY**

15.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof the Parties hereto have executed this Deed on the day and year first before written.

**SCHEDULE 1**  
**Owner's Obligations**

The Owner hereby covenants:

**1. Notice of Commencement**

- 1.1 To give written notice to the Council (via the Nominated Officer) and the County Council of the Commencement of Development on the Application Site within 15 (fifteen) Working Days of the same.

**2. Notice of Occupations**

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

- 2.1.1 the date of First Occupation of a Dwelling;
- 2.1.2 Practical Completion of the first Affordable Housing Unit;
- 2.1.3 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 Owner's Covenants with the Council**

The Owner covenants with the Council in the following terms:-

#### **Part 1 – Affordable Housing**

1. **Affordable Housing**
  - 1.1. The Owner shall provide and deliver Affordable Housing as part of the Development in accordance with the provisions of this Part 1 Schedule 2 and those Over 55 Accommodation Units which are also Affordable Housing Rented Units shall be subject to the provisions of Part 2 Schedule 2 of this Deed as well as the provisions of this Part 1 Schedule 2.
  - 1.2. The Owner shall submit the Affordable Housing Scheme to the Council for approval prior to Commencement of Development and the Owner shall not Commence Development or permit the Commencement of Development until the Affordable Housing Scheme has been approved in writing by the Council.
  - 1.3. 17 (seventeen) of the Dwellings to be provided with the Development shall be constructed, provided and Occupied as Affordable Housing Units in accordance with the Affordable Housing Unit Mix, which shall comprise the following:
    - 1.3.1. 4 (four) Affordable Rented Housing Units (which shall also comprise Over 55 Accommodation subject to the provisions of Part 2 of this Schedule 2) comprising 1-bed Bungalows to be constructed on plots 13, 14, 15 and 16 as shown shaded blue on Plan 2;



- 1.3.2. 6 (six) Affordable Rented Housing Units comprising 3-bedroom terraced houses to be constructed on plots 7, 8, 9, 17, 18 and 19 as shown shaded red on Plan 2; and
- 1.3.3. 7 (seven) Affordable Ownership Housing Units comprising 3-bedroom semi-detached houses to be constructed on plots 5, 6, 53 and 54 and 3-bedroom terraced houses to be constructed on 55, 56 and 57 as shown shaded purple on Plan 2.
- 1.4. The Affordable Housing Units shall be constructed and provided strictly in accordance with the approved Affordable Housing Scheme.
- 1.5. The Council shall give notice of approval or rejection of the Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 not later than 15 (fifteen) Working Days from the date of receipt by the Council of the Affordable Housing Scheme and in the event of its rejection shall (acting reasonably) set out its full reasons for rejection and specify the measures required to produce an acceptable Affordable Housing Scheme.
- 1.6. In the event that the Council rejects the Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 then the Owner may submit a revised Affordable Housing Scheme to the Council for approval whereupon the Council will again issue its decision in respect of such Affordable Housing Scheme in accordance with paragraph 1.5 above. In the alternative the Owner may seek to refer any dispute or disagreement for independent determination in accordance with Clause 13 of this Deed.
- 1.7. The Owner shall be entitled to invoke paragraph 1.6 of this Schedule 2 as many times as is necessary in order to secure an approval in respect of the Affordable Housing Scheme submitted to the Council pursuant to paragraph 1.2 of this Schedule 2.
- 1.8. All of the Affordable Housing Units must be constructed strictly in

accordance with the relevant standards laid down by the National House-Building Council so as to secure the National House-Building Council's Buildmark cover (or any equivalent cover that may be introduced in substitution from time to time) and comply with minimum internal space standards set out in the Nationally Described Space Standards (or equivalent successor standards from time to time) or other such standards agreed in writing between the Owner and the Council PROVIDED THAT such standards are no less than those applied to the Market Dwellings and PROVIDED FURTHER THAT the internal arrangements of the Affordable Rented Units which shall also comprise Over 55 Accommodation Units 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).

- 1.9. Not to Occupy or permit the Occupation of more than 75% (seventy five per cent) of the Market Dwellings within the Development until the Owner has made bona fide offers on an arm's length basis to enter into a contract to sell the Affordable Housing Units within the Development to an Affordable Housing Provider in accordance with the approved Affordable Housing Scheme and the terms of this Deed (save in respect of the Affordable Ownership Housing Units which the Council has agreed in writing may be provided as Discount Market Sale Dwellings and shall be offered to Eligible Households) and has given to the Council a summary of those Affordable Housing Providers to whom such offers have been made.
- 1.10. From the date the Affordable Housing Units within the Development are first offered to an Affordable Housing Provider pursuant to paragraph 1.9 of this Schedule 2 (above) the Owner shall use all reasonable endeavours to complete a Transfer of the Affordable Housing Units to the Affordable Housing Provider (save in respect of the Affordable Ownership Housing Units which the Council has agreed in writing which may be provided as Discount Market Sale Dwellings which shall be

Transferred to Eligible Households) in accordance with the terms of this Deed prior to the Occupation of 75% (seventy five per cent) of the Market Dwellings and the Owner shall not Occupy or permit the Occupation of more than 75% (seventy five per cent) of the Market Dwellings until all of the Affordable Housing Units have been Transferred to an Affordable Housing Provider (save in respect of the Affordable Ownership Housing Units which the Council has agreed in writing which may be provided as Discount Market Sale Dwellings which shall be Transferred to Eligible Households) in accordance with the terms of this Deed PROVIDED THAT for the avoidance of doubt there shall be no obligation on the Owner to have commenced construction of the relevant Affordable Housing Units at the point when the said Affordable Housing Units are offered in accordance with paragraph 1.10.

1.11. No more than 75% (seventy five per cent) of the Market Dwellings within the Development shall be Occupied until all of the Affordable Housing Units within the Development have been Practically Completed in accordance with the approved Affordable Housing Scheme, subject to such variations as may be agreed between the Council and the Owner from time to time.

1.12. From the date of Practical Completion each Affordable Housing Unit shall be used only as Affordable Housing (and PROVIDED ALSO THAT the Affordable Rented Units which also comprise Over 55 Accommodation Units shall also be used in accordance with Part 2 of this Schedule 2) and shall (unless otherwise agreed in writing with the Council) only be offered for Occupation to and Occupied by Eligible Households in accordance with the Priority Order unless otherwise agreed in writing with the Council SAVE THAT this obligation shall not be binding upon:

1.12.1 any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation

to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of an individual Affordable Housing Unit or any persons or bodies deriving title through such chargee or Receiver PROVIDED THAT:

- (i) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the relevant Affordable Housing Unit and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the relevant Affordable Housing Unit to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (ii) if such disposal has not completed within the 3 (three) month period, the mortgagee, chargee or receiver shall be entitled to dispose of the relevant Affordable Housing Unit free from the affordable housing provisions in this Deed which provisions shall determine absolutely in respect of such Affordable Housing Unit(s).

BUT FURTHER PROVIDED THAT at all times the rights and obligations of the mortgagee or chargee or receiver in this paragraph 1.12.1 shall not require the mortgagee or chargee to act contrary to its duties under the charge or mortgage nor oblige the mortgagee or chargee to dispose of an Affordable Housing Unit at a sum which is insufficient to redeem the outstanding sum of the mortgage or charge plus costs;

1.12.2 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

1.12.3 a disposal (and any subsequent Occupation) required by:

- (i) any statutory provisions now or hereafter in force;  
or
- (ii) Homes England; or
- (iii) a court order.

1.13 The Owner shall ensure that any Transfer of an Affordable Housing Unit:

1.13.1 to an Affordable Housing Provider shall contain the following provisions and that the following obligations shall be binding on the Affordable Housing Provider to whom the Affordable Housing Units are Transferred and all future successors in title:

- (i) A covenant that the Affordable Housing Provider shall not use the Affordable Housing Unit otherwise than for Affordable Housing (and PROVIDED ALSO THAT the Affordable Rented Units which also comprise Over 55 Accommodation Units shall also be used in accordance with Part 2 of this Schedule 2)
- (ii) A covenant that the Affordable Housing Unit shall only be offered for Occupation by Eligible Households in accordance with the Priority Order (unless otherwise agreed in writing with the Council); and
- (iii) 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 Affordable Rent; and

- (iv) A covenant that those Affordable Housing which are Shared Ownership Dwellings shall not be Occupied other than under the terms of the Shared Ownership Lease.

1.13.2 in respect of a Discount Market Dwelling, to an Eligible Household, shall be at no more than the Discount Market Sale Price contain a covenant that the Eligible Household shall not use the Affordable Housing Unit otherwise for Affordable Housing and the Transfer shall also be subject to the Discount for Sale Restriction which shall be entered in proprietorship register at the Land Registry for each and every Discount Market Dwelling on the first sale of that Discount Market Dwelling to a plot purchaser.

1.14 In the event that:

- 1.14.1 the Affordable Housing Provider to whom an offer is made by the Owner in accordance with paragraph 1.9 of this Schedule 2 declines to accept a Transfer of some or all of the Affordable Housing Units within the Development; or
- 1.14.2 no sale of some or all of the Affordable Housing Units within the Development has been effected within 6 (six) months from either the Commencement of Development or the date the Affordable Housing Units were offered to the Affordable Housing Provider in accordance with paragraph 1.9 of this Schedule 2 (whichever is the later);

then paragraph 1.15 of this Schedule 2 (below) shall apply in respect of such Affordable Housing Units.

1.15 Where this paragraph 1.15 applies then:

- 1.15.1 the Owner shall serve notice upon the Council stating that this



paragraph 1.15 applies and providing evidence as to why despite complying with paragraph 1.9 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);

1.15.2 upon receipt of the Owner's written notice served pursuant to sub-paragraph 1.15.1 above the Council shall consider the evidence (if any is available) and confirm in writing within 10 (ten) Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 1.9 of this Schedule 2 the Owner has 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.

1.16 In the event that the Council confirms in writing pursuant to sub-paragraph 1.15.2 that it disagrees that despite complying with paragraph 1.9 of this Schedule 2 the Owner has been unable to Transfer the Affordable Housing Units to the Affordable Housing Provider then the Owner may:

1.16.1 make a further offer to Transfer the relevant Affordable Housing Units to the Affordable Housing Provider or another Affordable Housing Provider in accordance with paragraphs 1.9 of this Schedule 2 (in which case the Owner shall be entitled to invoke the procedure set out in this paragraph 1.16 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 (twenty) Working Days beginning with the date of the making of such an offer); or

1.16.2 submit further evidence and submissions to the Council in order to address the Council's reasons for disagreement (in which case

sub-paragraphs 1.15.1 to 1.15.2 of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or

1.16.3 refer any dispute or disagreement for independent determination in accordance with Clause 13 of this Deed.

1.17 In the event that the Council or Expert pursuant to Clause 13 of this Deed confirms pursuant to this paragraph 1.17 of this Schedule 2 or Clause 13 (as the context requires) that despite complying with paragraph 1.9 of this Schedule 2 the Owner has been unable to Transfer the Affordable Housing Units to the Affordable Housing Provider then the Owner shall be entitled to dispose of the relevant Affordable Housing Units as Discount Market Sale Dwellings PROVIDED that such disposal shall be at no more than the Discount Market Sale Price and shall be to Eligible Households subject to Priority Order in perpetuity and a Discount for Sale Restriction shall be entered in the proprietorship register at the Land Registry for each and every Discount Market Sale Dwelling on the first sale of that Discount Market Sale Dwelling to a plot purchaser.

## **Part 2 - Over 55 Accommodation**

### **2 Over 55 Accommodation**

2.1. The Owner shall provide and deliver Over 55 Accommodation as part of the Development in accordance with the provisions of this Part 2 Schedule 2 PROVIDED ALSO THAT the Over 55 Accommodation Units which comprise an Affordable Housing Rented Units shall also be subject to the provisions of Part 1 of Schedule 2 of this Deed as well as the provisions of this Part 2 of Schedule 2.

2.2. 9 (nine) of the Dwellings to be provided within the Development shall be constructed and provided in accordance with the terms of this Deed as Over 55 Accommodation Units of which:



- 2.2.1. 4 (four) of the Over 55 Accommodation Units (which shall also comprise Affordable Rented Units subject also to the provisions of Part 1 Schedule 2) shall comprise 1-bed Bungalows to be constructed on plots 13, 14, 15 and 16 as shown on Plot 2; and
- 2.2.2. 5 (five) of the Over 55 Accommodation Units (which shall be a Market Dwelling) shall comprise 3 bedroom Bungalows to be constructed on plots 29, 30, 31, 47 and 48 as shown on Plot 2.
- 2.3. The Over 55 Accommodation Units shall each provide a principal 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 Nationally Described Space Standards and 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 provisions) and 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.
- 2.4. The Over 55 Accommodation Units shall not be Occupied by a person under the age of 55 years (SAVE 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).
- 2.5. Any Transfer of the Over 55 Accommodation Units shall contain a covenant that the Over 55 Accommodation Units shall not be Occupied by a person under the age of 55 years (SAVE 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).
- 2.6. The Market Over 55 Accommodation shall be properly marketed and advertised as such on the open market subject to the occupancy condition as set out in paragraph 2.4 of this Part 2 Schedule 2.

2.7. In the event that despite the proper marketing of the Market Over 55 Accommodation no sale of some or all of the Market Over 55 Accommodation has been effected within 6 (six) months of Practical Completion of the relevant unsold unit or units then paragraph 2.8 of this Part 2 Schedule 2 (below) shall apply in respect of such unit or units of Market Over 55 Accommodation.

2.8. Where paragraph 2.7 applies then:

2.8.1. the Owner may at any time serve notice upon the Council stating that this paragraph 2.8 applies and providing evidence as to why despite complying with paragraph 2.6 of this Schedule 2 the Owner has been unable to sell off some or all of the Market Over 55 Accommodation to those eligible for such units together with evidence of such proper marketing as was carried out to effect the sale; and

2.8.2. upon receipt of the Owner's written notice served pursuant to sub-paragraph 2.8.1 above the Council shall consider the evidence (if any is available) and confirm in writing within 10 (ten) Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 2.6 of this Part 2 Schedule 2 the Owner has been unable to sell some or all of the Market Over 55 Accommodation to those eligible for such units and in the event that the Council disagrees the Council shall set out its full reasons for such disagreement.

2.9. In the event that the Council confirms in writing pursuant to sub-paragraph 2.8.2 that it disagrees that despite complying with paragraph 2.6 of this Schedule 2 the Owner has been unable to sell the Market Over 55 Accommodation to those eligible for such units then the Owner may:

2.9.1. submit further evidence and submissions to the Council in order

to address the Council's reasons for disagreement in which case sub-paragraphs 2.8.1 and 2.8.2 of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or

2.9.2. refer any dispute or disagreement for independent determination in accordance with Clause 13 of this Deed.

2.10. In the event that the Council or an Expert (pursuant to Clause 13 of this Deed) confirms pursuant to this paragraph 2.10 of this Schedule 2 or Clause 13 (as the context requires) that despite complying with paragraph 2.6 of this Schedule 2 the Owners have been unable to sell some or any of the Market Over 55 Accommodation to those eligible for such then the Owner shall be entitled to dispose of the relevant Market Over 55 Accommodation units on the open market free from the occupancy restrictions in this Schedule 2.

### **Part 3 - Off Site Recreation**

#### **3. Off Site Recreation Contribution and Off Site Recreation Improvements**

3.1 The Owner shall not Commence Development or permit the Commencement of Development until the Council confirms in writing whether:

3.1.1 the Owner shall be required to pay the Off-Site Recreation Contribution, in which case the provisions of Part 3A of this Schedule shall apply; or

3.1.2 the Owner shall be required to make the Off Site Recreation Improvements, in which case the provisions of Part 3B of this Schedule shall apply.

#### **Part 3A – Off Site Recreation Contribution**

3.2 In the event that the Council notifies the Owner that it requires the

payment of the Off Site Recreation Contribution in accordance with paragraph 3.1.1 of this Schedule, the Owner shall:

- 3.2.1 pay to the Council the Off Site Recreation Contribution prior to the Occupation of 25 (twenty five) Dwellings.
- 3.2.2 Not Occupy or permit or allow Occupation of more than 24 (twenty four) Dwellings until the Off Site Recreation Contribution has been paid to the Council in full.

### **Part 3B – Off Site Recreation Improvements**

3.3 In the event that the Council notifies the Owner that it requires the Off Site Recreation Improvements to be made:

- 3.3.1 To submit to the Council in writing details of the Off Site Scheme for approval containing details of the proposed Off Site Recreation Improvements such improvements to cost up to but not more than the amount of the Off Site Recreation Contribution and the Owner shall not Commence Development or permit the Commencement of Development unless and until the Off Site Scheme has been approved by the Council in writing.
- 3.3.2 To carry out and complete the Off Site Recreation Improvements in accordance with the approved Off Site Scheme PROVIDED THAT the Off Site Scheme may be amended in writing from time to time with the approval of the Council.
- 3.3.3 Not to Occupy or permit or allow Occupation of more than 25 (twenty five) Dwellings unless and until the Off Site Recreation Improvements have been completed to the satisfaction of the Council strictly in accordance with the approved Off Site Scheme and the Off Site Recreation Improvements are made available for public use and the Owner has submitted to the Council a ROSPA report confirming that the Off Site Recreation Improvements are safe.

3.4 The Owner shall notify the Council of completion of the Off Site

Recreation Improvements and invite the Council to inspect the same and the Owner shall carry out any reasonable remedial works (always to be in accordance with the Off Site Scheme) identified by the Council until the Council confirms in writing that the Off Site Recreation Improvements have been completed to the Council's reasonable satisfaction.

#### **Part 4. Open Space**

##### **4. Open Space**

4.1 The Owner shall not Commence Development or permit the Commencement of Development until:

4.1.1 the Owner has submitted to the Council for its approval details of the Management Company its corporate structure directors and officers and the mechanism of funding the Management Company demonstrating that the proposed Management Company can carry out the management and maintenance of the Open space; and

4.1.2 the Open Space Specification and the Open Space Management Plan has been submitted to and approved in writing by the Council.

4.2 The Owner shall not Occupy or permit the Occupation of any Dwellings until:

4.2.1 the Management Company approved pursuant to paragraph 4.1.1 of this Schedule has been set up which is a private limited company incorporated and registered in England and Wales and funded strictly in accordance with the details approved by the Council and certified copies of the company certificate and incorporation and memorandum and articles of association have been provided to the Council; and

4.1.2 the Management Company has been appointed a named manager to be responsible for liaising with the Council and the owner-

occupiers and tenants of the Dwellings and the name and contact details of the manager have been provided to the Council.

4.3 To ensure that:

4.3.1 the manager of the Management Company appointed pursuant to paragraph 4.1.2 of this Schedule regularly updates and distributes to the owner-occupiers and tenants of each and every Dwelling their contact details (to include their name, address and telephone number); and

4.3.2 the Management Company's articles of association provide that an increase in any service charge payable by the owners of the Dwellings shall be no higher than the equivalent increase in the Index over the relevant period.

4.4 The Owner shall carry out and complete the Open Space Works in accordance with the Open Space Specification PROVIDED THAT the Open Space Specification may be amended in writing from time to time with the approval of the Council.

4.5 The Owner shall not Occupy any Dwellings unless the Owner has completed the Open Space Works and provided the Open Space strictly in accordance with the Open Space Specification to the reasonable satisfaction of the Council.

4.6 The Owner shall notify the Council of completion of the Open Space Works and invite the Council to inspect the Open Space and the Owner shall carry out any reasonable remedial works (always to be in accordance with the Open Space Specification) at the Owner's cost until the Council confirms in writing that the Open Space Works have been completed to the Council's reasonable satisfaction and should there be any disagreement subject to Clause 13.

4.7 Upon completion of the Open Space Works (including any remedial



works) on the Open Space to the reasonable satisfaction of the Council the Owner shall during the Maintenance Period:

4.7.1 permit full and unfettered public access to the Open Space from the date of completion of the Open Space Works; and

4.7.2 be responsible for the management and maintenance of the Open Space free of defects during the Maintenance Period.

4.8 Upon the expiry of the Maintenance Period the Owner shall serve notice on the Council notifying it of completion of the Maintenance Period and invite the Council to inspect the Open Space Works and the Owner shall carry out any further remedial works (always to be in accordance with the Open Space Specification) at the Owner's cost identified by the Council acting reasonably to ensure that the Open Space Works function as designed without defects and and should there be any disagreement subject to Clause 13.

4.9 The Owner shall as soon as reasonably practicable following the expiry of the Maintenance Period Transfer the Open Space to the Management Company and pay to the Management Company such funding as may have been identified in the details approved by the Council pursuant to paragraph 4.1.1.

4.10 Upon completion of the Transfer to the Management Company the Management Company (and absent any such Transfers the Owner) shall:

4.10.1 Not use the Open Space for any purpose other than for the provision of public open space for the benefit of members of the public;

4.10.2 Maintain and manage the Open Space in a clean and tidy condition and free of defects and in accordance with the approved Open Space Management Plan;

4.10.3 Not to build or allow or suffer to be built any building on the



relevant part of the Open Space save for any buildings and structures permitted in the Open Space Specification; and

4.10.4 Allow full and unfettered public access to the Open Space, subject to any byelaws the Council may make.

- 4.11 The Owner shall not Occupy or permit the Occupation of more than 85% of the Dwellings unless and until the Open Space is Transferred to the Management Company in accordance with the provisions of this Deed.
- 4.12 In the event of any failure by the Owner to manage and maintain the Open Space (including any failure to carry out any remedial works required to address any defaults) in accordance with the provisions of this Deed, the Council may in its absolute discretion be entitled to serve notice of such default on the Owner specifying a reasonable period within which the Owner must remedy those defects and may thereafter enter and remain on the Application Site (by its employees or by contractor or otherwise) and carry out such works and/or implement such measures as the Council considers reasonably necessary.
- 4.13 The Owner shall pay to the Council the reasonable costs incurred by the Council in carrying out any remedial works and/or implementing any measures required pursuant to paragraph 4.12 above, with such costs to be paid to the Council within 10 (ten) Working Days of receipt of an invoice or the same and to be registrable as a charge over the Site.

### **SCHEDULE 3**

#### **The Owner covenants to the County Council**

The Owner hereby covenants with the County Council as follows:

#### **1 Contribution Triggers**

- 1.1 Not to Occupy nor permit the Occupation of more than 24 (twenty-four) Dwellings until 50% (fifty per cent) of the Primary Education Contribution has been paid to the County Council.
- 1.2 Not to Occupy nor permit the Occupation of more than 46 Dwellings until the remaining 50% (fifty per cent) of the Primary Education Contribution has been paid to the County Council.
- 1.3 Not to Occupy nor permit the Occupation of more than 24 (twenty-four) Dwellings until 50% (fifty per cent) of the Secondary Education Contribution has been paid to the County Council.
- 1.4 Not to Occupy nor permit the Occupation of more than 46 (forty six) Dwellings until the remaining 50% (fifty per cent) of the Secondary Education Contribution has been paid to the County Council.

#### **2 Notification**

- 2.1 To notify the County Council at the address shown in this Deed within 10 (ten) Working Days of the above trigger points in paragraph 1 to this Schedule 3 having been reached.

## **SCHEDULE 4**

### **Covenants by the County Council**

1. To pay any Contributions received into a separately identified interest-bearing section of the County Council's combined accounts as soon as reasonably practicable.
2. The Contributions paid to the County Council shall be used solely for the purposes set out in this Deed and for no other purpose.
3. The County Council shall not use the Primary Education Contribution or any part of it other than for the provision of additional primary school places at Clitheroe Pendle Primary School and/or Clitheroe Brookside Primary School or the Secondary Education Contribution other than for the provision of additional secondary school places at Clitheroe Royal Grammar School and/or St. Augustine's RC High School or any subsequent name or designation by which they are known.
4. Should the Contributions not be spent on the projects named within this Deed within 5 (five) years of the payment of the final instalment of the Contribution, the County Council will return the sum which has not been expended or committed for expenditure to the party who paid the Contribution and furthermore the County Council shall ensure that sufficient local school places are provided to address the impact of the Development at no cost to the Owners.

## **SCHEDULE 5**

### **Covenants by the Council**

1. To pay any Contributions received into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.
2. The Contributions paid to the Council shall be used solely for the purposes set out in this Deed and for no other purpose.
3. Should the Contributions not be spent on the projects named within this Deed within 10 (ten) years of the final payment of the Contribution, the Council will return the sum which has not been expended or committed for expenditure (and money shall be deemed to be expended if the Council has entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) to the party who paid the Contribution **SAVE THAT** it is agreed that the Council may use public funds to carry out the purposes specified in the Deed in advance of receiving any of the sums from the Owner and may apply the sums received towards offsetting the amount spent from public funds.
4. To inform the Owner in writing pursuant to paragraph 3 of Part 3 Schedule 2 whether it requires the Off Site Recreation Contribution to be payable or the Off Site Recreation Improvements to be carried out within 10 (ten) Working Days of receipt of the notice of Commencement of Development issued by the Owner to the Council pursuant to paragraph 1 of Schedule 1.

## **APPENDIX 1**

### **Plan 1**



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Authorized Signatory

Development	Hawthorne Farm		
Location	Cilmerae		
Accounting Name	Location Plan		
Drawing Title	HTF.101		
Drawing Number	Scale: 1:250		
Revision	Scale: A2		
Drawn by	SDH	Date Started	Dec 2019
Checked by		Date	



## PERSIMMÓN

**Persimmon Homes Lancashire**

**Persimmon Homes Lancaster**  
 Persimmon House, Lancaster Business Park, Colton Road, Lancaster, LA13BQ  
 024 542 000 Fax 01524 542 001 Web: [www.persimmonhomes.com](http://www.persimmonhomes.com)

## APPENDIX 2

### Plan 2



existing gas main & associated easement

- bin collection point

Development	Hawthorne Farm				
Location	Chilchew				
Accessing Home					
Drawing the	Planning Layout				
Drawing Number	HTF.PLO1				
Revision	J	Name n.42	1:500	Date issued	Oct 2018
Quantity	SDH				
Created by					Loce

 **PERSIMMON**

**Persimmon Homes Lancashire**

Head Office: Persimmon Homes Lancashire, The Coltsford, Ince, Warrington, Cheshire, WA1 4JD  
Tel: 01244 24 0000 Fax: 01244 242 000 Email: [www.persimmonhomes.co.uk](mailto:www.persimmonhomes.co.uk)



Authorized Signatory

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## **APPENDIX 3**

**Education Contribution Assessment dated 15 July 2021**



# Education Contribution Assessment

**Land off Hawthorne Farm - 3/2019/1104**

*Ribble Valley Borough Council*

15<sup>th</sup> July 2021

### **Education Assessment 15<sup>th</sup> July 2021**

Lancashire County Council is responsible for the provision of school places across the 12 county districts. The county has been facing significant increases in the birth rate at the same time as capital funding from the Department for Education has been significantly reduced.

In accordance with Lancashire County Council's 'School Place Provision Strategy', the following will apply:

Where the growth in pupil numbers is directly linked to housing development and existing school places are not sufficient to accommodate the potential additional pupils that the development may yield, Lancashire County Council would seek to secure developer contributions towards additional school places. Only by securing such contributions (which, depending upon the scale of development, may also include a contribution of a school site), can Lancashire County Council mitigate against the impact upon the education infrastructure which the development may have.

This assessment shows the level of impact on primary and secondary school places relevant to the following development and provides details on the level of contribution required to mitigate the development impact:

#### **Land off Hawthorne Farm - 3/2019/1104**

##### **Pupil Yield**

Through a detailed research project carried out during 2012 LCC have established a pupil yield to be applied for the bedroom mix within a development.

Using the Rightmove database (based on Land Registry information), a cross matching exercise was undertaken to match the first occupation of a house with the relevant School Census. The research enabled LCC to ascertain the likely impact of a dwelling with 1, 2, 3, 4, or 5+ bedrooms in terms of the child yield. This enabled LCC to project the pupil yield of new houses, based on the number of bedrooms per dwelling.

LCC will seek to apply these pupil yields to our assessment, however, if bedroom information has not been provided by the developer LCC will apply the 4 bedroom yield, to provide a medium to worst case scenario. Once bedroom information is available the impact of this development will be reassessed using the yield information provided in the 'Development details' section below.

**Local primary schools within 2 miles of development**

When assessing the need for an education contribution from this development Lancashire County Council considers primary school provision within a 2 mile radius of the proposed site. Details of the schools relevant to this site are provided below:

<b>School Name</b>	<b>Latest Number on Roll *</b>	<b>Future Planned Net Capacity (Jan 2026) **</b>	<b>Projected Pupils by Jan 2026 ***</b>
Clitheroe Pendle Primary School	350	321	414
Clitheroe Brookside Primary School	172	210	202
St Michael and St John's RC Primary School. Clitheroe	172	210	176
St James' Church of England Primary School. Clitheroe	309	300	342
Clitheroe Edisford Primary School	224	210	258
Waddington and West Bradford CofE Voluntary Aided Primary School	173	189	186
Chatburn Church of England School	122	112	150
<b>Total</b>	<b>1522</b>	<b>1552</b>	<b>1728</b>

\* Latest Number on Roll (NOR) reflects the most up-to-date pupil numbers at the school. Assessments between 1st December and 31st March will use October NOR, assessments between 1st April and 30th November will use January NOR.

\*\* The net capacity figure is agreed via consultation with the schools, during September each year. The future net capacity includes any agreed capacity changes, which LCC have been informed about.

\*\*\* Based on the latest projections at the time of the assessment. Please note that the figures provided are based upon current circumstances and this position is subject to change in response to a number of factors that can affect parental preference. The figures take into account the latest available birth information, evidence of migration and also the projected pupil place demand in 5 years.

\*\*\*\*Please note, these forecasted figures will not be the capacity of the school in the forecasted year, they are an apportionment of the projected overall figures.

**Projected places in 5 years: -176**

Additional information which may provide context to the figures above has been included in the table below. This table provides year by year pupil projections for the schools affected by the development.

<b>JAN 2022</b>	<b>JAN 2023</b>	<b>JAN 2024</b>	<b>JAN 2025</b>	<b>JAN 2026</b>
1488	1542	1556	1562	1578

The figures above show the forecast number on roll before housing and migration is applied. Using the appropriate district's 5 year Housing Land Supply documents (or

equivalent) and migration figures in 5 years' time we forecast there will be **1728** pupils in these schools.

#### Development details

Number of bedrooms	Yield applied per dwelling	Number of dwellings	Primary yield for this development
1	0.01		
2	0.07		
3	0.16	25	4
4	0.38	13	4.94
5	0.44	10	4.4
<b>Totals</b>		<b>48</b>	<b>(13.3) 13 Places</b>

#### Education requirement

Latest projections for the local primary schools show there to be a shortfall of 176 places in 5 years' time. These projections take into account the current numbers of pupils in the schools, the expected take up of pupils in future years based on the local births, the expected levels of inward and outward migration based upon what is already occurring in the schools and the housing development within the local 5 year Housing Land Supply document (or equivalent), which already have planning permission.

With an expected yield of 13 places from this development the shortfall would increase to 189.

Therefore, we would be seeking a contribution from the developer in respect of the full pupil yield **of this development**, i.e. 13 places.

*\*Please note at this stage a full claim was identified, and this does not take into account any planning approvals subsequent to those included in the housing land supply.*



### Local Secondary schools within 3 miles of the development

When assessing the need for an education contribution from this development Lancashire County Council considers secondary school provision within a 3 mile radius of the proposed site. Details of the schools relevant to this site are provided below:

School Name	Latest Number on Roll *	Future Planned Net Capacity (Jan 2026) **	Projected Pupils by Jan 2026 ***
Clitheroe Royal Grammar School	748	750	793
Ribblesdale High School	1336	1425	1468
Bowland High School	560	550	618
<b>Total</b>	<b>2644</b>	<b>2725</b>	<b>2879</b>

\* Latest Number on Roll (NOR) reflects the most up-to-date pupil numbers at the school. Assessments between 1st December and 31st March will use October NOR, assessments between 1st April and 30th November will use January NOR.

\*\* The net capacity figure is agreed via consultation with the schools, during September each year. The future net capacity includes any agreed capacity changes, which LCC have been informed about.

\*\*\* Based on the latest projections at the time of the assessment. Please note that the figures provided are based upon current circumstances and this position is subject to change in response to a number of factors that can affect parental preference. The figures take into account the latest available birth information, evidence of migration and planned housing development, to provide a 5 year projection.

\*\*\*\*Please note, these forecasted figures will not be the capacity of the school in the forecasted year, they are an apportionment of the projected overall figures.

Projected places in 5 years: **-154**

Additional information which may provide context to the figures above has been included in the table below. This table provides year by year pupil projections for the schools affected by the development.

JAN 2022	JAN 2023	JAN 2024	JAN 2025	JAN 2026
2711	2728	2731	2705	2682

The figures above show the forecast number on roll before housing and migration is applied. Using the appropriate districts 5 year Housing Land Supply documents (or equivalent) and migration figures in 5 years' time we forecast there will be **2879** pupils in these schools.



**Development details**

Number of bedrooms	Yield applied per dwelling	Number of dwellings	Secondary yield for this development
1	0.00		
2	0.03		
3	0.09	25	2.25
4	0.15	13	1.95
5	0.23	10	2.3
<b>Totals</b>		<b>48</b>	<b>(6.5) 7 Places</b>

**Education Requirement**

Latest projections for the local secondary schools show there to be a shortfall of 154 places in 5 years' time. These projections take into account the current numbers of pupils in the schools, the expected take up of pupils in future years based on the local births, the expected levels of inward and outward migration based upon what is already occurring in the schools and the housing development within the local 5 year Housing Land Supply document, which already have planning permission.

With an expected yield of 7 places from this development the shortfall would increase to 161.

Therefore, we would be seeking a contribution from the developer in respect of the full pupil yield **of this development**, i.e. 7 places.

*\*Please note at this stage a full claim was identified, and this does not take into account any planning approvals subsequent to those included in the housing land supply.*

### Summary and Calculations

This assessment represents the final position for the s106 agreement, assessed on 15/07/2021 but will be adjusted by indexation at the point of payment.

The latest information available at this time was based upon the latest School Census available and resulting projections.

Based upon the latest assessment, taking into account all approved applications, LCC will be seeking a contribution for 13 primary and 7 secondary school places.

Calculated at the current rates, this would result in a claim of:

#### Permanent expansion

Primary places:

(£17,268 x 0.97)

= £16,749.96 per place

£16,749.96 x 13 places = **£217,749.48**

Secondary places:

(£23,775 x 0.97)

= £23,061.75 per place

£23,061.75 x 7 places = **£161,432.25**

If this is not the final point of decision or later information becomes available prior to decision, LCC reserve the right to reassess the education requirements taking into account the latest information available. It should be noted that if this is an outline application the development impact should be reassessed on reserved matters approval, taking into account detailed bedroom mix information. The use of a formula to enable this should be agreed as part of the planning decision process.

### Expenditure Project

Following an initial scoping exercise of the local schools it has been determined that Lancashire County Council intend to use the primary education contribution to provide additional primary places at Clitheroe Pendle Primary School and/or the new school linked to the Higher Standen Farm (Pendle Road) Site. These are the closest primary schools to the development that have space to accommodate an expansion.

It has also been determined that Lancashire County Council intend to use the secondary education contribution to provide additional secondary places at Clitheroe Royal Grammar and/or St Augustine's RC High School. These are the closest secondary schools to the development that have space to accommodate an expansion.

Whilst the County Council have confirmed its intention to deliver projects at Clitheroe Pendle Primary School and/or the new school linked to the Higher Standen Farm (Pendle Road) Site and Clitheroe Royal Grammar and/or St Augustine's RC High School it should be noted that this would be subject to the following:

- willingness of school governing body to expand
- suitability of site
- planning permission & compliance with Section 77 of the Schools Standards and Framework Act 1998 and Schedule 1 to the Academies Act 2010.
- consultation with local schools and the community
- parental preference at the time that the places are required
- school standards at the time that the places are required
- availability of other funding streams

Should the primary and/or secondary education contribution not be spent on the project named within this assessment, the County Council will return the entire sum to the owner. Furthermore, the County Council will ensure that sufficient local primary and secondary school places are provided to address the impact of the development at no cost to the owner.

#### **Please Note**

- **This is the final position for the s106 agreement assessed on 15/07/2021.**
- **The cost per place used in this assessment is in line with the Education Methodology at the point of assessment. However, the cost per place to be used within the s106 agreement, if this is the district's chosen method of mitigation of the development impact on school places, will be that within the Education Methodology at the point of sealing.**

#### **Further Information**

If the education contribution assessment identifies the need for a contribution and/or land to be provided Lancashire County Council is, in effect, objecting to the application. A developer contribution to deliver school places and/or land meeting the school site requirements as detailed in the assessments where school land is required, to Lancashire County Council as the education authority, including indexation will, in most cases, overcome the objection. If a developer does not agree to payment of the requested education contribution or the local planning authority does not pursue Lancashire County Council's request on its behalf, Lancashire County Council cannot guarantee that children yielded by the development will be able to access a school place within reasonable distance from their home, so the development could be considered to be unsustainable. Furthermore, if the planning application is approved without the required education contribution LCC would request that the local planning authority confirm how the shortfall of school places, resulting from the development, will be addressed. (Please see page 10 of the Education Contribution Methodology).

If you require any further information about the assessment process (including the current rates), in the first instance, please refer to LCC's Planning Obligations Education Methodology and supporting information at:  
<http://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers.aspx>

## **APPENDIX 4**

### **DRAFT PLANNING PERMISSION**

### 3/2019/1104 Hawthorn Conditions

The development must be begun not later than the expiration of three years beginning with the date of this permission.

REASON: Required to be imposed pursuant to section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:

#### PLANS:

##### Housetypes:

Barton – 3 Bed

Burnham – 4 Bed

Coniston – 4 Bed

Danbury – 3 Bed

Delamere – 3 Bed

Heartwood – 1 Bed

Holywell – 5 Bed

Lockwood – 3 Bed

Marston – 4/5 Bed

#### Approved plans:

Site plan: HTF-PL01 Rev J

Boundary Treatment Plan: HTF-BTP Rev A

Fence Details: SDF12 and SDF05

Screen Wall Details: SDW08/04

REASON: For the avoidance of doubt and to clarify which plans are relevant to the consent.

#### MATERIALS

Prior to the commencement of the construction of the development hereby approved full details of the external materials and surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be constructed in accordance with the approved materials.

REASON: To ensure that the appearance of the development is appropriate to the character and setting of the area.

## RESIDENTIAL AMENITY

No building or engineering operations within the site or deliveries to and from the site shall take place other than between 07:30 hours and 18:00 hours Monday to Friday and between 08:30 hours and 14:00 hours on Saturdays, and not at all on Sundays or Bank Holidays.

REASON: In order to protect the amenities of existing residents and land uses.

## HIGHWAYS

### CONSTRUCTION PLAN

No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the submitted statement shall provide details of:

- A. The location of parking of vehicles of site operatives and visitors
- B. The location for the loading and unloading of plant and materials
- C. The location of storage of plant and materials used in constructing the development
- D. The locations of security hoarding
- E. The location and nature of wheel washing facilities to prevent mud and stones/debris being carried onto the Highway (For the avoidance of doubt such facilities shall remain in place for the duration of the construction phase of the development) and the timings/frequencies of mechanical sweeping of the adjacent roads/highway
- F. Periods when plant and materials trips should not be made to and from the site (mainly peak hours but the developer to identify times when trips of this nature should not be made)
- G. Measures to ensure that construction and delivery vehicles do not impede access to adjoining properties.
- H. Days and hours of operation for all construction works.

The approved statement shall be adhered to throughout the construction period of the development.

REASON: In the interests of protecting residential amenity from noise and disturbance and to ensure the safe operation of the Highway.

## ELECTRIC VEHICLE CHARGING POINTS

Each dwelling shall have been provided with an electric vehicle charging point in a location suitable to enable electric vehicles to be charged at the dwelling prior to first occupation.

REASON: To ensure that the development provides adequate and appropriate sustainable transport options and in the interest of lowering emissions resultant from vehicular movements associated with the development.

All car parking and manoeuvring areas, shown on the approved plans, shall be marked out and made available for use before each dwelling, to be served by such areas, is brought into



use. The approved parking and manoeuvring areas shall be permanently maintained as approved thereafter.

REASON: To allow for the effective use of the parking areas.

#### DRAINAGE/FLOOD RISK

##### DEVELOPMENT IN ACCORDANCE WITH THE SUBMITTED FLOOD RISK ASSESSMENT:

The development permitted by this planning permission shall be carried out in accordance with the principles set out within the submitted flood risk assessment (reference: 19310-edge-XX-XX-RP-C-0001\_flood risk assessment [p04], by: Edge Consulting Engineers, dated: 4 February 2021) and outline sustainable drainage strategy (drawing: 19310-EDGE-XX-XX-DR-C-C2001 Rev P09, dated: 17 November 2020).

The measures shall be fully implemented prior to first occupation of any dwelling and in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority in consultation with the Lead Local Flood Authority.

##### FINAL SUSTAINABLE DRAINAGE SCHEME TO BE SUBMITTED

No development shall commence until a final, detailed surface water sustainable drainage scheme for the site has been submitted to, and approved in writing by, the local planning authority.

The detailed sustainable drainage scheme shall be based upon the site-specific flood risk assessment submitted and the sustainable drainage principles set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), either directly or indirectly. The detailed sustainable drainage scheme shall include, as a minimum:

- a) Final sustainable drainage plans, appropriately labelled to include:
  - i. A final surface water drainage layout plan showing all pipe and structure references, dimensions and design levels;
  - ii. A plan identifying the areas contributing to the surface water drainage network,

- including surface water flows from outside the curtilage as necessary;
- iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
  - iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
  - v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each building;

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- vi. Details of proposals to collect and mitigate surface water runoff from the development boundary; and
  - vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface waters, and deliver suitably clean water to sustainable drainage components;
- b) A full set of sustainable drainage flow calculations for the surface water drainage network. The calculations must show the full network design criteria, pipeline schedules and simulation outputs for the 1 in 1 year, 1 in 30 year and 1 in 100 year return period, plus an additional 40% allowance for climate change and an appropriate allowance for urban creep. Surface water run-off must not exceed a maximum rate of 11.7l/s.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings.

**REASON:**

To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with the Paragraphs 163 and 165 of the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems.

**CONSTRUCTION PHASE SURFACE WATER MANAGEMENT PLAN**

No development shall commence until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority. Those details shall include, as a minimum:

a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and, if surface water flows are to be discharged they are done so at a restricted rate to be agreed with the Lancashire County Council LLFA.

b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

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#### REASONS:

1. To ensure the development is served by satisfactory arrangements for the disposal of surface water during each construction phase(s) so it does not pose an undue flood risk on site or elsewhere;
2. To ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

#### OPERATION AND MAINTENANCE PLAN & VERIFICATION REPORT OF CONSTRUCTED SUSTAINABLE DRAINAGE SYSTEM:

No building hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

#### REASON:

To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Paragraph 165 of the National Planning Policy Framework.

#### ECOLOGY AND TREES

The development hereby approved shall be carried out in complete accordance with the recommendations and ecological enhancement measures detailed within Section 5 of the submitted Ecological Survey and Assessment (Ref: 2019-283 - September 2019).

REASON: In the interests of biodiversity and to enhance opportunities for species of conservation concern and reduce the impact of development.

No above ground level works shall commence or be undertaken on the construction of any dwelling until details of the provisions to be made for building dependent species of conservation concern, artificial bird nesting boxes and artificial bat roosting sites have been submitted to, and approved in writing by the Local Planning Authority.

For the avoidance of doubt the details shall be submitted on a dwelling/building dependent bird/bat species site plan and include details of plot numbers and the numbers (there shall be at least 1 nest brick/bat tile per dwelling) of artificial bird nesting boxes and artificial bat roosting site per individual dwelling and type. The details shall also identify the actual wall and roof elevations into which the above provisions shall be incorporated.

The artificial bird/bat boxes shall be incorporated into those individual dwellings during construction and be made available for use before each such dwelling is occupied and thereafter retained. The development shall be carried out in strict accordance with the approved details.

REASON: In the interests of biodiversity and to enhance nesting/roosting opportunities for species of conservation concern and protected species.

All trees identified to be retained within the submitted Arboricultural Impact Assessment Ref: P1239.19 September 2019, drawing P1239.19.01/02 shall be enclosed with temporary protective fencing in accordance with BS5837:2012 [Trees in Relation to Demolition, Design & Construction]. The fencing shall be retained during the period of construction and no work, excavation, tipping, or stacking/storage of materials shall take place within such protective fencing during the construction period.

REASON: To ensure that existing trees are adequately protected during construction in the interests of the visual amenity of the area.

Any removal of vegetation, including trees and hedges, should be undertaken outside the nesting bird season (March to August) unless an up-dated pre-clearance check has been carried out by a licensed ecologist on the day of removal and no nesting birds are present. The up-dated pre-clearance check shall have been submitted to the Local Planning Authority prior to the removal of any trees and/or hedges.

REASON: To ensure that there are no adverse effects on the favourable conservation status of birds and to protect the bird population from damaging activities.

No above ground works shall commence on site until details of a scheme for any external building or ground mounted lighting/illumination, shall have been submitted to and approved in writing by the local planning authority.

For the avoidance of doubt the submitted details shall include luminance levels and demonstrate how any proposed external lighting has been designed and located to avoid excessive light spill/pollution and shall include details to demonstrate how artificial illumination of important wildlife habitats is minimised/mitigated.

The lighting schemes shall be implemented in accordance with the approved details and retained as approved

REASON: To enable the Local Planning Authority to exercise control over development which could prove materially harmful the character and visual amenities of the immediate area and to minimise/mitigate the potential impacts upon protected species resultant from the development

Notwithstanding the submitted details, prior to any dwelling being occupied, details/elevations at a scale of not less than 1:20 of the proposed boundary walling, gates and fencing shall have been submitted to and approved by the Local Planning Authority and these details shall identify the measures to be taken to encourage habitat connectivity throughout the site. The development shall be carried out in strict accordance with the approved details.

REASON: In order that the Local Planning Authority may ensure that the detailed design of the proposal is appropriate to the locality and to enhance biodiversity.

## LANDSCAPING

Within three months of commencement of development on site, a scheme/timetable of phasing for the approved landscaping areas shall have been submitted for the written approval of the Local Planning Authority. The development shall be carried out in strict accordance with the duly approved timings and phasing's and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

REASON: To ensure the proposed landscaped areas are provided on a phase by phase basis.

Prior to occupation of the first dwelling, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas (other than within curtilages of buildings), shall be submitted to and approved in writing by the Local Planning Authority. The site thereafter shall be managed and maintained in accordance with the approved plan for a minimum period of 25 years.

REASON: To ensure the proper long-term management and maintenance of the landscaped areas in the interests of visual amenity and biodiversity enhancement.

Note : Subject to Section 106



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

**THE COMMON SEAL OF  
LANCASHIRE COUNTY COUNCIL**

**Was hereunto affixed to this Deed in the  
Presence of:-**



**Authorised Signatory**



30315

**THE COMMON SEAL OF  
RIBBLE VALLEY BOROUGH COUNCIL**  
**Was hereunto affixed to this Deed in the  
Presence of :-**


**Mayor** 

  
**Chief Executive**


1908



**EXECUTED as a DEED by**  
**HAWTHORNE FARM LIMITED**  
acting by one Director:-

Director..........

**In the presence of:**

**Witness Signature**  .....

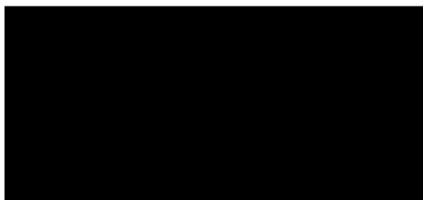
Name

Address

Occupation...*Property Investor*.....

EXECUTED as a DEED by  
PERSIMMON HOMES LIMITED  
acting by its attorneys

)  
)  
)



Attorney

In the presence of:

Witness Signature



.....

Name



.....

Address



Occupation GRADUATE PLANNER.....