

DATED 26 April

2023

(1) RIBBLE VALLEY BOROUGH COUNCIL

(2) LANCASHIRE COUNTY COUNCIL

(3) BDW TRADING LIMITED

(4) JIGSAW HOMES NORTH

FOURTH DEED OF VARIATION

**Pursuant to Section 106A of the Town and Country Planning Act 1990
relating to land off Waddington Road, Clitheroe, Lancashire BB7 2DE**



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

geldards

THIS AGREEMENT is made on the *26th* day of *April* 2023

BY:

- (1) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA ("the Council"); and
- (2) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Preston, Lancashire PR1 8XJ ("the County Council"); and
- (3) **BDW TRADING LIMITED (company registration number 03018173)** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("the First Owner"); and
- (4) **JIGSAW HOMES NORTH (Registered Society Number 16668R)** of Cavendish 249, Cavendish Street, Ashton under Lyne, Tameside OL6 7AT ("the Second Owner").

WHEREAS

- (A) The Council is the local planning authority for the purposes of the 1990 Act (as defined in the Original Agreement) for the area in which the Site (as defined in the Original Agreement) is situated and the authority by whom the obligations contained in this Deed and the Original Agreement are enforceable.
- (B) The County Council is the highway authority for the area within which the Site is situated and is also a local planning authority for the purposes of the 1990 Act by whom the obligations under Schedule Five of the Original Agreement are enforceable.
- (C) The First Owner is the registered proprietor of that part of the Site (save in respect of a number of Dwellings which have been sold to individual owner-occupiers) and whose title is registered as a freehold title at the Land Registry under Title Number LAN223498.
- (D) The Second Owner is the registered proprietor of the Affordable Housing Units forming part of the Site ~~at 4, 6, 14 and 16 Malkin Street, Clitheroe BB7 2RW whose title is registered as a freehold title at the Land Registry under Title Numbers LAN252810, LAN252843, LAN252814 and LAN242764. Set~~ *out in Schedule 1*
- (E) The Original Agreement was entered into on 24 February 2015.
- (F) The Original Permission was granted on 6 March 2015 subject to the Original Agreement.
- (G) The Second Permission was granted on 22 July 2019 and is subject to the Original Agreement by virtue of the First Deed of Variation entered into on 22 July 2019
- (H) The Original Agreement was further varied pursuant to the Second Deed of Variation on 18 November 2020 and the Third Deed of Variation on 10 August 2021.

- (l) The Owners have agreed to enter into this Deed with the Council and the County Council to amend the Original Agreement as varied by the First Deed of Variation, the Second Deed of Variation and the Third Deed of Variation

NOW THIS DEED is made pursuant to section 106A of the 1990 Act and is a planning obligation for the purposes of that section and **WITNESSES** as follows:

1. DEFINITIONS

- 1.1 Unless defined in this Deed or the context otherwise requires, a term defined in the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation shall have the same meaning in this Deed. In this Deed (including for the avoidance of doubt the recitals) the following expressions shall have the following meaning:

First Deed of Variation	means the deed of variation made under Section 106A of the 1990 Act (and other enabling provisions) dated 22 July 2019 between (1) Ribble Valley Borough Council (2) Lancashire County Council and (3) BDW Trading Limited;
Original Agreement	means the planning obligation by deed of agreement made under Section 106 of the 1990 (and other enabling provisions) dated 24 th February 2015 between (1) Nicholas Guy le Gendre Starkie (2) Clitheroe Auction Mart Company Ltd (3) John Howard Taylor Sarah Jane Howard and Samantha Anne Howard (4) Ribble Valley Borough Council and (5) Lancashire County Council;
Original Permission	means the outline planning permission subject to conditions granted by the Council on 6 March 2015 for the construction of up to 275 dwellings and access under reference 3/2014/0597
Owner	means the First Owner and the Second Owner jointly and severally;
Second Permission	means the outline planning permission subject to conditions granted pursuant to section 73 of the 1990 Act granted by the Council on 22 July 2019 for the variation of conditions 27 and 28 of the Original Permission to allow 49 houses to be occupied on the Site before all S.278 works (highway adoption/improvements) were

completed under reference
3/2019/0056;

Second Deed of Variation

means the deed of variation made under Section 106A of the 1990 Act (and other enabling provisions) dated 18 November 2020 between (1) Ribble Valley Borough Council (2) Lancashire County Council and (3) BDW Trading Limited.

Third Deed of Variation

means the deed of variation made under Section 106A of the 1990 Act (and other enabling provisions) dated 10 August 2021 between (1) Ribble Valley Borough Council (2) Lancashire County Council (3) BDW Trading Limited and (4) Jigsaw Homes North

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 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 and in the case of the Council and the County Council any successor to their statutory functions.

3. LEGAL BASIS

- 3.1 This Deed is supplemental and collateral to the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation and is made pursuant to Sections 106 and 106A of the 1990 Act and the covenants, restrictions and obligations imposed on the Owner under this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are

enforceable by the Council as local planning authority and their successors in title.

- 3.2 Insofar as any of the covenants, restrictions and obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

4. CONFIDENTIALITY

- 4.1 This Deed shall take effect from the day it is dated.

5. VARIATIONS

- 5.1 The parties agree that the Original Agreement (as varied by the First Deed of Variation, the Second Deed of Variation and the Third Deed of Variation) shall be varied in accordance with the insertions shown in blue and the deletions shown in red on the version of the Original Agreement annexed at Appendix 1 to this Deed and marked "Varied Original Agreement".

- 5.2 The parties agree that the conformed copy of the Original Agreement (as varied by the First Deed of Variation, the Second Deed of Variation, the Third Deed of Variation and this Deed) annexed at Appendix 2 to this Deed and marked "Conformed Copy of Original Agreement" shall be treated by the parties as the form of the Original Agreement from the date hereof and the Plans attached to the Original Agreement shall be deemed to be attached to Appendix 2 to this Deed at the relevant locations

6. MISCELLANEOUS

- 6.1 Upon completion of this Deed the First Owner shall pay to the Council the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 6.2 Upon completion of this Deed the First Owner shall pay to the County Council the legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed up to the sum of £350.00.
- 6.3 The Council shall register this Deed as a local land charge.
- 6.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or unenforceability of the remaining provisions of this Deed.
- 6.5 Nothing in this Deed shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligations of the Council and the County Council under all statutes, bylaws, statutory instruments, orders and regulations or any exercise of their functions as a local authority.

7. GOVERNING LAW

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.

8. CONTRACTUAL RIGHTS OF THIRD PARTY

No term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

IN WITNESS of which the parties have executed this Deed on the date first written above.

Schedule 1

Plot	Number	Address 1	Address 2	Address 3	Postcode	Title No
2	4	Malkin Street	Clitheroe	Lancashire	BB7 2RW	LAN252810
3	6	Malkin Street	Clitheroe	Lancashire	BB7 2RW	LAN252843
7	14	Malkin Street	Clitheroe	Lancashire	BB7 2RW	LAN242756
8	16	Malkin Street	Clitheroe	Lancashire	BB7 2RW	LAN242764
31	66	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN250138
32	64	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN255077
35	52	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN253375
36	54	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN253382
37	56	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN255241
38	58	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN255259
39	50	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN253385
40	48	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN253389
41	46	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN255267
42	44	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN255265
79	29	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN250142
80	27	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN250143
81	25	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN250145
82	23	Molland Drive	Clitheroe	Lancashire	BB7 2RY	LAN250147
173	19	Malkin Street	Clitheroe	Lancashire	BB7 2RW	LAN270238
174	17	Malkin Street	Clitheroe	Lancashire	BB7 2RW	LAN270240
192	9	Hewitt Close	Clitheroe	Lancashire	BB7 2SB	LAN271495

Appendix 1
Varied Original Agreement

DATED

2015

**NICHOLAS GUY le GENDRE STARKIE
CLITHEROE AUCTION MART COMPANY LIMITED**

**JOHN HOWARD TAYLOR
SARAH JANE HOWARD
SAMANTHA ANNE HOWARD**

- and -

RIBBLE VALLEY BOROUGH COUNCIL

and

LANCASHIRE COUNTY COUNCIL

PLANNING OBLIGATION

AGREEMENT

**S. 106 of the Town & Country Planning Act 1990
relating to Waddow View, Waddington Road, Clitheroe, Lancashire**

THIS AGREEMENT is made the day of2015

BETWEEN:

- (1) (a) NICHOLAS GUY le GENDRE STARKIE c/o Ingham & Yorke Huntroyde Estate Office Padiham Lancashire BB12 7QX ('the First Owner')
 - (b) CLITHEROE AUCTION MART COMPANY LIMITED whose registered office is at Ribblesdale Centre Lincoln Way Clitheroe Lancashire BB7 1QD (Company number 00054139) ('the Second Owner')
 - (c) JOHN HOWARD TAYLOR of St Annes High Halden Ashford Kent TN26 3BY SARAH JANE HOWARD of 1006-1438 Richards Street Vancouver British Columbia Canada V9A 3B8 and SAMANTHA ANNE HOWARD of 2919 Wascana Street Victoria British Columbia Canada (V9A 1V6) ('the Third Owner')
- (The parties of the first three parts being together "the Owner")
- (2) RIBBLE VALLEY BOROUGH COUNCIL of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ('the Council') and
 - (3) LANCASHIRE COUNTY COUNCIL of PO Box 78 County Hall Preston Lancashire PR1 8XJ ('the County Council')

RECITALS

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (2) The County Council is also a local planning authority, the local highway authority and the education authority for the area in which the Site is situated.
- (3) The Owner is the freehold owner of the Site as set out in Schedule 1.
The Owner submitted the Application to the Council on 4th July 2014
- (4) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates.

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1980 Act' means the Highways Act 1980;

- 1.1.2 "the 1990 Act" means the Town and Country Planning Act 1990;
- 1.1.3 "Affordable Housing" means subsidised housing that will be available to an Approved Person;
- 1.1.4 "the Affordable Housing Land" means the land on which the Affordable Housing Units are erected;
- 1.1.5 "the Affordable Housing Scheme" means a scheme to be agreed with the Council setting out the detail of the size and type of affordable housing units, the number of bedrooms, and the location of the affordable housing units on the site;
- 1.1.6 "the Affordable Housing Units" means that part of the Development comprising - 30% of the residential units constructed on the Site (to include one half of the Older Persons Housing), of which 50% are Shared Ownership Units and 50% are affordable units for rent and 'an Affordable Housing Unit' shall be construed accordingly;
- 1.1.7 "the Applicant" shall mean a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household;
- 1.1.8 "the Application" means the application for outline planning permission for the Development dated 4th July 2014 submitted to the Council and allocated reference number 3/2014/0597/P;
- 1.1.9 "Approved Person" means a person who meets the Qualifying Criteria and in respect of an Affordable Housing Unit that is also Older Person Housing means a person who also meets the Over 55s Requirements;
- ~~1.1.10 "a Mortgagee" means 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 receiver (however appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any person or bodies deriving title through such mortgagee or chargee or Receiver,~~
- 1.1.10 "the Borough" means the administrative area of the Council;
- 1.1.11 "Commencement of Development" means the commencement of any material operation (as defined in the 1990 Act section 56(4) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of surfaces, erection of

any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commencement of Development' shall be construed accordingly;

1.1.12 "Contributions" means the Education Contribution the Public Open Space Contribution and the Transport Contribution;

1.1.13 "the Date of Practical Completion" means the date of issue of a certificate of practical completion of a phase of the Development by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect;

1.1.14 "the Development" means the development of the Site with up to 275 dwellings;

1.1.15 "Discounted Sale Unit" means the sale of an Affordable Housing Unit at a discount of ~~40~~ 35 per cent of the Open Market Value in perpetuity;

1.1.16 "Dispose" means each and every means by which the right of occupation of the Affordable Housing Unit is given or transferred to another person body or company and 'Disposal' shall be construed accordingly;

1.1.17 "a Dwelling" means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly;

1.1.18 "the Education Contribution" means the sum calculated in accordance with Schedule 3;

1.1.19 "the Education Contribution Purposes" means the provision of additional educational facilities required as a consequence of the Development;

~~1.1.20 "Financial Need" means an Applicant whose means are not reasonably sufficient to enable him/her to buy or rent suitable property in the locality which is reasonably convenient and suitable for the Applicant~~

1.1.204 "Financial Need Criteria" means:

(a) that the Applicant cannot afford to rent suitable accommodation on the open market in the ~~Locality~~ Borough; or

(b) no suitable alternative affordable accommodation is available in the ~~Locality~~ Borough on the open market;

1.1.212 "a Highways Agreement" means an agreement substantially in the form of the County Council's model s278 agreement providing for those matters set out in Schedule 4 as appropriate;

1.1.223 "Homes ~~and Communities Agency~~ England" means ~~the Homes and Communities Agency~~ England or ~~its statutory~~ any ~~successors~~ government agency that funds and is responsible for the delivery of new Affordable Housing and the regulation of the Affordable Housing Providers in England;

~~1.1.24 "the Housing Corporation" means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors~~

1.1.235 "Independent Valuer" means an independent chartered surveyor with not less than 10 years post qualification experience in the valuation of land and developments for use as permitted by the Planning Permission who shall be appointed by the Owner and the Council or in default of agreement within seven working days of either party seeking the agreement of the other to an appointment at the request of the Owner or the Council by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors,

1.1.246 "the Index" means in respect of the Transport Contribution the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organization, in respect of the Education Contribution the Building Cost Information Service General Building Cost Index published by the Royal Institution of Chartered Surveyors or any successor body

1.1.257 "Indexation Factor" means the recalculation of a financial contribution to be made under this Agreement applying the following formula

$$A \times B/C = D$$

A = the contributions payable in accordance with Schedules 3 and 5 to this Deed as the case may be

B = the figure shown in the relevant Index for the month before the date such relevant Contribution is paid

C = the figure shown in the relevant Index for the month and year of the date of this Agreement

D = the recalculated sum payable

1.1.268 "Interest" means interest at 1% above the base lending rate of Royal Bank of Scotland Bank plc from time to time,

1.1.279 "the Local Housing Allowance" means the Local Housing Allowance rates for the Borough ~~of Ribble Valley~~ from time to time or any statutory replacement thereof

1.1.2830 "Living" means ~~those currently living in the Locality or Borough (as applicable),~~ having their principal residence;

1.1.3429 "the Market Housing Units" means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing,

1.1.30 "a Mortgagee" means 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 receiver (however

appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any person or bodies deriving title through such mortgagee or charge or Receiver.

1.1.312 "Next of Kin" means mother, father, brother, sister or adult ~~dependant~~dependent children.

1.1.323 "Nominated Officer" means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place,

1.1.334 "Nomination Process" means the process of nominating an Approved Person in accordance with the Council's Allocation Policy,

1.1.345 "Notice" means a written notice from the Owner to the Council confirming that the Owner intends to market for sale Shared Ownership Units and in which the Owner invites the Council to agree the Open Market Value of the Shared Ownership Units,

~~1.1.36 "Occupation" means the use of a Market Housing Unit for residential purposes;~~

1.1.357 "to Occupy" means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupation" and "Occupied" shall be construed accordingly,

1.1.368 'Older Persons Housing' means dwellings suitable to accommodate older people comprising 15% of the total number of housing units constructed on the Site of which 50% will be Affordable Housing Units and 50% Market Housing Units

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

1.1.379.1 a willing seller; and

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

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

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

1.1.379.5 that both parties to the transaction had acted knowledgeable prudently and without compulsion;

1.1.38 "Original Planning Permission" the outline planning granted by the Council on 6 March 2015 with reference number 3/2014/0597

1.1.39 "Over 55s Requirement" means a person who is disabled and/or is over the age of 55 years except that in circumstances of a married couple or civil partnership where at least one person in the married couple or civil partnership is not less than 55 years of age or is disabled'

1.1.40 'The Owner' means the First Owner, the Second Owner and the Third Owner

~~1.1.41 The 'Title Plan' means the plan number 1 attached to this deed,~~

1.1.412 'Planning Permission' the Original Planning Permission and/or the Second Planning Permission

1.1.42 "Protected Tenant" means any Occupier of an Affordable Housing Unit who shall exercise a statutory entitlement to buy or acquire the relevant Dwelling or any Shared Ownership lessee exercising the right to staircase to 100% of the equity share of a Dwelling or any successor in title either directly or indirectly.

1.1.43 The 'Public Open Space Contribution' means the sum set out in Schedule 4

1.1.44 'Qualifying Criteria' means priority in which an Applicant who meets the Financial Need Criteria will be allocated a Rental Agreement of a Rented Unit being first in priority order;

(a) those currently Living in the Borough for more than ten years'

(b) those currently Living in the Borough and have done so continually for between five to ten years

(c) those currently Living in the Borough and have done so continually for a minimum of twelve months; or

(d) those currently Working in the Borough to which they have applied for accommodation;

(e) those Returning to the Borough; and finally

(f) those who are able to justify a requirement for accommodation in the Borough;

1.1.45 'the Registered ~~Social Landlord~~Provider' (RSLP) means a company or organisation whose aim or function includes the provision and management of Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) and which is either:

(a) a Non Profit ~~Registered social landlord~~ Provider as defined in ~~Part 1 of~~ the Housing and Regeneration Act 1996/2008 (or as redefined by any amendment, replacement or re-enactment of that Act), ~~who is and~~ registered with ~~the Housing Corporation~~Homes England; or

(b) any company or other body approved by Homes England for receipt of social housing grant pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act, and who is approved by the Council (such approval not to be unreasonably withheld or delayed),

1.1.46 "the Regulations" means the Community Infrastructure Levy Regulations 2010 no. 948,

1.1.47 "Rental Agreement" means a letting agreement for a Rented Unit granted by the Registered Social Landlord on its standard terms and conditions, or by the Owner under the provisions of clause 4.1.2 of Schedule 2, to an Approved Person in accordance with the Nomination Process as shall be appropriate for the site and subject to a rent which is accepted as affordable for the Borough by ~~the~~ Homes England and Communities Agency provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so),

1.1.48 "Rented Units" are Units which are available for rent only,

1.1.49 "Reserved Matters Consent" means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Site which permits residential development and specifies the number of dwellings and number of bedrooms permitted on that part of the Site

1.1.50 "Returning" means persons who at least one of the adult Applicants, have Next of Kin who currently live in the Borough'

~~1.1.51 "Right of Pre-emption" is a right contained in a Shared Ownership Lease for the Registered Social Landlord to buy back the Shared Ownership Units,~~

1.1.51 "Second Application" the application registered by the Council on 18 January 2019 with reference number 3/2019/0056 for the variation of conditions 27 and 28 of the Original Planning Permission to allow 49 houses to be occupied on the Site before all s278 works (highway adoption/improvements) have been completed

1.1.52 "Second Planning Permission" the planning permission granted by the Council pursuant to the Second Application

1.1.523 "Shared Ownership Lease" means a lease ~~of a Shared Ownership Unit that contains with it a Right of Pre-emption and Shared Ownership Leases shall be construed accordingly,~~ in the form of the Homes England 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.

1.1.534 "a Shared Ownership Unit" means a unit of Affordable Housing in respect of which a ~~s~~Shared ~~Q~~ownership ~~I~~lease is granted by the Registered Social Landlord to an Approved Person and Shared Ownership Unit shall be construed accordingly

1.1.545 "the Site" means the land against which this deed may be enforced shown edged red green and orange on the Title Plan and described in Schedule 1, and

~~1.1.55 "a Social Rented Unit" means an Affordable Housing Unit which is let subject to an assured tenancy agreement with the Registered Social Landlord to persons identified in accordance with the nominations requirements of any funding agreement as approved by the Council in writing, at a rent not exceeding the target rent of the Housing Corporation,~~

1.1.56 "Staircase" means the exercise by the occupier pursuant to the Shared Ownership Lease of the right to acquire 100% of the equitable interest in the Shared Ownership Unit by paying a percentage of the market value to the Registered Social Landlord after which the rent payable on the part retained by the Registered Social Landlord shall be reduced proportionately,

1.1.57 The 'Title Plan' means the plan number 1 attached to this deed.

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

1.1.597 "Transport Contribution" means the sums set out in Schedule 5,

1.1.5860 "Units" means the Affordable Housing Units and 'a Unit' shall be construed accordingly,

1.1.5961 "Working" means a person who is permanently employed or self-employed for a minimum of eighteen hours per week paid or unpaid in the Borough,

1.1.602 "Working Days" means any day of the week excluding Saturdays, Sundays and Bank Holidays.

~~1.1.61 "Original Planning Permission" the outline planning granted by the Council on 6 March 2015 with reference number 3/2014/0507~~

~~1.1.62 "Second Application" the application registered by the Council on 18 January 2019 with reference number 3/2019/0056 for the variation of conditions 27 and 28 of the Original Planning Permission to allow 49 houses to be occupied on the Site before all s278 works (highway adoption/improvements) have been completed~~

~~1.1.63 "Second Planning Permission" the planning permission granted by the Council pursuant to the Second Application~~

~~1.1.61 "Protected Tenant" means any Occupier of an Affordable Housing Unit who shall exercise a statutory entitlement to buy or acquire the relevant Dwelling or any Shared Ownership lessee exercising the right to staircase to 100% of the equity share of a Dwelling or any successor in title either directly or indirectly.~~

1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

- 2.1 This deed is made pursuant to the 1990 Act section 106.
- 2.2 The terms of this Deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council and the County Council as local planning authority.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

3.1.1 the grant of the Planning Permission, and

3.1.2 the Site being occupied

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

3.2 Duration

3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

3.3 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3.4 Non-enforcement

The obligations contained in this deed shall not be binding upon or enforceable against:

3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services,

3.4.2 the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations,

- 3.4.3 any mortgagee of a Registered Social Landlord or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver,
- 3.4.4 any person to whom a Registered Social Landlord grants a lease or Shared Ownership ~~Lease~~ of a Unit or any successor in title to any such person,
- 3.4.5 a tenant or any occupant of an Affordable Housing Unit exercising a right to buy, right to acquire or similar statutory right to purchase,
- 3.4.6 any mortgagee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver,
- 3.4.7 any person who by virtue of the terms of the lease of a Shared Ownership Unit is granted a new lease of that Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any successor in title of such person or mortgagee,
- 3.4.8 the purchasers or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit,
- 3.4.9 any mortgagee of a Shared Ownership Unit or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or receiver;

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

4 Owner's covenants

The Owner covenants with the Council and County Council as set out in Schedules 2, 3 and 5.

5 Provisions of immediate effect

- 5.1 On completion of this deed the Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £330 and £300 respectively.
- 5.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 5.3 The Owner agrees with the Council to give the Council prompt written notice within 14 days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

6 Notices

- 6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 6.2 The address for any notice or other written communication shall be within the United Kingdom.
- 6.3 A notice or communication shall be served or given:
- 6.3.1 on the Owner at c/o Ingham & Yorke Huntroyde Estate Office Padiham BB12 7QX or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of J H Staples,
 - 6.3.2 on the Council at Church Walk Clitheroe Lancashire BB7 2RA or such other address as shall be notified in writing to the Owner from time to time, marked for the attention of the Housing Strategy Officer
 - 6.3.3 on the County Council at PO Box 78 County Hall Preston Lancashire PR1 8XJ

7 Local land charge

- 7.1 This deed shall be registered as a local land charge.
- 7.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall immediately effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

8 Jurisdiction and legal effect

- 8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.
- 8.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 8.3 No waiver (whether expressed or implied) by the Council (or the County Council or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the County Council or Owner) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 8.4 The provisions of this deed (other than this clause 8.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

- 8.5 Subject to clause 8.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 8.5 shall include the Owner the Council and the County Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 8.5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.5.1 For the purposes of this clause 8.5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.5.2 Any dispute over the identity of the Specialist is to be referred to at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange this nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 8.6 The Specialist is to act as an independent expert and:
- 8.6.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 8.6.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 8.6.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 8.6.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 8.6.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 8.6.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.

- 8.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 8.8 This clause 8 does not apply to disputes in relation to matters of law, enforcement or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

9 Indexation, interest and VAT

- 9.1 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.
- 9.2 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.
- 9.3 The Contributions set out in Schedule 3 and Schedule 5, including every instalment where a Contribution is payable by instalments, shall be adjusted in accordance with the Indexation Factor from the date of this deed to the date of payment.

10 Contributions

- 10.1 In the event that any of the Contributions shall not have been expended or contractually committed to be spent then on expiry of a five year period (to be calculated from the date that the last instalment of the Contribution is paid to the County Council) then the County Council covenant to repay the Contribution or the unexpended balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen thereon shall be promptly repaid to the Owner
- 10.2 The Council and the County Council respectively shall hold any Contribution paid to it in accordance with the provisions of this Agreement in an interest bearing account pending use

11. Community Infrastructure Levy

- 11.1 If after the date of this Agreement the Council approves a charging schedule pursuant to the Regulations under the Planning Act 2008 as amended and the same has taken effect and as a consequence thereof any planning obligations under this Agreement change and/or require that the Landowner must pay a sum of money to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any planning obligation of a party under this Agreement, then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date they are entered into.

11.2 If having regard to the Regulations as amended it is expressly declared by the Secretary of State or an Inspector appointed by him that any of the Contributions have not been taken into account in the determination of the Application as a reason for the grant of planning permission then the obligations clauses of this Agreement relating to the relevant Contribution(s) shall be severed and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

IN WITNESS whereof the parties of the first to third parts have set their hands and deliver this as their deed the day and year first before written

SCHEDULE 1

The Owner's Title and Site Description

All that freehold land shown edged red, green and orange on the plan comprising:

First Owner – part of Chews Farm Clitheroe being registered with title absolute under title number LAN152692 edged red on the Title Plan

Second Owner – edged green on the Plan being part of the land comprised in a Conveyance dated 14th May 1949 made between (1) Frank Shirley Adams and (2) Clitheroe Auction Mart Co Ltd

Third Owner – edged orange on the plan being registered with possessory title under title number LA641973

SCHEDULE 2

The Owner's Covenants with the Council

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

1 Progress of development

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development and
- 1.2 upon first Occupation of a ~~d~~Dwelling

2 Affordable housing

- 2.1 To build the Units in accordance with the Planning Permission and the Affordable Housing Scheme.
- 2.2 To use its best endeavours to ~~dispose of~~ Transfer the Units to an RSLP.
- 2.3 To procure that on any ~~Disposal~~ such Transfer the RSLP shall covenant:

2.3.1 Not to let the Rented Units other than by way of a Rental Agreement save that if on the first letting of any Rented Unit after a period of 4 weeks of requesting nominations a suitable tenant cannot be found by reason of the Over 55's Requirement the RP may with the consent of the Council (such consent not to be unreasonably withheld) offer such a unit to a person who does not meet the Over 55's Requirement and further save that if on the second or any subsequent letting of any Rented Unit after a period of 2 weeks of requesting nominations a suitable tenant cannot be found by reason of the Over 55's Requirement the RSL may with the consent of the Council (such consent not to be unreasonably withheld) offer such a unit to a person who does not meet the Over 55's Requirement

2.3.24 Not to ~~Dispose of any interest in~~ Transfer the Units or any part thereof ~~prior to the grant of a Shared Ownership Lease~~ save to another RSLP ~~who~~ that has been approved in writing by the Council (such consent not to be unreasonably withheld or delayed)

2.3.32 ~~To ensure that the Units which are available to occupy are~~ Not to dispose of any Shared Ownership Units ~~and Rented Units made available~~ except to an Approved Person where each Shared Ownership Unit is occupied by someone who is part renting and part purchasing the property and where the share initially purchased by each occupier shall not be less than ~~thirty~~ twenty five per cent of the interest in the Shared Ownership Unit unless

otherwise agreed in writing by the Council save that if on the first disposal of any Shared Ownership Unit after a period of 8 weeks from completion of the construction and commencement of marketing such unit shall not have been disposed of by the RSL it may dispose of the Shared Ownership Unit to a person who is not an Approved Person and further save that if on the second or any subsequent disposal of any Shared Ownership Unit after a period of 6 weeks from commencement of marketing such unit shall not have been disposed of by the RSL it may dispose of the Shared Ownership Unit to a person who is not an Approved Person

2.3.43 To permit any occupier of a Shared Ownership Unit to Staircase to one hundred per cent by increments of no less than ten per cent and to ensure that every Shared Ownership Lease granted contains suitable provisions to secure compliance with this covenant

2.3.54 To ensure that the annual rent on the non-purchased share of each Shared Ownership Unit shall be in line with the prevailing normal rental levels for an RSLP ~~or such other figure as shall be approved in writing by the Council.~~

2.3.65 To ensure that the Disposal by the RSLP (and any subsequent owners)-of the Units shall be subject to the nomination rights and qualifications set out in this Schedule.

2.3.76 that the RSLP shall only transfer a Shared Ownership Unit to an Approved Person

2.3.87 that the RSLP shall serve notice in writing on the Council within twenty one Working Days of the Disposal of a Shared Ownership Unit so that the Council is kept fully informed of tenancies and ownerships on the Site.

~~2.3.8 If the RSL is minded to Dispose of the whole or any part of the Units to any other RSL then it shall serve written notice of its intention on the council and shall obtain the prior written consent of the Council to any Disposal, such consent not to be unreasonably withheld or delayed.~~

2.4 To give notice in writing to the Council within fifteen Working Days after the completion of the disposal of the Units to an RSLP.

3 Phasing

3.1 the first 33% of the affordable housing units shall be completed before 21.5% of the Market Housing Units are occupied
a further 33% of the affordable housing units shall be completed before 43% of the Market Housing Units are occupied

the final 34% of the affordable housing units shall be completed before 65% of the Market Housing Units are occupied

4 Obligations of the Owner if the Affordable Housing Units are not transferred to an RSLP

4.1 In relation to the Affordable Housing Units the obligation of this schedule to convey the Units to an RSLP shall at the Owner's discretion cease to have effect upon the expiry of a period of one year from the Date of Practical Completion of the relevant phase of Market Housing Units PROVIDED THAT:

4.1.1 it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with an RSLP; and

4.1.2 in relation to the Rented Units, the Owner shall undertake with the Council that the Owner will enter into Rental Agreements; and

4.1.3 in relation to the Shared Ownership Units, the following shall apply:-

(a) they shall be offered for sale to an Approved Person for a maximum of sixty per cent of the Open Market Value as a Discounted Sale Unit;

(b) immediately upon service of the Notice the Owner and the Council shall consult together and attempt in good faith to agree the Open Market Value of the Shared Ownership Unit(s); and

(c) if the Owner and the Council have not agreed the Open Market Value within five working days of the service of the Notice each party shall be entitled to refer the matter for determination by the Independent Valuer who shall act as an expert (and not as arbitrator).

5 Additional Affordable Provision

5.1 The Transfer or letting of the Units to any RSLP or any other person in accordance with Clause 4.1.3 shall be subject to the following provisions:

5.1.1 a covenant providing that the Units shall only be occupied by an Approved Person meeting the Qualifying Criteria and nominated in accordance with the Nomination Process except in accordance with the covenants to be given under paragraphs 2.3.1 and 2.3.3 above;

5.2 The provisions of paragraph 5.1 of this Schedule shall not be binding on a mortgagee whether or not in possession of the whole or any part of a Unit provided that such mortgagee or charge whether or not in possession exercising any power of sale shall first have used reasonable endeavours over a period of three months in consultation with the Council to dispose of the Unit to an Approved Person approved by the Council (such approval not to be unreasonably withheld or delayed);

5.3 Any Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than two months' prior notice to the Council of its intention to dispose and:

5.3.1 in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

5.3.2 if the Council does not serve its response to the notice served under paragraph 5.3 within the one month then the Mortgagee shall be entitled to dispose free of the restrictions
PROVIDED THAT at all times the rights and obligations in this paragraph 5.3 shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of moneys outstanding under the charge or mortgage

5.4 The provisions of Paragraph 5.1 of this Schedule shall not be binding on a Protected Tenant who has exercised a statutory right to buy or acquire a Dwelling or an Occupier who has purchased 100% of the equity of a Shared Ownership Unit

6 Housing to accommodate older people

To build 50% of the Older Persons Housing as Market Housing Units

SCHEDULE 3

The Education Contribution

- 1 The calculation of the education contribution will be undertaken in accordance with the following:
- 2 **"GBCI"** means the BCIS General Building Cost Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same) for the quarter in which the contribution (or any part of it) is paid;
- 3 **"Primary Cost Per Place"** means $\text{£}12,257 \times 0.9 \times \text{GBCI}/288.4$
- 4 **"Primary Education Contribution"** means the sum equating to the number of Primary Pupil Places Required x Primary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional primary school places;
- 5 **"Pupil Places Required"** means the number of primary or secondary Pupils Expected to be Resident in the Development less any Spare Places expected to be available to cater for the Development;
- 6 **"Pupils Expected to be Resident"** means the sum of the number of Dwellings less Older Persons Housing Units with a given number of bedrooms x corresponding Pupil Yield Figure for primary or secondary education (rounded to the nearest whole number);
- 7 **"Pupil Yield Figure"** means

	Total Number of Bedrooms in Dwelling - Pupil Yield per Dwelling				
	One	Two	Three	Four	Five
Primary	0.01	0.07	0.16	0.38	0.44
Secondary	0	0.03	0.09	0.15	0.23

- 8 **"Secondary Cost Per Place"** means $\text{£}18,469 \times 0.9 \times \text{GBCI}/288.4$
- 9 **"Secondary Education Contribution"** means the sum equating to the number of Secondary Pupil Places Required x Secondary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional secondary school places within three miles of the Site;

- 10 **“Space Places”** means the number of primary and secondary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 3 hereto;
- 11 Within 20 working days following the grant of a Reserved Matters Consent to notify the County Council that a Reserved Matters Consent has been granted and request that the County Council calculates the Primary Education Contribution and the Secondary Education Contribution relation to the said Reserved Matters Consent in accordance with this Deed.
- 12 The calculation of the Primary Education Contribution and the Secondary Education Contribution generally and of Spare Places shall be undertaken in the same manner as demonstrated in the County Council's Education Methodology (Appendix 1)
- 13 The County Council's pupils projections that are current at the time of the calculation shall be used
- 14 The Owner covenants with the County Council to pay the Education Contribution by 5 equal instalments the first of which will be payable on the occupation of 18% of the dwellings being constructed pursuant to the Planning Permission and thereafter each subsequent instalment to be paid on occupation of each additional 20% of the dwellings constructed pursuant to the Planning Permission
- 15 The Owner further covenants to give the County Council written notice of the occupation of the first 18% and each additional 20% of the dwellings constructed as aforesaid within 14 days of the date each such level of occupation is achieved

SCHEDULE 4

Public Open Space Contribution

- 1 The Public Open Space Contribution will be at the rate of £370 per dwelling the total to be calculated at Reserved Matters Consent stage when the actual number of dwellings approved will be known.
- 2 Subject to Clause 10 of this Agreement the Public Open Space Contribution will be used by the Council to improve the provision of activity play for all ages in Clitheroe Castle Grounds through the installation of an Outdoor Gym Adventure Play facility
- 3 The Owner covenants with the Council to pay the Public Open Space Contribution by 5 equal instalments the first of which will be payable on the occupation of 18% of the dwellings being constructed pursuant to the Planning Permission and thereafter each subsequent instalment to be paid on occupation of each additional 20% of the dwellings constructed pursuant to the Planning Permission
- 4 The Owner further covenants to give the Council written notice of the occupation of the first 18% and each additional 20% of the dwellings constructed as aforesaid within 14 days of the date each such level of occupation is achieved

SCHEDULE 5

Transport Contribution and Highways

The Owner covenants with the County Council as follows:

- 1 on submission of the first annual travel plan report to pay to the County Council the sum of £24,000 for support in delivering a successful Travel Plan
- 2 prior to occupation of the first Dwelling to pay to the County Council the sum of £10,000 in respect of provision for a secure cycle storage facility at Clitheroe Railway Station
- 3 prior to the Commencement of Development on site to pay to the County Council the sum of £6,000 for the completion of Traffic Regulation Order (TRO) investigations and legal procedures in respect of the highway projects listed below. Any works arising from such investigations and procedures shall be delivered through a Highways Agreement between the developer and the County Council under Section 278 of the Highways Act 1980.

Waddington Road	Extend the 20mph zone order to a point north of the entrance to Clitheroe cemetery; zebra crossing; amend priority and right turn junction design into site; design of mini-roundabout at junction of Railway View Road
Kirkmoor Road	New parking restriction (no waiting at any time) junction with Castle View
Bawdlands/Castle View junction	New parking restriction (no waiting at any time) on both sides of Castle View
Whalley Road	Improvements to mini-roundabout at junction with Queensway
Corbridge Court/back King Street	Improved footway and cycling provision linking site to Clitheroe Town Centre
Waterloo Road/Shawbridge Street	A scheme to mitigate the combined impact of the proposed Waddow View (3/2014/05978) and

	<p>Standen (3/2012/0942) developments to the junction to be agreed with the Develop with a Transport Contribution for this development calculated on the proportion which the growth in peak hour traffic flow at the junction from 2014 to 2018 created by Waddow View bears to the total growth arising from the two combined developments over the same period.</p> <p>PROVIDED ALWAYS THAT the Transport Contribution shall be limited to the scheme set out on Plan 2 attached hereto prepared by DTPC (Northwest) LLP in the event that the first application for Reserved Matters Consent for the Standen development is not made within 2 years of Commencement of Development.</p>
Site	Introduce 20mph zone

Appendix 2
Conformed Copy Of Original Agreement

DATED

2015

**NICHOLAS GUY le GENDRE STARKIE
CLITHEROE AUCTION MART COMPANY LIMITED**

**JOHN HOWARD TAYLOR
SARAH JANE HOWARD
SAMANTHA ANNE HOWARD**

- and -

RIBBLE VALLEY BOROUGH COUNCIL

and

LANCASHIRE COUNTY COUNCIL

PLANNING OBLIGATION

AGREEMENT

**S. 106 of the Town & Country Planning Act 1990
relating to Waddow View, Waddington Road, Clitheroe, Lancashire**

THIS AGREEMENT is made the day of2015

BETWEEN:

- (1) (a) NICHOLAS GUY le GENDRE STARKIE c/o Ingham & Yorke Huntroyde Estate Office Padiham Lancashire BB12 7QX ('the First Owner')
 - (b) CLITHEROE AUCTION MART COMPANY LIMITED whose registered office is at Ribblesdale Centre Lincoln Way Clitheroe Lancashire BB7 1QD (Company number 00054139) ('the Second Owner')
 - (c) JOHN HOWARD TAYLOR of St Annes High Halden Ashford Kent TN26 3BY SARAH JANE HOWARD of 1006-1438 Richards Street Vancouver British Columbia Canada V9A 3B8 and SAMANTHA ANNE HOWARD of 2919 Wascana Street Victoria British Columbia Canada (V9A 1V6) ('the Third Owner')
- (The parties of the first three parts being together "the Owner")
- (2) RIBBLE VALLEY BOROUGH COUNCIL of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ('the Council') and
 - (3) LANCASHIRE COUNTY COUNCIL of PO Box 78 County Hall Preston Lancashire PR1 8XJ ('the County Council')

RECITALS

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (2) The County Council is also a local planning authority, the local highway authority and the education authority for the area in which the Site is situated.
- (3) The Owner is the freehold owner of the Site as set out in Schedule 1.
The Owner submitted the Application to the Council on 4th July 2014
- (4) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates.

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1980 Act' means the Highways Act 1980;

- 1.1.2 "the 1990 Act" means the Town and Country Planning Act 1990;
- 1.1.3 "Affordable Housing" means subsidised housing that will be available to an Approved Person;
- 1.1.4 "the Affordable Housing Land" means the land on which the Affordable Housing Units are erected;
- 1.1.5 "the Affordable Housing Scheme" means a scheme to be agreed with the Council setting out the detail of the size and type of affordable housing units, the number of bedrooms, and the location of the affordable housing units on the site;
- 1.1.6 "the Affordable Housing Units" means that part of the Development comprising - 30% of the residential units constructed on the Site (to include one half of the Older Persons Housing), of which 50% are Shared Ownership Units and 50% are affordable units for rent and 'an Affordable Housing Unit' shall be construed accordingly;
- 1.1.7 "the Applicant" shall mean a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household;
- 1.1.8 "the Application" means the application for outline planning permission for the Development dated 4th July 2014 submitted to the Council and allocated reference number 3/2014/0597/P;
- 1.1.9 "Approved Person" means a person who meets the Qualifying Criteria and in respect of an Affordable Housing Unit that is also Older Person Housing means a person who also meets the Over 55s Requirements;
- 1.1.10 "the Borough" means the administrative area of the Council;
- 1.1.11 "Commencement of Development" means the commencement of any material operation (as defined in the 1990 Act section 56(4) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of surfaces, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commencement of Development' shall be construed accordingly;
- 1.1.12 "Contributions" means the Education Contribution the Public Open Space Contribution and the Transport Contribution;
- 1.1.13 "the Date of Practical Completion" means the date of issue of a certificate of practical completion of a phase of the Development by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect;

- 1.1.14 "the Development" means the development of the Site with up to 275 dwellings;
- 1.1.15 "Discounted Sale Unit" means the sale of an Affordable Housing Unit at a discount of 35per cent of the Open Market Value in perpetuity;
- 1.1.16 "Dispose" means each and every means by which the right of occupation of the Affordable Housing Unit is given or transferred to another person body or company and 'Disposal' shall be construed accordingly;
- 1.1.17 "a Dwelling" means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly;
- 1.1.18 "the Education Contribution" means the sum calculated in accordance with Schedule 3;
- 1.1.19 "the Education Contribution Purposes" means the provision of additional educational facilities required as a consequence of the Development;
- 1.1.20 "Financial Need Criteria" means:
- (a) that the Applicant cannot afford to rent suitable accommodation on the open market in the Borough; or
 - (b) no suitable alternative affordable accommodation is available in the Borough on the open market;
- 1.1.21 "a Highways Agreement" means an agreement substantially in the form of the County Council's model s278 agreement providing for those matters set out in Schedule 4 as appropriate;
- 1.1.22 "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;
- 1.1.23 "Independent Valuer" means an independent chartered surveyor with not less than 10 years post qualification experience in the valuation of land and developments for use as permitted by the Planning Permission who shall be appointed by the Owner and the Council or in default of agreement within seven working days of either party seeking the agreement of the other to an appointment at the request of the Owner or the Council by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors,
- 1.1.24 "the Index" means in respect of the Transport Contribution the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organization, in respect of the Education Contribution the Building Cost Information Service General Building Cost Index published by the Royal Institution of Chartered Surveyors or any successor body

1.1.25 "Indexation Factor" means the recalculation of a financial contribution to be made under this Agreement applying the following formula

$$A \times B/C = D$$

A = the contributions payable in accordance with Schedules 3 and 5 to this Deed as the case may be

B = the figure shown in the relevant Index for the month before the date such relevant Contribution is paid

C = the figure shown in the relevant Index for the month and year of the date of this Agreement

D = the recalculated sum payable

1.1.26 "Interest" means interest at 1% above the base lending rate of Royal Bank of Scotland Bank plc from time to time,

1.1.27 "the Local Housing Allowance" means the Local Housing Allowance rates for the Borough from time to time or any statutory replacement thereof

1.1.28 "Living" means having their principal residence;

1.1.29 "the Market Housing Units" means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing,

1.1.30 "a Mortgagee" means any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any receiver (however appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any person or bodies deriving title through such mortgagee or charge or Receiver,

1.1.31 "Next of Kin" means mother, father, brother, sister or adult dependent children.

1.1.32 "Nominated Officer" means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place,

1.1.33 "Nomination Process" means the process of nominating an Approved Person in accordance with the Council's Allocation Policy,

1.1.34 "Notice" means a written notice from the Owner to the Council confirming that the Owner intends to market for sale Shared Ownership Units and in which the Owner invites the Council to agree the Open Market Value of the Shared Ownership Units,

1.1.35 "to Occupy" means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out

or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupation" and "Occupied" shall be construed accordingly,

- 1.1.36 'Older Persons Housing' means dwellings suitable to accommodate older people comprising 15% of the total number of housing units constructed on the Site of which 50% will be Affordable Housing Units and 50% Market Housing Units
- 1.1.37 'Open Market Value' means the best price (based on a RICS valuation) at which the sale of the freehold interest in the Shared Ownership Unit (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which will still subsist and are capable of taking effect) would have been completed unconditionally for cash consideration by private treaty at the date of the Notice with vacant possession on completing of the sale assuming:
- 1.1.37.1 a willing seller; and
 - 1.1.37.2 that prior to the date of the Notice there had been a reasonable period (having regard to the nature of the Shared Ownership Unit and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale; and
 - 1.1.37.3 that the state of the market levels of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of the Notice; and
 - 1.1.37.4 that no account is taken of any additional bid by a buyer with a special interest; and
 - 1.1.37.5 that both parties to the transaction had acted knowledgeable prudently and without compulsion;
- 1.1.38 "Original Planning Permission" the outline planning granted by the Council on 6 March 2015 with reference number 3/2014/0597
- 1.1.39 "Over 55s Requirement" means a person who is disabled and/or is over the age of 55 years except that in circumstances of a married couple or civil partnership where at least one person in the married couple or civil partnership is not less than 55 years of age or is disabled'
- 1.1.40 'The Owner' means the First Owner, the Second Owner and the Third Owner
- 1.1.41 'Planning Permission' the Original Planning Permission and/or the Second Planning Permission
- 1.1.42 "Protected Tenant" means any Occupier of an Affordable Housing Unit who shall exercise a statutory entitlement to buy or acquire the relevant Dwelling or any Shared Ownership lessee exercising the right to staircase to 100% of the equity share of a Dwelling or any successor in title either directly or indirectly.

- 1.1.43 The 'Public Open Space Contribution' means the sum set out in Schedule 4
- 1.1.44 'Qualifying Criteria' means priority in which an Applicant who meets the Financial Need Criteria will be allocated a Rental Agreement of a Rented Unit being first in priority order;
- (a) those currently Living in the Borough for more than ten years'
 - (b) those currently Living in the Borough and have done so continually for between five to ten years
 - (c) those currently Living in the Borough and have done so continually for a minimum of twelve months; or
 - (d) those currently Working in the Borough to which they have applied for accommodation;
 - (e) those Returning to the Borough; and finally
 - (f) those who are able to justify a requirement for accommodation in the Borough;
- 1.1.45 'the Registered Provider' (RP) means a company or organisation whose aim or function includes the provision and management of Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) and which is either:
- (a) a Non Profit Registered Provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of that Act)and registered with Homes England; or
 - (b) any company or other body approved by Homes England for receipt of social housing grant,
- 1.1.46 "the Regulations" means the Community Infrastructure Levy Regulations 2010 no. 948,
- 1.1.47 "Rental Agreement" means a letting agreement for a Rented Unit granted by the Registered Social Landlord on its standard terms and conditions, or by the Owner under the provisions of clause 4.1.2 of Schedule 2, to an Approved Person in accordance with the Nomination Process as shall be appropriate for the site and subject to a rent which is accepted as affordable for the Borough by Homes England provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so),
- 1.1.48 "Rented Units" are Units which are available for rent only,
- 1.1.49 "Reserved Matters Consent" means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Site which permits residential development and specifies the number of dwellings and number of bedrooms permitted on that part of the Site
- 1.1.50 "Returning" means persons who at least one of the adult Applicants, have Next of Kin who currently live in the Borough'

- 1.1.51 "Second Application" the application registered by the Council on 18 January 2019 with reference number 3/2019/0056 for the variation of conditions 27 and 28 of the Original Planning Permission to allow 49 houses to be occupied on the Site before all s278 works (highway adoption/improvements) have been completed
- 1.1.52 "Second Planning Permission" the planning permission granted by the Council pursuant to the Second Application
- 1.1.53 "Shared Ownership Lease" means a lease in the form of the Homes England 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.
- 1.1.54 "a Shared Ownership Unit" means a unit of Affordable Housing in respect of which a Shared Ownership Lease is granted by the Registered Social Landlord to an Approved Person and Shared Ownership Unit shall be construed accordingly
- 1.1.55 "the Site" means the land against which this deed may be enforced shown edged red green and orange on the Title Plan and described in Schedule 1, and
- 1.1.56 "Staircase" means the exercise by the occupier pursuant to the Shared Ownership Lease of the right to acquire 100% of the equitable interest in the Shared Ownership Unit by paying a percentage of the market value to the Registered Social Landlord after which the rent payable on the part retained by the Registered Social Landlord shall be reduced proportionately,
- 1.1.57 The 'Title Plan' means the plan number 1 attached to this deed,
- 1.1.58 "Transfer" means in relation to the transfer of an interest in property the transfer of a freehold interest
- 1.1.59 "Transport Contribution" means the sums set out in Schedule 5,
- 1.1.60 "Units" means the Affordable Housing Units and 'a Unit' shall be construed accordingly,
- 1.1.61 "Working" means a person who is permanently employed or self-employed for a minimum of eighteen hours per week paid or unpaid in the Borough,
- 1.1.62 "Working Days" means any day of the week excluding Saturdays, Sundays and Bank Holidays.

1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

- 2.1 This deed is made pursuant to the 1990 Act section 106.
- 2.2 The terms of this Deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council and the County Council as local planning authority.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Site being occupied

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

3.2 Duration

- 3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.
- 3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.
- 3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

3.3 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3.4 Non-enforcement

The obligations contained in this deed shall not be binding upon or enforceable against:

- 3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services,
- 3.4.2 the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations,
- 3.4.3 any mortgagee of a Registered Social Landlord or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver,
- 3.4.4 any person to whom a Registered Social Landlord grants a lease or Shared Ownership Lease of a Unit or any successor in title to any such person,
- 3.4.5 a tenant or any occupant of an Affordable Housing Unit exercising a right to buy, right to acquire or similar statutory right to purchase,

- 3.4.6 any mortgagee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver,
- 3.4.7 any person who by virtue of the terms of the lease of a Shared Ownership Unit is granted a new lease of that Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any successor in title of such person or mortgagee,
- 3.4.8 the purchasers or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit,
- 3.4.9 any mortgagee of a Shared Ownership Unit or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or receiver;

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

4 Owner's covenants

The Owner covenants with the Council and County Council as set out in Schedules 2, 3 and 5.

5 Provisions of immediate effect

- 5.1 On completion of this deed the Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £330 and £300 respectively.
- 5.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 5.3 The Owner agrees with the Council to give the Council prompt written notice within 14 days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

6 Notices

- 6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 6.2 The address for any notice or other written communication shall be within the United Kingdom.
- 6.3 A notice or communication shall be served or given:

- 6.3.1 on the Owner at c/o Ingham & Yorke Huntroyde Estate Office Padiham BB12 7QX or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of J H Staples,
- 6.3.2 on the Council at Church Walk Clitheroe Lancashire BB7 2RA or such other address as shall be notified in writing to the Owner from time to time, marked for the attention of the Housing Strategy Officer
- 6.3.3 on the County Council at PO Box 78 County Hall Preston Lancashire PR1 8XJ

7 Local land charge

- 7.1 This deed shall be registered as a local land charge.
- 7.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall immediately effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

8 Jurisdiction and legal effect

- 8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.
- 8.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 8.3 No waiver (whether expressed or implied) by the Council (or the County Council or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the County Council or Owner) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 8.4 The provisions of this deed (other than this clause 8.4 which shall be effective in any event) shall be of no effect until this deed has been dated.
- 8.5 Subject to clause 8.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 8.5 shall include the Owner the Council and the County Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 8.5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
 - 8.5.1 For the purposes of this clause 8.5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to

developments in the nature of the Development and property in the same locality as the Site.

8.5.2 Any dispute over the identity of the Specialist is to be referred to at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange this nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

8.6 The Specialist is to act as an independent expert and:

8.6.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

8.6.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

8.6.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.6.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

8.6.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.6.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.

8.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.8 This clause 8 does not apply to disputes in relation to matters of law, enforcement or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

9 Indexation, interest and VAT

9.1 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

- 9.2 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.
- 9.3 The Contributions set out in Schedule 3 and Schedule 5, including every instalment where a Contribution is payable by instalments, shall be adjusted in accordance with the Indexation Factor from the date of this deed to the date of payment.

10 Contributions

- 10.1 In the event that any of the Contributions shall not have been expended or contractually committed to be spent then on expiry of a five year period (to be calculated from the date that the last instalment of the Contribution is paid to the County Council) then the County Council covenant to repay the Contribution or the unexpended balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen thereon shall be promptly repaid to the Owner
- 10.2 The Council and the County Council respectively shall hold any Contribution paid to it in accordance with the provisions of this Agreement in an interest bearing account pending use

11. Community Infrastructure Levy

- 11.1 If after the date of this Agreement the Council approves a charging schedule pursuant to the Regulations under the Planning Act 2008 as amended and the same has taken effect and as a consequence thereof any planning obligations under this Agreement change and/or require that the Landowner must pay a sum of money to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any planning obligation of a party under this Agreement, then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date they are entered into.
- 11.2 If having regard to the Regulations as amended it is expressly declared by the Secretary of State or an Inspector appointed by him that any of the Contributions have not been taken into account in the determination of the Application as a reason for the grant of planning permission then the obligations clauses of this Agreement relating to the relevant Contribution(s) shall be severed and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

IN WITNESS whereof the parties of the first to third parts have set their hands and deliver this as their deed the day and year first before written

SCHEDULE 1

The Owner's Title and Site Description

All that freehold land shown edged red, green and orange on the plan comprising:

First Owner – part of Chews Farm Clitheroe being registered with title absolute under title number LAN152692 edged red on the Title Plan

Second Owner – edged green on the Plan being part of the land comprised in a Conveyance dated 14th May 1949 made between (1) Frank Shirley Adams and (2) Clitheroe Auction Mart Co Ltd

Third Owner – edged orange on the plan being registered with possessory title under title number LA641973

SCHEDULE 2

The Owner's Covenants with the Council

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

1 Progress of development

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development and
- 1.2 upon first Occupation of a Dwelling

2 Affordable housing

- 2.1 To build the Units in accordance with the Planning Permission and the Affordable Housing Scheme.
- 2.2 To use its best endeavours to Transfer the Units to an RP.
- 2.3 To procure that on any such Transfer the RP shall covenant:

2.3.1 Not to let the Rented Units other than by way of a Rental Agreement save that if on the first letting of any Rented Unit after a period of 4 weeks of requesting nominations a suitable tenant cannot be found by reason of the Over 55's Requirement the RP may with the consent of the Council (such consent not to be unreasonably withheld) offer such a unit to a person who does not meet the Over 55's Requirement and further save that if on the second or any subsequent letting of any Rented Unit after a period of 2 weeks of requesting nominations a suitable tenant cannot be found by reason of the Over 55's Requirement the RSL may with the consent of the Council (such consent not to be unreasonably withheld) offer such a unit to a person who does not meet the Over 55's Requirement

2.3.2 Not to Transfer the Units or any part thereof save to another RP that has been approved in writing by the Council (such consent not to be unreasonably withheld or delayed)

2.3.3 Not to dispose of any Shared Ownership Unit except to an Approved Person where each Shared Ownership Unit is occupied by someone who is part renting and part purchasing the property and where the share initially purchased by each occupier shall not be less than twenty five per cent of the interest in the Shared Ownership Unit unless otherwise agreed in writing by the Council save that if on the first disposal of any Shared Ownership Unit after a period of 8 weeks from completion of the construction and commencement of marketing

such unit shall not have been disposed of by the RSL it may dispose of the Shared Ownership Unit to a person who is not an Approved Person and further save that if on the second or any subsequent disposal of any Shared Ownership Unit after a period of 6 weeks from commencement of marketing such unit shall not have been disposed of by the RSL it may dispose of the Shared Ownership Unit to a person who is not an Approved Person

- 2.3.4 To permit any occupier of a Shared Ownership Unit to Staircase to one hundred per cent by increments of no less than ten per cent and to ensure that every Shared Ownership Lease granted contains suitable provisions to secure compliance with this covenant
 - 2.3.5 To ensure that the annual rent on the non-purchased share of each Shared Ownership Unit shall be in line with the prevailing normal rental levels for an RP
 - 2.3.6 To ensure that the Disposal by the RP (and any subsequent owners) of the Units shall be subject to the nomination rights and qualifications set out in this Schedule.
 - 2.3.7 that the RP shall only transfer a Shared Ownership Unit to an Approved Person
 - 2.3.8 that the RP shall serve notice in writing on the Council within twenty one Working Days of the Disposal of a Shared Ownership Unit so that the Council is kept fully informed of tenancies and ownerships on the Site.
- 2.4 To give notice in writing to the Council within fifteen Working Days after the completion of the disposal of the Units to an RP.

3 Phasing

- 3.1 the first 33% of the affordable housing units shall be completed before 21.5% of the Market Housing Units are occupied
a further 33% of the affordable housing units shall be completed before 43% of the Market Housing Units are occupied
the final 34% of the affordable housing units shall be completed before 65% of the Market Housing Units are occupied

4 Obligations of the Owner if the Affordable Housing Units are not transferred to an RP

- 4.1 In relation to the Affordable Housing Units the obligation of this schedule to convey the Units to an RP shall at the Owner's discretion cease to have effect upon the expiry of a period of one year from the Date of Practical Completion of the relevant phase of Market Housing Units PROVIDED THAT:
 - 4.1.1 it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with an RP; and

- 4.1.2 in relation to the Rented Units, the Owner shall undertake with the Council that the Owner will enter into Rental Agreements; and
- 4.1.3 in relation to the Shared Ownership Units, the following shall apply:-
- (a) they shall be offered for sale to an Approved Person for a maximum of sixty per cent of the Open Market Value as a Discounted Sale Unit;
 - (b) immediately upon service of the Notice the Owner and the Council shall consult together and attempt in good faith to agree the Open Market Value of the Shared Ownership Unit(s); and
 - (c) if the Owner and the Council have not agreed the Open Market Value within five working days of the service of the Notice each party shall be entitled to refer the matter for determination by the Independent Valuer who shall act as an expert (and not as arbitrator).

5 Additional Affordable Provision

- 5.1 The Transfer or letting of the Units to any RP or any other person in accordance with Clause 4.1.3 shall be subject to the following provisions:
- 5.1.1 a covenant providing that the Units shall only be occupied by an Approved Person meeting the Qualifying Criteria and nominated in accordance with the Nomination Process except in accordance with the covenants to be given under paragraphs 2.3.1 and 2.3.3 above;
- 5.2 The provisions of paragraph 5.1 of this Schedule shall not be binding on a mortgagee whether or not in possession of the whole or any part of a Unit provided that such mortgagee or charge whether or not in possession exercising any power of sale shall first have used reasonable endeavours over a period of three months in consultation with the Council to dispose of the Unit to an Approved Person approved by the Council (such approval not to be unreasonably withheld or delayed);
- 5.3 Any Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than two months' prior notice to the Council of its intention to dispose and:
- 5.3.1 in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

5.3.2 if the Council does not serve its response to the notice served under paragraph 5.3 within the one month then the Mortgagee shall be entitled to dispose free of the restrictions

PROVIDED THAT at all times the rights and obligations in this paragraph 5.3 shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of moneys outstanding under the charge or mortgage

5.4 The provisions of Paragraph 5.1 of this Schedule shall not be binding on a Protected Tenant who has exercised a statutory right to buy or acquire a Dwelling or an Occupier who has purchased 100% of the equity of a Shared Ownership Unit

6 Housing to accommodate older people

To build 50% of the Older Persons Housing as Market Housing Units

SCHEDULE 3

The Education Contribution

1 The calculation of the education contribution will be undertaken in accordance with the following:

2 **"GBCI"** means the BCIS General Building Cost Index published by the Royal Institute of Chartered
3 Surveyors or any successor body (or such other index replacing the same) for the quarter in which the
4 contribution (or any part of it) is paid;

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

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

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

11 **"Pupils Expected to be Resident"** means the sum of the number of Dwellings less Older Persons
12 Housing Units with a given number of bedrooms x corresponding Pupil Yield Figure for primary or
13 secondary education (rounded to the nearest whole number);

14 **"Pupil Yield Figure"** means

	Total Number of Bedrooms in Dwelling - Pupil Yield per Dwelling				
	One	Two	Three	Four	Five
Primary	0.01	0.07	0.16	0.38	0.44
Secondary	0	0.03	0.09	0.15	0.23

15 **"Secondary Cost Per Place"** means $\text{£}18,469 \times 0.9 \times \text{GBCI}/288.4$

16 **"Secondary Education Contribution"** means the sum equating to the number of Secondary Pupil
17 Places Required x Secondary Cost Per Place to be paid to the County Council in accordance with the
18 terms of this Deed for the provision of additional secondary school places within three miles of the
19 Site;

- 10 **“Space Places”** means the number of primary and secondary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 3 hereto;
- 11 Within 20 working days following the grant of a Reserved Matters Consent to notify the County Council that a Reserved Matters Consent has been granted and request that the County Council calculates the Primary Education Contribution and the Secondary Education Contribution relation to the said Reserved Matters Consent in accordance with this Deed.
- 12 The calculation of the Primary Education Contribution and the Secondary Education Contribution generally and of Spare Places shall be undertaken in the same manner as demonstrated in the County Council's Education Methodology (Appendix 1)
- 13 The County Council's pupils projections that are current at the time of the calculation shall be used
- 14 The Owner covenants with the County Council to pay the Education Contribution by 5 equal instalments the first of which will be payable on the occupation of 18% of the dwellings being constructed pursuant to the Planning Permission and thereafter each subsequent instalment to be paid on occupation of each additional 20% of the dwellings constructed pursuant to the Planning Permission
- 15 The Owner further covenants to give the County Council written notice of the occupation of the first 18% and each additional 20% of the dwellings constructed as aforesaid within 14 days of the date each such level of occupation is achieved

SCHEDULE 4

Public Open Space Contribution

- 1 The Public Open Space Contribution will be at the rate of £370 per dwelling the total to be calculated at Reserved Matters Consent stage when the actual number of dwellings approved will be known.
- 2 Subject to Clause 10 of this Agreement the Public Open Space Contribution will be used by the Council to improve the provision of activity play for all ages in Clitheroe Castle Grounds through the installation of an Outdoor Gym Adventure Play facility
- 3 The Owner covenants with the Council to pay the Public Open Space Contribution by 5 equal instalments the first of which will be payable on the occupation of 18% of the dwellings being constructed pursuant to the Planning Permission and thereafter each subsequent instalment to be paid on occupation of each additional 20% of the dwellings constructed pursuant to the Planning Permission
- 4 The Owner further covenants to give the Council written notice of the occupation of the first 18% and each additional 20% of the dwellings constructed as aforesaid within 14 days of the date each such level of occupation is achieved

SCHEDULE 5

Transport Contribution and Highways

The Owner covenants with the County Council as follows:

- 1 on submission of the first annual travel plan report to pay to the County Council the sum of £24,000 for support in delivering a successful Travel Plan
- 2 prior to occupation of the first Dwelling to pay to the County Council the sum of £10,000 in respect of provision for a secure cycle storage facility at Clitheroe Railway Station
- 3 prior to the Commencement of Development on site to pay to the County Council the sum of £6,000 for the completion of Traffic Regulation Order (TRO) investigations and legal procedures in respect of the highway projects listed below. Any works arising from such investigations and procedures shall be delivered through a Highways Agreement between the developer and the County Council under Section 278 of the Highways Act 1980.

Waddington Road	Extend the 20mph zone order to a point north of the entrance to Clitheroe cemetery; zebra crossing; amend priority and right turn junction design into site; design of mini-roundabout at junction of Railway View Road
Kirkmoor Road	New parking restriction (no waiting at any time) junction with Castle View
Bawdlands/Castle View junction	New parking restriction (no waiting at any time) on both sides of Castle View
Whalley Road	Improvements to mini-roundabout at junction with Queensway
Corbridge Court/back King Street	Improved footway and cycling provision linking site to Clitheroe Town Centre
Waterloo Road/Shawbridge Street	A scheme to mitigate the combined impact of the proposed Waddow View (3/2014/05978) and

	<p>Standen (3/2012/0942) developments to the junction to be agreed with the Develop with a Transport Contribution for this development calculated on the proportion which the growth in peak hour traffic flow at the junction from 2014 to 2018 created by Waddow View bears to the total growth arising from the two combined developments over the same period.</p> <p>PROVIDED ALWAYS THAT the Transport Contribution shall be limited to the scheme set out on Plan 2 attached hereto prepared by DTPC (Northwest) LLP in the event that the first application for Reserved Matters Consent for the Standen development is not made within 2 years of Commencement of Development.</p>
Site	Introduce 20mph zone

**THE COMMON SEAL of
RIBBLE VALLEY BOROUGH COUNCIL**
was hereunto affixed to this Deed
in the presence of:



Mayor



Chief Executive

**THE COMMON SEAL of
LANCASHIRE COUNTY COUNCIL**
was hereunto affixed to this Deed
in the presence of:



Authorised Signatory



1999



31264

SIGNED as a DEED by



as Attorney for **BDW Trading Limited** under a Power of Attorney dated 28 March 2022

both in the presence of:



Print name:



Occupation:

SENIOR LAND MANAGER



EXECUTED as a DEED by affixing of **THE COMMON SEAL** of **JIGSAW HOMES NORTH** in the presence of:



Authorised Signatory



Authorised Signatory

