

**Dated** \_\_\_\_\_ **2022**

**PERSIMMON HOMES LIMITED**

and

**LANCASHIRE COUNTY COUNCIL**

and

**RIBBLE VALLEY BOROUGH COUNCIL**

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**DEED OF VARIATION**

**Made pursuant to Section 106A of the Town and Country Planning Act 1990  
(as amended) relating to Land at Hawthorne Farm, Clitheroe**

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**kuits** | solicitors



## **THIS DEED IS DATED**

### **PARTIES**

- (1) **PERSIMMON HOMES LIMITED** of Persimmon House, Fulford, York, YO19 4FE, incorporated and registered in England and Wales with company number 04108747 ('the **Owner**')
- (2) **LANCASHIRE COUNTY COUNCIL**, of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ ('the **County Council**')
- (3) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe BB7 2RA ('the **Council**')

each a "Party" and together the "Parties"

### **Whereas**

- A.** The Council is the local planning authority for the purposes of Section 106 and Section 106A of the Town and County Planning Act 1990 (as amended) ("the Act") for the area in which the Application Site (as defined in the Original Agreement) is situated and is the authority by which the planning obligations herein contained are enforceable.
- B.** On 20<sup>th</sup> December 2021 the Parties entered into a s106 agreement to regulate development of the Application Site pursuant to the pending planning permission ("the Original Agreement") following a resolution by the Council that planning permission be granted subject to the Owner entering into a Planning Obligation Deed in accordance with Section 106 of the 1990 Act.
- C.** On 23<sup>rd</sup> December 2021 the Council granted planning permission under reference 3/2019/1104 for the erection of 58 dwellings (including 30% affordable dwellings) with open space, infrastructure and associated works on the Application Site ("the Planning Permission").
- D.** The Owner is the freehold owner of the Application Site, which is to be registered at HM Land Registry under title number LAN258727 following completion of registration of the transfer dated 17 February 2022 made between Hawthorne Farm Ltd and Persimmon Homes Limited (formerly part of title number LA968636 and the whole of title number LA762060).
- E.** The Parties have agreed to enter into this Deed with the intention of varying the Original Agreement as set out in the Schedule to this Deed and that the obligations contained in this Deed are binding upon the Owner in respect of the Application Site and that such obligations can be enforced by the Council against the Owner and their successors in title in respect of the Application Site.

NOW THIS DEED is made pursuant to section 106A of the Act and WITNESSES as follows:

### **1. Definitions and Interpretation**

- 1.1. Save for the definitions and rules of interpretation herein and unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 1.2. Clause headings shall not affect the interpretation of this deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6. A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.9. Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.10. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11. Where 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.

## **2. Statutory provision**

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers with the intention that it shall bind the interests of the Owner in the Application Site.

## **3. Variations**

- 3.1. The Parties agree that the provisions of the Original Agreement remain in full force and effect save as expressly varied by the Schedule to this Deed.
- 3.2. The variations to the Original Agreement set out in the Schedule to this Deed shall take effect upon the date hereof as though they had originally been contained within the Original Agreement.

## **4. Covenants to the Council**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

## **5. Local land charge**

This deed shall be registered as a local land charge.

## **6. Council's costs**

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

## **7. Third party rights**

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

**8. 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.

**IN WITNESS** whereof this document has been executed as a deed the day and year first above written:

## SCHEDULE

### Variations to the Original Agreement

The Parties hereby agree that the following amendments shall be made to the Original Agreement: -

1.1 The definition of "Over 55 Accommodation" shall be deleted and replaced with the following:

*“Over 55 Accommodation” means a Dwelling that shall not be Occupied by a person under the age of 55 years (except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age) and the unit of accommodation shall be designed to meet Nationally Described Space Standards and the internal arrangements of the unit of accommodation/dwelling shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of the Building Regulations 2010 (or any subsequent revisions).”*

1.2 Paragraph 2.2.2 of Part 2 of Schedule 2 shall be deleted and replaced with the following:

*“5 (five) of the Over 55 Accommodation Units (which shall be Market Dwellings) shall comprise 3 bedroom Dwellings to be constructed on plots 29, 30, 31, 47 and 48 as shown on Plot 2.”*

1.3 Paragraph 2.3 of Part 2 of Schedule 2 shall be deleted and replaced with the following:

*“The Over 55 Accommodation Units shall be designed to meet Nationally Described Space Standards and the internal and external arrangements of the unit of accommodation shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building Regulations 2010 (or any subsequent provisions).”*

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

Authorised Signatory

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

Mayor

Chief Executive

**EXECUTED** as a Deed by  
**PERSIMMON HOMES LIMITED**  
acting by its attorneys:

Attorney 1 Signature: .....

Attorney 1 Name: .....

in the presence of:

Witness Signature: .....

Witness Name (in caps): .....

Witness Address: .....

Witness Occupation: .....

Attorney 2 Signature: .....

Attorney 2 Name: .....

in the presence of:

Witness Signature: .....

Witness Name (in caps): .....

Witness Address: .....

Witness Occupation: .....