

[REDACTED]

DATED

22nd December

2023

(1) [REDACTED]

and

(2) [REDACTED]

and

(3) [REDACTED]

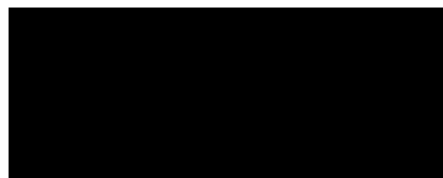
SECTION 106 AGREEMENT
TOWN AND COUNTRY PLANNING ACT 1990
relating to land at Phase 3, Alston Grange, Preston Road, Longridge



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

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THIS AGREEMENT AND DEED is made on 22nd December 2023

BETWEEN

- (1) **LANCASHIRE COUNTY COUNCIL** of PO Box 100, County Hall, Preston, Lancashire, PR1 0LD ("the **County Council**"); and
- (2) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA ("the **Council**"); and
- (3) [REDACTED]
("the **Owner**")

WHEREAS

- A The Owner is the freehold owner of the Property the title of which land is as at the date of this Deed registered at HM Land Registry as forming part of the land under title number LAN208122.
- B The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Property is situated and by whom the obligations contained in this Deed are enforceable.
- C The County Council is the local highway authority and local education authority for the area in which the Property is situated by whom the obligations in Schedule 3 are enforceable.
- D There are no other interests in the Property that would prevent the Owner entering into and complying with this Deed.
- E Outline planning permission was granted by the Council in respect of the Property and the adjoining land within title number LAN208122 on 18 September 2017 under planning reference 3/2016/0974 for residential development including the erection of 275 dwellings, a local neighbourhood centre, access arrangements and associated landscaping/wildlife infrastructure subject to the 2017 Agreement which secured planning obligations in respect of the proposed development of the Property and adjoining land.
- F Reserved matters approval was given by the Council on 25 May 2018 under planning reference 3/2018/0105 for the erection of 256 dwellings, a local neighbourhood centre, access arrangements and associated landscaping/wildlife infrastructure.
- G The 2017 Agreement was varied by a Deed of Variation dated 23 September 2019 and references in this Agreement to the 2017 Agreement are to the 2017 Agreement as so varied.
- H The reserved matters approval was varied under planning reference 3/2021/0470 on 7 September 2021.

I The Owner has submitted the Application to the Council for full planning permission to provide for a re-plan of the Property and a net increase of 12 dwellings from the 256 dwellings previously approved under reserved matters scheme 3/2021/0470.

J Financial contributions in respect of the Longridge Loop, Public Realm Improvements, Pedestrian and Cycle Measures, Public Transport and Travel Plan necessary as a result of the construction of dwellings on the Property were secured via the 2017 Agreement. These have been paid by the Owner and it is hereby acknowledged that no further financial contributions towards these items will be required as a result of the grant of planning permission pursuant to the Application.

K This Deed is entered into by the Parties in order to secure the remaining Primary Education Contribution and obligations which arise from the re-plan of the Property and delivery of a net increase of 12 Dwellings across the Property pursuant to the Application, securing Affordable Housing, the Public Open Space Contribution and the Primary Education Contribution.

L The Council has resolved that the Application be approved subject to the entering into of this Planning Obligation Deed in accordance with Section 106 of the 1990 Act.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

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1.1 In this Deed unless the context otherwise requires:

1990 Act

means the Town and Country Planning Act 1990

2017 Agreement

means the Section 106 Agreement dated 15 September 2017 entered into between (1) the County Council (2) the Council (3) William Monks, Michael Monks, Kathleen Kinghorn and Diane McDonald (4) Neil Anthony Forshaw and Stephen Edward Joseph Forshaw and (5) William Monks (Longridge) Limited as amended by the Deed of Variation dated 23 September 2019 entered into between (1) the Council (2) the County Council and (3) Kler Community Living LLP.

Affordable Home Ownership

means shared ownership housing made available to an Affordable Housing Provider and sold 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 and permits staircasing up to 100% ownership.

Affordable Housing

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



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Affordable Housing Provider

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

Affordable Housing Scheme
Affordable Housing Units

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

means those Dwellings which are to be provided as Affordable Housing which shall be 30% of the total number of Dwellings to be provided on the Site (such number to be rounded up or down to the nearest whole number) and which units shall constitute 64% Affordable Home Ownership and 32% Affordable Rented Housing and "Affordable Housing Unit" shall be construed accordingly.

Affordable Rent

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

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Affordable Rented Housing

means those Affordable Housing Units transferred to a Registered Provider for allocation as affordable rented housing where the lettings shall be made under a form of tenancy prescribed by the Homes England and at a rent equal to or less than the prevailing affordable rent (inclusive of applicable service charges) permitted by the Homes England which shall normally be 80% of the open market rental value (or the maximum amount of local housing allowance payable for the Dwelling if this is lower than the calculated 80% figure).

Application

means the application for planning permission submitted to the Council and registered by the Council on 22 March 2023 and given reference number 3/2023/0100 for residential development of 91 units (plots 150-222 and 251-268) together with access roads, 200sqm community hall and associated parking, landscaping, footpaths, public open space and children's play area (amendment to previously approved reserved matters scheme 3/2021/0470 involving re-plan of site and net gain of 12 residential units).



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Bungalow

means a unit of accommodation that provides a principal bedroom and bathroom at ground floor, in addition to and without compromising kitchen/dining and living room provision, all of which shall be designed to meet national space standards. All internal and external arrangements of the unit of accommodation / dwelling shall also accord with

the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of the Building Regulations 2010 (or any subsequent revisions). For the avoidance of doubt the ground floor accommodation shall possess the ability to be habitable without necessitating the need for access to upper floor accommodation by the user.

Commencement of Development

means the carrying out as part of the Development of a material operation (within the meaning ascribed in Section 56 of the 1990 Act) other than (for the purposes of this Deed and for no other purposes) an operation in connection with:

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

Contribution

means all or any of the Primary Education Contribution and the Public Open Space Contribution.

Development

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

Discount Sale Unit

means a dwelling sold at a maximum sale price of 70% of Open Market Value.

Dwelling

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

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 Affordable Housing Providers in England.

Index

means:

- (a) in the case of the Primary Education Contribution the BCIS All-in Tender Price Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same) for the quarter in which the contribution (or any part of it) is paid; and
- (b) in all other cases the All Items Index of Retail Prices issued by the Office for National Statistics or in the event of discontinuance any replacement thereof or such alternative index as may be proposed by the Owner and agreed by the Council

Indexation

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

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

Interest

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

Local Housing Allowance

means the list of rents set by the Valuation Office Agency for the Longridge area.

Market Dwelling

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

Monitoring Fee

means the sum of one thousand six hundred pounds (£1,600) to be paid to the Council to cover the Council's costs in monitoring compliance with this Deed

Mortgagee

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

Nominated Officer	means the Council's Housing Strategy Officer
NPPF	means the Department for Communities and Local Government document entitled "National Planning Policy Framework" (September 2023) or any replacement or modification thereof in force from time to time.
Occupation	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupied" shall be construed accordingly.
Open Value	means the estimated amount for which a Dwelling should sell on the open market for cash consideration on the date of valuation assuming:
Market	(a) a willing buyer and a willing seller in an arm's length transaction;
	(b) that prior to the date of valuation there had been a reasonable period (having regard to the nature of the Dwelling and the state of the market) for the proper marketing of the Dwelling for the agreement of price and terms and for the completion of the same;
	(c) that the state of the market level of values and other circumstances were on any other earlier assumed date of exchange of contracts the same as on the date of valuation;
	(d) that no account is taken of any additional bid by a purchaser with a special interest; and
	(e) that each party had acted knowledgeably prudently and without compulsion.
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 couple or civil partnership is not less than 55 years of age. The internal arrangements of the unit of accommodation/dwelling shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 2015) of the Building Regulations 2010 (or any subsequent revisions).
Plan 1	means the plan annexed to this Deed at Appendix 1 and labelled "Site Location Plan".
Planning Permission	means the full planning permission subject to conditions to be granted pursuant to the Application;

**Primary
Education
Contribution**

means either:

Contribution A the sum of £77,700.00 to be used in respect of Aston Lane Catholic Primary School; or

Contribution B the sum of £92,768.00 to be used in respect of the proposed new primary school at Whittingham Hospital

As shall be notified by the County Council to the Owner in writing prior to the Occupation of any Dwellings within the Development and is to be paid to the County Council in accordance with the terms of this Deed for the provision of additional primary school places.

**Practical
Completion**

means the issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect and "Practically Completed" shall be construed accordingly.

Priority Order

means the following cascading order of persons to whom an Affordable Housing Unit must be offered in accordance with paragraph 1.10 of Schedule 2:

- (a) In the first instance where at least one ordinarily resident member of a household is a person who in the reasonable opinion of the Affordable Housing Provider is in housing need and who:
- (i) have lived in the Borough of Ribble Valley for at least 5 of the last 10 years;
 - (ii) currently live within the Borough of Ribble Valley and have done so for at least the past 12 months (proof of residence for the relevant period must be provided in the form of the electoral roll or (if such persons are not on the electoral roll) utility and council tax bills);
 - (iii) used to live in the Borough of Ribble Valley for not less than three years but was forced to move away because of the lack of Affordable Housing;
 - (iv) currently work in the Borough of Ribble Valley and have done so for at least the past 12 months for more than 18 hours per week;
 - (v) currently has a close family member (mother, father, brother, sister, son, daughter) living in the Borough of Ribble

Valley and who have done so for not less than three years.

(vi) is the wife, husband or civil partner (as defined in the Civil Partnership Act 2004) or is the resident dependent (such as a child) of such a person specified in (i) to (v) above.

(vii) where there are no persons who fit the criteria of (i) to (vi) then a person who is in housing need in accordance with the definition in Annex 2 of the NPPF.

Property

means the freehold property on the west side of Preston Road, Longridge as shown edged red on Plan 1 against which this Deed may be enforced and registered as at the date of this Deed at HM Land Registry under title number LAN208122

Protected Tenant

means any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or

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(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or

(c) has been granted Affordable Home Ownership by the Affordable Housing Provider and acquired 100% equity in the Affordable Housing Unit.

and any successor in title to any of (a) (b) or (c)

Public Space Contribution

means the sum of sixty thousand pounds (£60,000.00) to be paid to the Council in accordance with the terms of this Deed towards improvements to community facilities at Kestor Lane Recreation Ground, Longridge

Working Days

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

Interpretation

1.2 The headings in this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever.

1.3 Unless the context requires otherwise reference to this Deed to a clause schedule or paragraph are references respectively to a clause schedule of paragraph of this Deed.



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- 1.4 Where any part to this Deed comprises two or more persons any obligation on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of these persons and references to that party shall include reference to each or any of those persons.
- 1.5 A reference to any statute or statutory section shall be taken to include a reference to any statutory, amendment, modification or re-enactment of it for the time being in force.
- 1.6 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa.

2. Enforceability

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
 - 2.2 This Deed is a planning obligation under Section 106 of the 1990 Act with the intent to bind the Property and is enforceable by the Council (and where applicable the County Council) as local planning authority against the Owner and successors in title to observe and perform the covenants herein.
 - 2.3 The obligations of this Deed are conditional on:
 - (a) the grant of the Planning Permission; and
 - (b) the Commencement of the Development pursuant to the Planning Permission
- SAVE FOR the provisions of clauses 3, 4, 5, 9 and 13 which shall come into effect immediately upon completion of this Deed.
- 2.4 No persons shall be liable for a breach of covenant contained in this Deed after he shall have parted with his interest in the Property or the part in respect of which any liability has arisen which is the subject of a breach but without prejudice to liability for any existing breach of covenant prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Property in any transfer of the Property will constitute an interest for the purposes of this clause 2.4.
 - 2.5 Nothing in this Deed shall affect, bind or be enforceable against any individual person in respect of any completed Dwelling and its curtilage acquired or leased by them for residential occupation on the Property SAVE THAT the provisions of Paragraphs 1.8 – 1.13 of Schedule 2 shall remain binding on Owner occupiers and tenants of the Affordable Housing Units and their respective successors in title and their mortgagees.
 - 2.6 This Deed shall not be binding or enforceable against any mortgagee or chargee exercising a power of sale but shall be binding on a purchaser from a mortgage in possession.
 - 2.7 The provisions of this Deed are not intended to be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor

or authority to the Council or the County Council or successors in the title to the Owner) pursuant to the Contract (Rights of Third Parties) Act 1998.

3. Expiry Modification Variation or Amendments of Planning Permission

3.1 If the Planning Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect.

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

4. Registration

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

5. 2017 Agreement

5.1 For the avoidance of doubt from the Commencement of Development the Property will cease to be bound by the 2017 Agreement and the only planning obligations which will be binding upon the Property from the Commencement of Development are those contained within this Deed.

6. Service of Notices

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

7. Reasonableness

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

8. Covenants

8.1 The Owner hereby covenants with the Council to perform the obligations as specified in Schedules 1 and 2.

8.2 The Owner hereby covenants with the County Council to perform the obligations as specified in Schedules 1 and 3.

8.3 The Council covenants with the Owner in the terms set out in Schedule 5.

8.4 The County Council covenants with the Owner in the terms set out in Schedule 4.

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9. Waiver

- 9.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. Change of Ownership

- 10.1 The Owner shall give the Council within 10 (ten) Working Days written notice of any change in the ownership of any of its interests in the Property (save for any transfer in respect of an individual Dwelling or any transfer to an Affordable Housing Provider comprising only of Dwellings) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Property purchased by reference to a plan.

11. Interest

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

12. VAT

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

13. Indexation

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

14. Miscellaneous

- 14.1 Nothing in this Deed is intended to restrict the exercise by the Council or County Council of any of their powers, statutory rights, discretions and responsibilities.
- 14.2 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 14.3 This Deed is a deed and is enforceable by the Council and the County Council in relation to the obligations respectively entered into with each of them.
- 14.4 The Council and the County Council will upon written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled (and subject to the payment of the Council and County Council's reasonable and proper costs and charges) issue written confirmation thereof.
- 14.5 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in anyway arising out or connected with this Deed shall except as otherwise expressly provided be referred to the decision of a single arbitrator to be agreed by the parties or

failing Deed between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or enactment for the time being in force.

- 14.6 The Owner shall pay the Council's legal fees incurred in relation to this Deed the sum of [£TBC] (TBC) and the County Council's legal fees of £500.00 (five hundred pounds).
- 14.7 The Owner shall pay to the Council the Monitoring Fee on completion of this Deed and the Owner shall not Commence Development until the Monitoring Fee has been paid.
- 14.8 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales (as they apply in England) and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 OWNER'S OBLIGATIONS

1 Notice of Commencement

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

2 Notice of Occupations

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

- 2.1 the date of First Occupation of the first Dwelling;
- 2.2 Practical Completion of the first Affordable Housing Unit
- 2.3 the date of each other Occupation that triggers a payment or other obligation or which is otherwise referred to under the terms of this Agreement.

SCHEDULE 2 THE OWNER'S COVENANTS WITH THE COUNCIL

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

- 1 Affordable Housing**
 - 1.1** The Owner shall provide Affordable Housing as part of the Development in accordance with the provisions of this Schedule 2.
 - 1.2** The Owner shall not Commence Development until the Owner has submitted and the Council has approved in writing an Affordable Housing Scheme that shall:
 - (a)** provide 30% (thirty per cent) of the total number of Dwellings to be constructed within the Development (rounded up or down to the nearest Dwelling on a "round half up" basis) as Affordable Housing Units of which 36% (thirty-six per cent) of the Affordable Housing Units shall be Affordable Rented Housing and 64% (sixty-four per cent) of the Affordable Housing Units shall be Affordable Home Ownership.
 - (b)** provide as part of the 30% Affordable Housing Units 7.5% of the total Dwellings as Bungalows to meet the identified need for Over 55 Accommodation
 - (c)** provide as part of the Market Dwellings 7.5% of the total Dwellings as Bungalows to meet the identified need for Over 55 Accommodation
 - 1.3** The Council shall give notice of approval or rejection of each Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 not later than 20 Working Days from the date of receipt by the Council of the Affordable Housing Scheme and in the event of its rejection shall (acting reasonably) set out its full reasons for rejection and specify the measures required to produce an acceptable Affordable Housing Scheme.
 - 1.4** In the event that the Council rejects an Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 then the Owner may submit a revised Affordable Housing Scheme to the Council for approval whereupon the Council will again issue its decision in respect of such Affordable Housing Scheme in accordance with paragraph 1.4 above. in the alternative the Owner may seek to refer any dispute or disagreement for independent determination in accordance with Clause 14.8 of this Deed.
 - 1.5** The Owner shall be entitled to invoke paragraph 1.4 of this Schedule 2 as many times as is necessary in order to secure an approval in respect of an Affordable Housing Scheme submitted to the Council pursuant to paragraph 1.2 of this Schedule 2.
 - 1.6** No more than 75% (seventy-five per cent) of the Market Dwellings within the Development shall be Occupied before the Owner have offered the Affordable Housing Units within Development to an Affordable Housing Provider in accordance with the approved Affordable Housing Scheme and the terms of this Deed.
 - 1.7** From the date the Affordable Housing Units within the Development are first offered to an Affordable Housing Provider pursuant to paragraph 1.6 of this

Schedule 2 (above) the Owner shall use reasonable endeavours in seeking to transfer the relevant Affordable Housing Units to the Affordable Housing Provider in accordance with the terms of this Deed PROVIDED THAT for the avoidance of doubt there shall be no obligation on the Owner to have commenced construction of the relevant Affordable Housing Units at the point when the said Affordable Housing Units are offered in accordance with this paragraph 1.7.

- 1.8 No more than 75% (seventy-five per cent) of the Market Dwellings within the Development shall be Occupied before 100% (one hundred per cent) of the Affordable Housing Units have been Practically Completed in accordance with the approved Affordable Housing Scheme subject to such variations of the approved Affordable Housing Scheme as may be agreed between the Council and the Owner from time to time.
- 1.9 From the date of Practical Completion each Affordable Housing Unit shall be used only as Affordable Housing and shall (unless otherwise agreed in writing with the Council) only be offered for Occupation to and Occupied in accordance with the Priority Order unless otherwise agreed in writing with the Council save that this obligation shall not be binding upon:
- (a) any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any person or body deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - (i) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the relevant Affordable Housing Unit and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the relevant Affordable Housing Unit to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - (ii) if such disposal has not completed within the 3 (three) month period; the mortgagee, chargee or receiver shall be entitled to dispose of the relevant Affordable Housing Unit free from the affordable housing provisions in this Deed which provisions shall determine absolutely in respect of such Affordable Housing Unit

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

- (b) any mortgagee of an individual Affordable Housing Unit exercising its power of sale in respect of any such Affordable Housing Unit and any purchaser of an Affordable Housing Unit or any person deriving title from such a person or any successor in title thereto and their respective mortgagees and chargees from such mortgagee PROVIDED THAT:
 - (i) any such mortgagee shall prior to seeking to dispose of the Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall give not less than 2 months' prior notice to the Council of its intention to dispose; and
 - (ii) in the event that the Council responds within 1 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing whilst redeeming the outstanding sum of the mortgage plus the mortgagee's costs then the Mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer;
 - (iii) if the Council does not serve its response to the notice served under paragraph 1.13.(a) within the 1 month then the Mortgagee shall be entitled to dispose free of the restrictions set out in this paragraph 1.13 of this Schedule 2;
 - (iv) if the Council or any other person cannot within 2 months of the date of service of its response under paragraph 1.13(b) secure such transfer then provided that the mortgagee shall have complied with its obligations under paragraph 1.13(a) the mortgagee shall be entitled to dispose free of the restrictions set out in this paragraph 1.13 of this Schedule 2;]
 - (c) any Protected Tenant or any mortgagee or chargee of a Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - (d) a disposal (and any subsequent occupation) required by:
 - (i) any statutory provisions now or hereafter in force; or
 - (ii) Homes England; or
 - (iii) a court order.
- 1.10 The Owner shall ensure that any transfer of an Affordable Housing Unit to an Affordable Housing Provider shall contain the following covenants:
- (a) that the Affordable Housing Provider shall not use the Affordable Housing Unit otherwise than for Affordable Housing;
 - (b) that the Affordable Housing Unit shall only be offered for Occupation in accordance with the Priority Order (unless otherwise agreed in writing with the Council); and

- (c) that those Affordable Housing Units which are Affordable Rented Housing shall be made available for letting at a rent level not exceeding the Local Housing Allowance Rent.

1.11 In the event that:

- (a) the Affordable Housing Provider to whom an offer is made by the Owner in accordance with paragraph 1.6 of this Schedule 2 declines to accept a transfer of some or all of the Affordable Housing Units within the Development; or
- (b) no sale of some or all of the Affordable Housing Units within the Development has been effected within 6 (six) six months from either the Commencement of Development of the Development or the date the Affordable Housing Units were offered to the Affordable Housing Provider in accordance with paragraph 1.6 of this Schedule 2 (whichever is the later)

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

1.12 Where this paragraph 1.12 applies then:

- (a) the Owner may at any time serve notice upon the Council stating that this paragraph 1.12 applies and providing evidence as to why despite complying with paragraph 1.6 of this Schedule 2 the Owner has been unable to transfer the Affordable Housing Units to the Affordable Housing Provider, together with evidence from the Affordable Housing Provider that they are not willing to so purchase the Affordable Housing Units (if such evidence is available);
- (b) upon receipt of the Owner's written notice served pursuant to sub-paragraph 1.12(a) above the Council shall consider the evidence and confirm in writing within 10 Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 1.8 of this Schedule 2 the Owner have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider and in the event that the Council disagrees the Council shall set out its reasons for such disagreement.

1.13 In the event that the Council confirms in writing pursuant to sub-paragraph 1.12(b) that it disagrees that that despite complying with paragraph 1.6 of this Schedule 2 the Owner have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider then the Owner may:

- (a) make a further offer to transfer the relevant Affordable Housing Units to the Affordable Housing Provider or another Affordable Housing Provider in accordance with paragraphs 1.6 and 1.7 of the Schedule 2 (in which case the Owner shall be entitled to invoke the procedure set out in this paragraph 1.12 in the event that some or all of the Affordable Housing Units have still not been transferred to an Affordable Housing Provider at the end of a further period of 20 Working Days beginning with the date of the making of such an offer); or

- (b) submit further evidence and submissions to the Council in order to address the Council's reasons for disagreement (in which case paragraphs 1.12 of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or
 - (c) refer any dispute or disagreement for independent determination in accordance with Clause 14.5 of this Deed.
- 1.14 In the event that the Council or an arbitrator appointed pursuant to Clause 14.5 of this Deed confirms pursuant to this paragraph 1.14 of this Schedule 2 or Clause 14.5 (as the context requires) that despite complying with paragraph 1.7 of this Schedule 2 the Owner have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider then the Owner shall be entitled to dispose of the relevant Affordable Housing Units as Discount Sale Units free from the restrictions in this Schedule 2 PROVIDED that such disposal shall be at no more than 70% (seventy per cent) of Open Market Value but shall be subject to Priority Order in perpetuity

2 Public Open Space Contribution

- 2.1 To pay to the Council the Public Open Space Contribution prior to Occupation of the first Dwelling.
- 2.2 Not to Occupy or permit or allow Occupation of any Dwelling until the Public Open Space Contribution has been paid to the Council.

SCHEDULE 3 THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

The Owner hereby Covenants with the County Council as follows:

1 Primary Education Contribution

- 1.1 Within 20 Working Days following the grant of the Planning Permission the Owner covenants to notify the County Council's School Planning Team that the Planning Permission has been granted and request that the County Council confirm whether the Primary Education Contribution shall be the Contribution A: the sum of £77,000.00 to be used in respect of Alston Lane Catholic Primary School, or Contribution B: the sum of £92,768.00 to be used in respect of the Proposed New Primary School at Whittingham Hospital.
- 1.2 No Dwellings within the Development shall be Occupied until such time as the County Council has notified the Owner in writing whether the Primary Education Contribution shall be the Contribution A: the sum of £77,000.00 to be used in respect of Alston Lane Catholic Primary School, or Contribution B: the sum of £92,768.00 to be used in respect of the Proposed New Primary School at Whittingham Hospital.
- 1.3 Prior to or on Occupation of the 23rd Dwelling to pay to the County Council 60% of the notified Primary Education Contribution.
- 1.4 Not to Occupy nor permit the Occupation of more than 23 of the Dwellings until 60% of the notified Primary Education Contribution has been paid to the County Council
- 1.5 Prior to or on Occupation of the 73rd Dwelling to pay to the County Council 40% of the notified Primary Education Contribution.
- 1.6 Not to Occupy nor permit the Occupation of more than 73 of the Dwellings until 40% the notified Primary Education Contribution has been paid to the County Council

SCHEDULE 4 COVENANTS BY THE COUNTY COUNCIL

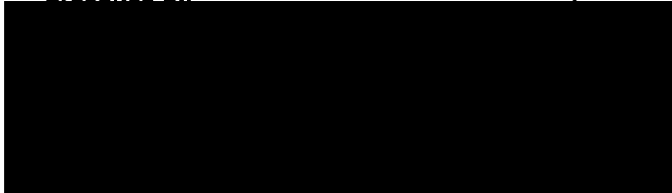
- 1.1 The County Council shall on receipt of a notice from the Occupier that the Development has Commenced notify the Owner in writing whether the Primary Education Contribution shall be Contribution A of £77,000.00 to be used in respect of an extension to Alston Lane Catholic Primary School or Contribution B sum of £92,768.00 to be used in respect of the construction of the proposed new primary school at Whittingham Hospital
- 1.2 The County Council shall not use the Primary Education Contribution other than for the purpose of a contribution towards the costs of the provision of primary education places at the schools identified within this agreement and notified by the County Council to the Owner in accordance with paragraph 1.1 of this clause (or such other name by which the schools are or become known)
- 1.3 The County Council shall hold the Primary Education Contribution in an interest-bearing account pending use for the purpose set out in paragraph 1.1 above.
- 1.4 To pay to the Owner such amount of any payment made by the Owner pursuant to this Deed to the County Council which has not been expended or committed for expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the County Council of the final instalment of such payment together with Interest, calculated at the Bank of England base lending date, from date of payment to the date of refund.
- 1.5 Upon request, the County Council shall provide to the Owner reasonable evidence as to the expenditure of the sums paid by the Owner under this Deed.

SCHEDULE 5 COVENANTS BY THE COUNCIL

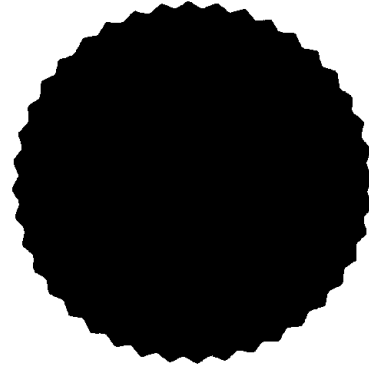
1 Contributions

- 1.1 Not to use any part of the Public Open Space Contribution other than for the purposes set out in this Deed.
- 1.2 In the event that the Contributions have not been spent or committed for expenditure by the Council within 5 years following the date of receipt of the Contributions in whole or any instalments (and money shall be deemed to be expended if the Council has entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) the Council shall refund to the Owner any part of the Contributions which has not been spent or committed for expenditure, together with any accrued Interest SAVE THAT it is agreed that the Council may use public funds to carry out the purposes specified in the Deed in advance of receiving any of the sums from the Owner and may apply the sums received towards offsetting the amount spent from public funds.

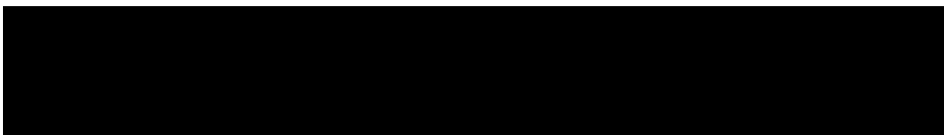
The common seal of)
RIBBLE VALLEY BOROUGH COUNCIL)
was affixed to this document in the)
presence of:)



Authorised Signatory



The common seal of)
LANCASHIRE COUNTY COUNCIL)
Was affixed to this Deed pursuant to the)
Scheme of Delegation to Chief Officers in)
the presence of:)



Authorised Signatory



31818

EXECUTED as a DEED for and on behalf
of [REDACTED]
acting by its members in the presence of

[REDACTED]

Name: ,

Name:

[REDACTED]

Authorised signatory of

Authorised signatory of

[REDACTED]

[Redacted]

Name:

Name:

[Redacted]

Authorised signatory of

Authorised signatory of

[Redacted]

[Redacted]

Name:

Name:

[Redacted]

Authorised signatory of

Authorised signatory of

[Redacted]

APPENDIX 1 – PLAN 1

