

**DATED**

**2023**

---

- (1) **RIBBLE VALLEY BOROUGH COUNCIL**
- (2) **STOCKPORT DEVELOPMENT LIMITED**

---

**DEED OF VARIATION UNDER SECTION 106 AND SECTION  
106A OF THE TOWN AND COUNTRY PLANNING ACT 1990**

relating to the development of land at Chapel Hill Farm, Chapel  
Hill, Longridge

Application No. 3/2016/1051

---

## CONTENTS

1.	DEFINITIONS .....	1
2.	CONSTRUCTION OF THIS DEED .....	2
3.	LEGAL BASIS .....	2
4.	CONDITIONALITY .....	2
5.	COVENANTS BY THE OWNERS AND PROMOTER'S CONSENT IN RESPECT OF THE PHASE DEVELOPMENT SITE .....	2
6.	MISCELLANEOUS.....	2
7.	VARIATION TO ORIGINAL AGREEMENT.....	3
8.	DISPUTE RESOLUTION .....	3
9.	WAIVER .....	4
10.	VALUE ADDED TAX.....	4
11.	JURISDICTION .....	4
12.	DELIVERY .....	4

**DATED**

**2023**

**BY**

- (1) **Ribble Valley Borough Council** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (the Council); and
- (2) **Stockport Development Limited (co number 10149031)** of 97 Northgate Road, Stockport, Cheshire, SK3 9PQ (the Owner)

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site (as hereinafter defined) is situated.
- (B) The Owner is the owner in fee simple of the Site free from incumbrances, registered under Title Number LA759319 with HM Land Registry.
- (C) On 7 November 2012 the Council granted the Planning Permission.
- (D) The parties to this Deed have agreed to enter into this Deed for the purpose of varying the Original Agreement and in pursuance of sections 106 and 106A of the 1990 Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.

**IT IS AGREED AS FOLLOWS**

**1. DEFINITIONS**

For the purposes of this Deed:

- (i) terms defined in clause 1.1 of the Original Agreement bear the same meanings as were respectively ascribed to them in the Original Agreement where they appear in this Deed unless provided otherwise in this Deed;
- (ii) the following expressions shall have the following meanings where they appear in this Deed:

<b>“Original Agreement”</b>	the legal agreement pursuant to Section 106 of the Act entered into in respect of the Application dated 1 November 2012 between (1) Ribble Valley Borough Council and (2) [ ] as varied by the Original Variation.
<b>“Original Variation”</b>	a variation to the Original Agreement dated 28 <sup>th</sup> November 2014 between (1) Ribble Valley Borough Council and (2)
<b>“Public Subsidy”</b>	means funding of up to no more than 54 Dwellings on Phase 2 in the form of grant and/or loan from Homes England or central government sources

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 expressly stated or 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 shall include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Any reference to an Act of Parliament shall include 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.
- 2.5 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 District Council and the County Council the successors to their respective statutory functions.

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106A of the 1990 Act and section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the District Council as local planning authority against the Owner.

4. **CONDITIONALITY**

The provisions in this Deed shall take effect immediately upon the date of this Deed.

5. **COVENANTS BY THE OWNERS AND THE DEVELOPER**

The Owner in respect of the Site covenants that the Site shall be bound by the obligations contained in the First Schedule of this Deed in substitution for the obligations contained in the Original Agreement.

6. **MISCELLANEOUS**

- 6.1 The Owner shall pay to the Council on completion of this Deed their reasonable legal costs being the sum of £[ ] incurred in the negotiation, preparation and execution of this Deed.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be registered as a local land charge by the District Council.

- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and if the Owner shall in its absolute discretion elect to treat the withholding of any such agreement approval consent or expression of satisfaction as a dispute referable by the Owner for resolution pursuant to clause 7 any decision of an expert in favour of the Owner shall be deemed to be an agreement approval consent or expression of satisfaction as aforesaid in respect of the subject matter submitted by the Owner to the Council or as the case may be.
- 6.5 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 enforceability of the remaining provisions of this Deed.
- 6.6 This Deed shall cease to have effect (insofar 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 prior to Commencement

## 7. **VARIATION TO ORIGINAL AGREEMENT**

- 7.1 The parties to this Deed hereby agree that the Original Agreement is varied as described in Schedule 1 of this Deed.
- 7.2 Save as varied by this Deed the provisions of the Original Agreement remain in full force and effect.

## 8. **DISPUTE RESOLUTION**

- 8.1 Where any dispute or difference arises between any parties to this Deed any party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert (the **appointed expert**) having not less than ten years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute of another professional institution or body the identity of such person in default of agreement being an appointment made on the application of any party to such dispute at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors provided that in the absence of a direction by the appointed expert in accordance with this clause as to how the costs of the reference to the appointed expert should be borne as between the parties to such dispute each party shall bear their own costs and shall share equally the costs and charges of the appointed expert.
- 8.2 The appointed expert shall:
- 8.2.1 afford to each of the parties to the dispute an opportunity to make representations to him in writing and if he/she so directs submissions upon one another's representations;
  - 8.2.2 be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;

- 8.2.3 be bound to have regard to such representations;
- 8.2.4 have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the costs and charges of the appointed expert) to be met by any party behaving unreasonably;
- 8.2.5 in the making of his/her award not be liable save to the extent in law as provided in relation to the decisions of an expert;
- 8.2.6 make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law); and
- 8.2.7 be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause.

9. **WAIVER**

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

10. **VALUE ADDED TAX**

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

11. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

12. **DELIVERY**

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

## **SCHEDULE 1**

The Original Agreement as varied by the Original Variation is to be further varied as follows:-

1. The definition of “Affordable Housing Scheme“ shall be amended by:
  - a) deleting the words “social” at point (b) on the first line.
  
2. The definition of “Affordable Housing units” shall be deleted and replaced with:

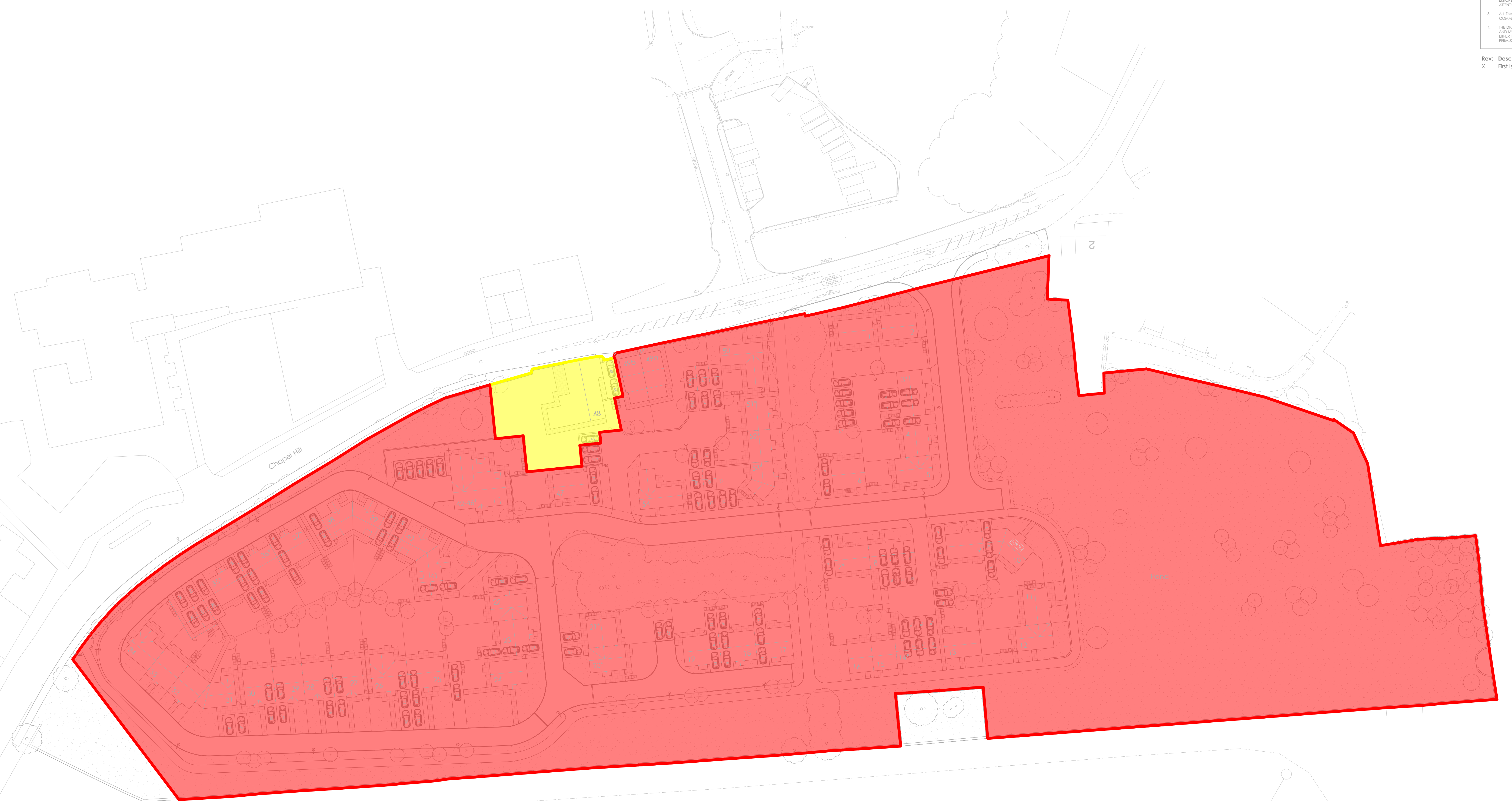
“Affordable Housing Units means those dwellings to be allocated and constructed as Affordable Housing on Phase 2 and outlined in the First Schedule and/or such additional dwellings as are agreed with the council are to be allocated as Affordable Housing
  
3. The definition of “Approved Person” shall be amended by including the following:
  - (f) people on the list of the Registered Provider in need of Affordable Housing.
  
4. The Definition of Development is amended by deleting the number “52 “and replacing with “54” and deleting the words “and the conversion of the former barn to one dwelling unit” from the definition.
  
5. “the Phase Plan attached to the Original Variation shall be removed and replaced with the Phasing Plan attached to this Deed of Variation.
  
6. The definition of Mortgagee shall be deleted and replaced with the following:

“Mortgagee” means in respect of a Registered Provider a 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

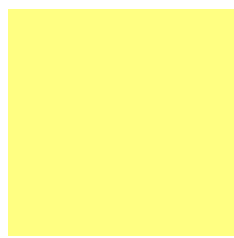
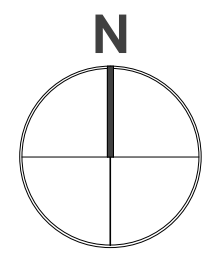


GENERAL NOTE:  
1. UNDER NO CIRCUMSTANCES SHOULD DIMENSIONS BE SCALED FROM THIS DRAWING. IF IN DOUBT ASK.  
2. THE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT DRAWINGS SPECIFICATIONS, ANY DISCREPANCIES, ERRORS OR OMISSIONS TO BE BROUGHT TO THE ATTENTION OF THE ARCHITECT.  
3. ALL DIMENSIONS ARE TO BE CHECKED PRIOR TO COMMENCEMENT.  
4. THIS DRAWING IS THE PROPERTY OF d2 architects AND MUST NOT BE COPIED OR REPRODUCED EITHER IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION.

Rev: Description: Date:  
X First Issue 27.06.23



Site Plan  
Scale: 1 : 500



PHASE 1



PHASE 2

Construction

Scheme Title:  
**Chapel Hill, Longridge**  
  
Drawing Reference:  
**S106 Site Phasing Plan**  
  
Scale @ A1: **1 : 500**  
Drawn by: **KSL**  
Checked by: **MOH**

Project Number: **6208** Drawing Number: **CN-00-705** Revision: **X**

**d2**architects  
  
SoUGHTON House  
2 Nicholas Street Mews  
Chester  
Cheshire  
CH1 2NS  
  
Hirdle Studio  
Penrith Celyn  
Ruthin  
Denbighshire  
LL15 2HF  
  
T: 01244 820 984 / 01824 562012  
E: admin@d2architects.co.uk  
W: www.d2architects.co.uk



administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver

7. In paragraph 1 of Schedule 1:
  - (a) the words “number and “ shall be inserted after the word “alternative” on the second to last line of the paragraph
8. Paragraph 7 shall be amended to delete the words “who shall be approved in writing by the Council”
9. Paragraph 8.3.1.3, 8.3.2, 8.3.3 and 8.3.4 shall be deleted.
10. A new definition shall be included as follows:

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 (any equivalent contractual right) in respect of a particular Affordable Housing Unit;
  - (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 a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the registered provider) in response of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing unit.
11. “Paragraph 9 of the First Schedule shall be deleted and replaced with the following
  9. The Affordable Housing provisions in this Deed shall not be binding on:
    - 9.1 a Mortgagee of the whole or any part of the Affordable Housing Units or any or any successors in title to such Mortgagee PROVIDED THAT such Mortgagee acting pursuant to any event of default shall first give written notice to the Council of its intention to dispose and shall have used reasonable endeavours over a period of 3 months from the date of the written notice to dispose of the Affordable Housing Units to another Registered Provider approved by the Council or to the Council for a consideration of not less than the amount due and outstanding to

the Mortgagee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Mortgagee in respect of the mortgage or charge. If such disposal has not taken place within that 3 month period, the Mortgagee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Deed.

9.2 A Protected Tenant and its mortgagee

9.3 The successors in title to the parties in paragraphs 9.1 and 9.2 and any mortgagee.

12. A new clause 20 shall be added to the main body of the Original Agreement:

**“20 Public Subsidy**

The parties agree that where Affordable Housing Units on Phase 2 are provided by a Registered Provider with the benefit of Public Subsidy then the requirements restrictions and planning obligations contained in the First Schedule and any remaining Affordable Housing obligations contained in this Agreement shall not apply to each of those Affordable Housing Units

In witness whereof the parties hereto have executed this Deed on the day and year first before written.

**EXECUTED** as a **DEED** by  
affixing the common seal of  
RIBBLE VALLEY BOROUGH COUNCIL  
In the presence of

Authorised signatory

**EXECUTED** as a **DEED** by

By a Director in the presence of: .....

Witness