

**DATED**

**2025**

**(1) LANCASHIRE COUNTY COUNCIL**

**and**

**(2) RIBBLE VALLEY BOROUGH COUNCIL**

**and**

**(3) PERSIMMON HOMES LIMITED**

## **DEED OF VARIATION PURSUANT TO SECTION 106 AND SECTION 106A OF THE TOWN & COUNTRY PLANNING ACT 1990**

relating to Land at Hawthorne Farm, Clitheroe

## CONTENTS

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### CLAUSE

|     |   |   |
|-----|---|---|
| 1.  | Interpretation  | 1 |
| 2.  | Statutory Provisions  | 3 |
| 3.  | Covenants with the Council                                    | 4 |
| 4.  | Release   | 4 |
| 5.  | Local Land Charge   | 4 |
| 6.  | Council's Costs   | 4 |
| 7.  | Ownership   | 4 |
| 8.  | Dispute Resolution  | 4 |
| 9.  | No fetter of discretion                                       | 5 |
| 10. | Waiver  | 5 |
| 11. | Future permissions  | 5 |
| 12. | Agreements and declarations                                   | 6 |
| 13. | Notices   | 6 |
| 14. | Third Party Rights  | 7 |
| 15. | Governing Law   | 7 |
|     | Schedule 1 - Amendments to the Original Agreement (as varied) | 9 |

**THIS DEED** is dated

2025

## **PARTIES**

- (1) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (**County Council**);
- (2) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA(**Council**); and
- (3) **PERSIMMON HOMES LIMITED** (Company Registration Number 04108747) whose registered office is situate at Persimmon House, Fulford, York, North Yorkshire YO19 4FE (**Owner**).

each a **Party** and together the **Parties**.

## **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the local education authority for which the planning obligation contained in the Original Agreement (as varied) are enforceable.
- (C) The Owner is the freehold owner of the Site free from encumbrances registered with HM Land Registry under title number LAN258727.
- (D) On 20 December 2021 the Parties entered into the Original Agreement.
- (E) On 23 December 2021 the Council granted Planning Permission.
- (F) On 26 October 2023 the County Council, the Council and the Owner entered into the First Deed of Variation.
- (G) The Parties hereto have agreed to enter into this Deed with the intention of varying the Original Agreement (as varied) as set out in the Schedule to this Deed
- (H) The Original Agreement (as varied) shall remain in full force and effect save as varied by this Deed.

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this Deed.

#### **1.1 Definitions:**

**First Deed of Variation:** the deed made under section 106 and section 106A of the Act dated 26 October 2023 between (1) Persimmon Homes Limited (2) Lancashire County Council and (3) Ribble Valley Borough Council to vary the provisions of the Original Agreement.

**Original Agreement:** the agreement made under section 106 of the Act dated 20 December 2021 between (1) the County Council (2) the Council (3) Hawthorne Farm Limited and (4) Persimmon Homes Limited.

**Original Permission:** the outline planning permission with reference number 3/2019/1104.

**Working Day(s):** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 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 and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 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.
- 1.9 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.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 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.
- 1.15 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.
- 1.16 The obligations hereunder shall not be binding upon nor enforceable against a mortgagee or any statutory undertaker or the person who acquires any part of the Site or interest therein solely for the purpose of the supply of electricity gas water drainage and/or telecommunication services.
- 1.17 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates.

## **2. STATUTORY PROVISIONS**

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 and section 106A of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 and section 106A of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the Act.
- 2.4 The Owner covenant that this Deed shall also apply to any planning permission entered into pursuant to any application made under Sections 73 and 96A of the Act (or any re-enactment of the said Sections 73 and 96A) in relation to the Site as if the definitions of the Application and the Permission in the Original Agreement (as varied) referred also to such future application made under and any such future planning permission granted under Sections 73 and 96A of the Act.

### **3. COVENANTS WITH THE COUNCIL**

3.1 The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations as follows:

- (a) the parties expressly agree that the Original Agreement (as varied) shall remain in full force and effect save as expressly varied by Schedule 1 of this Deed.

### **4. RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this Deed after parting with all of its interest in the Site or the part of the Site in respect of which such breach occurs, except in respect of any breach subsisting before parting with such interest.

### **5. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

### **6. COUNCIL'S COSTS**

The Owner shall pay to the Council on the date of this Deed the Council's reasonable and proper legal costs incurred in connection with the preparation, completion and registration of this Deed.

### **7. OWNERSHIP**

7.1 The Owner will notify the Council as soon as reasonably practicable of the following details of any conveyance, transfer or lease for a term exceeding 7 years, in respect of all or any part of the Site:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

### **8. DISPUTE RESOLUTION**

8.1 In the event of any dispute or difference arising between the parties arising out of this Deed such dispute or difference may be referred to the Expert.

8.2 If the parties are unable to agree on an Expert or the terms of their appointment within twenty (20) Working Days of any party serving details of a suggested expert on the others, any party to this Deed shall then be entitled to request the President to appoint an Expert and agree with the Expert the terms of appointment.

- 8.3 The Expert shall be required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of thirty (30) Working Days of the matter being referred to the Expert.
- 8.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this paragraph, then:
- (a) any party to this Deed may apply to the President to discharge the Expert and to appoint a replacement Expert with the required expertise; and
  - (b) this clause 8 shall apply to the new Expert as if they were the first Expert appointed.
- 8.5 The parties are entitled to make written submissions to the Expert and must provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 8.6 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 8.7 The parties must bear their own costs in relation to the reference to the Expert.
- 8.8 The parties must bear the Expert's fees and any costs properly incurred by them in arriving at their determination equally or in such other proportions as the Expert shall direct.
- 8.9 The parties must act reasonably and co-operate to give effect to the provisions of this clause 8 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

## **9. NO FETTER OF DISCRETION**

- 9.1 Nothing (contained or implied) in this Deed fetters or restricts the Council's statutory rights, powers, discretions and responsibilities.

## **10. WAIVER**

- 10.1 No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law constitutes a waiver of that or any other right or remedy. No single or partial exercise of that right or remedy prevents or restricts the further exercise of that or any other right or remedy.

## **11. FUTURE PERMISSIONS**

- 11.1 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with any planning permission (other than the planning permission granted pursuant to the

Second Reserved Matters Application or modification, variation or amendment thereof) granted after the date of the planning permission granted pursuant to the Second Reserved Matters Application.

## **12. AGREEMENTS AND DECLARATIONS**

12.1 The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

## **13. NOTICES**

13.1 A notice to be given under or in connection with this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

13.2 Any notice to be given under this Deed must be sent to the relevant party at their address as set out in this Deed or as otherwise specified by the relevant person by notice in writing to each other person.

13.3 Any notice given in accordance with clause 13.1 and clause 13.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

13.4 A notice given under this Deed shall not be validly given if sent by e-mail or fax.

13.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**14. 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.

**15. 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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of **LANCASHIRE COUNTY** )  
**COUNCIL** was affixed to this document in the )  
presence of: )  
) )  
..... )  
Authorised signatory )  
) )  
..... )  
Authorised signatory )

The Common Seal of **RIBBLE VALLEY** )  
**BOROUGH COUNCIL** was affixed to this )  
document in the presence of: )  
) )  
..... )  
Authorised signatory )  
) )  
..... )  
Authorised signatory )

**EXECUTED** as a **DEED** by )  
**PERSIMMON HOMES LIMITED** )  
acting by a duly appointed attorney, )  
in the presence of: )

.....  
Attorney  
.....  
Name of Attorney (PRINT)

Witness:  
Signature .....  
Name .....  
Address .....  
.....  
Occupation .....

## SCHEDULE 1 - AMENDMENTS TO THE ORIGINAL AGREEMENT (AS VARIED)

1. The Original Agreement (as varied) will remain in full force and effect save as varied below.

1.1 From the date of this Deed:

(a) Paragraph 2.7 of Part 2 of Schedule 2 shall be deleted in its entirety and the following clause substituted:

*"2.7. In the event that despite the proper marketing of the Market Over 55 Accommodation Units no sale of the Market Over 55 Accommodation Unit has been effected:*

*(a) in the case of the Owner within 3 (three) months of Practical Completion of the said Unit; and*

*(b) in the case of a sale by the successors in title to the Owner within 4 (four) months from the date of commencement of marketing the said Unit then*

*paragraph 2.8 of this Schedule 2 (below) shall apply in respect of such Market Over 55 Accommodation Unit."*