

DATED 14 February 2022 ~~2021~~

between

RIBBLE VALLEY BOROUGH COUNCIL (1)

LANCASHIRE COUNTY COUNCIL (2)

MILLER HOMES LIMITED (3)

**Supplemental Deed under Section 106A of the Town and Country Planning Act
1990 and all other enabling powers**

relating to Land on the north side of Henthorn Road, Clitheroe

THIS DEED is dated *the 14th* day of *February 2022* ~~2021~~

- (1) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe BB7 0TD ("**the Council**")
- (2) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire PR1 8XJ ("**the County Council**")
- (3) **MILLER HOMES LIMITED** (Scotland Company Number SC255429) whose registered address is at Miller House, 2 Lochside View, Edinburgh EH12 9DH ("**the Owner**")

Background

- (A) The Owner is the freehold owner of part of the Land registered at the Land Registry under title number LAN248626.
- (B) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (C) The County Council is the county planning authority and the local highway authority for the area in which the Land is situated.
- (D) The parties to this Deed have agreed that the Original Undertaking should be amended in order and to ensure that the planning obligations contained in the Original Undertaking are complied with save for the provisions as set out in this Deed.
- (E) This Deed is made under S106A of the Town and Country Planning Act 1990 ("**the Act**") and is supplemental to the Original Undertaking.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions

1.1 In this Deed, unless the context otherwise requires:

- 1.1.1. "Original Undertaking" means the Unilateral Undertaking dated 10 May 2019 given by (1) John Andrew Ferguson and Thomas Nicholas John

Aspinall with the consent of (2) Gladman Developments Limited to Lancashire County Council and Ribble Valley Council.

1.1.2. References to clauses paragraphs and schedules are references to those in the Original Undertaking; and

1.1.3. Words and phrases whose meanings are not varied by this Deed have the same meanings as in the Original Undertaking.

1.2 This Deed which binds that part of the Land registered at the Land Registry under title number LAN248626 is supplemental to the Original Undertaking and is enforceable by the Council and the County Council.

2. Planning Obligations

The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act.

3. Statutory provisions

This Deed is made pursuant to Sections 106 and 106A of the Act Section 111 of the Local Government Act 1972 and all other enabling powers and has been entered into by the Council pursuant to those powers.

4. Variation to the Original Undertaking

IT IS HEREBY AGREED between the parties to this Deed that with effect from the completion of this Deed the following variations to the Original Undertaking shall take effect as if the provisions that have been amended were originally incorporated into the Original Undertaking in place of those provisions for which they are substituted:

4.1 The definition of 'Mortgagee' in clause 1 shall be deleted and replaced with the following:

'Mortgagee

"Mortgagee" means any mortgagee or chargee of the Affordable Housing Provider (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'

4.2 A new definition of Protected Tenant shall be added in clause 1 as follows:

'Protected Tenant

"Protected Tenant" means anyone who:

- (i) has exercised any statutory right to buy including the preserved right to buy (or any equivalent contractual right) or any voluntary right to buy in respect of a particular Affordable Housing Unit
- (ii) has exercised the right to acquire in respect of a particular Affordable Housing Unit
- (iii) has staircased an Affordable Housing Unit to 100% including through the right to shared ownership'

4.3 Clause 2.4 shall be deleted and replaced with the following wording:

'2.4 This Deed shall not be binding or enforceable against:

- (a) Any individual owner occupier or tenant of the Dwellings or their mortgagees and chargees or successors in title
- (b) Any statutory undertaker
- (c) Any Affordable Housing Provider or their Mortgagee in respect of any obligations not comprised in Clause 9 or Paragraph 1 of Schedule 2 of this Deed'

4.4 Clause 9 shall be deleted and replaced with the following wording:

'9 Affordable Housing Mortgagee Protection

Nothing in this Deed shall be binding upon a Mortgagee exercising a power of sale in respect of the whole or part of the Affordable Housing Units provided that:

- (a) such Mortgagee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units 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
- (b) if such disposal has not completed within the three month period, the Mortgagee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely'

4.5 Paragraph 1.9.1 of Schedule 2 shall be deleted and replaced with the following wording:

'1.9.1 any Mortgagee or persons or bodies deriving title through such Mortgagee provided that:

1.9.1.1 such Mortgagee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units 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

1.9.1.2 if such disposal has not completed within the three month period, the Mortgagee, shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely'

- 4.6 Paragraph 1.9.2 of Schedule 2 shall be deleted.
- 4.7 The original Paragraph 1.9.3 of Schedule 2 shall be renumbered to Paragraph 1.9.2 and the original Paragraph 1.9.4 of Schedule 2 shall be renumbered to paragraph 1.9.3.
- 4.8 Nothing in this Deed affects the Council's powers in respect of any antecedent breach or omission in relation to the Original Undertaking.

5. Covenants to the Council and the County Council

The Owner covenants with the Council and the County Council to observe and perform the covenants restrictions and obligations contained in the Original Undertaking as varied by this Deed.

6. Registration

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

7. Costs

Upon execution of this Deed Great Places will pay the reasonable costs of the Council and the County Council incurred in the negotiation preparation and execution of this Deed.

8. Third Party Rights

A person who is not named in this Deed or is not a party to this Deed does not have any right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999.

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



.....
Authorised Signatory

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



.....
Authorised Signatory

**EXECUTED as a DEED by
MILLER HOMES LIMITED**
acting by two Directors or
one Director and the Company Secretary

Director

Director / Company Secretary

WITNESS

Miller Homes Ltd
Miller House
2 Lochside View
Lancashire Park
Lancashire, EH12 9DH

LEGAL ADMINISTRATOR