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| **DATED: day of 20****PLANNING OBLIGATION BY DEED OF AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**  |
| relating to development of land [at *Location*, Lancashire] (Ref: ) |
| (1) Fylde Borough Council |
| (2) Lancashire County Council(3) (‘the Owner’)(4) (‘the Mortgagee’) |
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|  | **DATED: day of 20** |
|  | **PARTIES**  |
|  | **FYLDE BOROUGH COUNCIL** of the Town Hall, Lytham St Annes, Lancashire FY8 1LW (“the Council”) |
|  | **[LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire PR1 8XJ (“the County Council”)] |
|  | (“the Owner”) |
| 1.
 | (“the Mortgagee”) |

**INTRODUCTION**

1. The Council is the local planning authority [and the County Council is the county planning authority and local education authority] for the purposes of the Act for the area in which the Site is situated.
2. The Owner is the [freehold] owner of the Site.
3. The Mortgagee is the registered proprietor of a charge over the site dated [*date]*
4. The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
5. The Council resolved on [*Date]* to grant the Planning Permission subject to the prior completion of this Deed.
6. The parties hereto consider that the restrictions and obligations contained in this Deed serve planning purposes, are material to the Application and comply with the statutory tests as set out in the Community Infrastructure Levy Regulations 2010.

**NOW THIS DEED WITNESSES as follows**:

**OPERATIVE PART**

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

“Act” the Town and Country Planning Act 1990

“Affordable Housing” social rented, affordable rented and intermediate housing within the meanings given to them in Annex 2 of the National Planning Policy Framework published March 2012 (unless otherwise agreed between the parties in writing) provided to eligible households whose needs are not met by the market

“Affordable Housing Statement” a statement to be submitted in writing by the Owners to the Council containing the following details:

* The number of Dwellings to be Affordable Housing Units, such number to be equal to or more than 30% of the number of Dwellings;
* the location, layout (including the gross internal floor space, external garden and parking areas), size (including the number of bedrooms), type and tenure of the Affordable Housing Units;
* how the Affordable Housing Units are to be transferred to a Registered Provider for subsequent allocation to Eligible Persons (including the order of priority in which Eligible Persons will be allocated the Affordable Housing Units);
* the method of calculating the sale or rental price of each Affordable Housing Unit;
* how the Owner will ensure that the Affordable Housing Units will remain as Affordable Housing in perpetuity for future owners, occupiers or tenants.

“Affordable Housing Units” The Dwellings identified as such in the Affordable Housing Statement

“Application” the application for [*full/outline*] planning permission dated [*date*] submitted to the Council for the Development and allocated reference number [*number*]

“Chargee” any mortgagee or chargee of the Registered Provider or a security trustee or receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

“Chargee’s Duty” the tasks and duties set out in paragraph 1.5 of the Third Schedule

“Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly

“Development” the Development of the Site pursuant to the Planning Permission for [*details]*

“Dwellings” the dwellings to be provided pursuant to the Planning Permission

“Eligible Person” any person who satisfies both of the conditions set out in this definition

The first condition is that the person:

Is permanently employed in the Relevant Parish; or

has been offered permanent employment in the Relevant Parish and intends to take up that offer; or

has his/her main home in the Relevant Parish; or

in the reasonable opinion of the Council has some other sufficiently long-standing connection with the Relevant Parish

The second condition is that the person would be unlikely otherwise to be able to afford to buy a dwelling in the Relevant Parish suitable for his needs and the needs of those likely to occupy it and for the purpose of determining whether this condition is satisfied the income and resources of all proposed buyers of the dwelling and of any person who it appears is likely to live in the dwelling may be taken into account

"GBCI Index" the BCIS General Building Cost 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.

“Index” all Items Index of Retail Prices issued by the Office for National Statistics

“Index Linked” increased in accordance with the following formula:

 Amount payable = the payment specified in this deed x (A/B) where:

 A= the figure for the Index that applied immediately preceding the date the payment is due.

 B=the figure for the Index that applied when the Index was last published prior to the date of this deed.

“Index Linked - Education” increased in accordance with the following formula:

 Amount payable = the payment specified in this deed x (A/B) where:

 A= the figure for the GBCI Index that applied immediately preceding the date the payment is due.

 B=the figure for the GBCI Index that applied when the Index was last published prior to the date of this deed.

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| “Interest” “Market Dwellings” | interest at two per cent above the base lending rate of the HSBC Bank Plc from time to timethe Dwellings which are not Affordable Housing Units |

 “Occupation” and “Occupied” occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Plan” the plan annexed hereto showing the location of the Site edged red

“Planning Permission” the planning permission subject to conditions to be granted by the Council pursuant to the Application a draft of which is set out in the Second Schedule

 "Practical Completion" the issue of a certificate of practical completion by the Owner’s architect or other appropriate professional person or in the event that the Development is constructed by a third party other than the Developer the issue of a certificate of practical completion by the other party's architect or other appropriate professional person

"Primary Cost Per Place" £12,257 x 0.9 x GBCI/288.4

"Primary Education Contribution" the sum equating to the number of Primary Pupil Places Required x Primary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional at Lea Community Primary School.

[“Public Open Space Contribution” the sum of [£x in respect of each Dwelling]

"Pupils Expected to be Resident" the sum of the number of Dwellings less Elderly Person Units with a given number of bedrooms x corresponding Pupil Yield Figure for primary or secondary education (rounded to the nearest whole number);

"Pupil Places Required" the number of primary Pupils Expected to be Resident in the Development less any Spare Places expected to be available to cater for the Development;

"Pupil Yield Figure" means

|  | Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling |
| --- | --- |
|  | one | two | three | four | five |
| Primary | 0.01 | 0.07 | 0.16 | 0.38 | 0.44 |

“Registered Provider” an organisation is registered under chapter 3 of Part 2 of the Housing and Regeneration Act 2008

“Relevant Parish” The meaning set out in clause 6

"Reserved Matters Consent(s)" any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Site which permits residential development and specifies the number of Dwellings and number of bedrooms permitted on that part of the Site;

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| --- | --- |
|  “Site”  “Spare Places” | the land described in the First Schedule the number of primary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 3 hereto; |

“Working Day” any day other than Saturday and Sunday and any Bank Holiday

**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 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 include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any 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.

2.6 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 Council [and the County Council] the successors to their statutory functions.

**3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council [and the County Council] as local planning authority against the Owner.

**4 CONDITIONALITY**

 This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 7.1, 16 and 17 legal costs clause jurisdiction and delivery clauses which shall come into effect immediately upon completion of this Deed.

**5 THE OWNER’S COVENANTS**

 The Owner covenants with the Council [and the County Council] as set out in the Third Schedule.

**6. RELEVANT PARISH**

6.1 The meaning of “Relevant Parish” is the civil parish of [XXXXXX] unless 6.2 or 6.4 applies.

6.2 This sub-clause applies where the Owner satisfies the Council that there is no reasonable prospect of a person coming forward who fulfils the criteria set out in the definition of “Eligible Person”

6.3 Where 6.2 applies, in relation to that Dwelling and that disposal, “Relevant Parish” means any of the civil parishes of [*neighbouring parishes]*,

6.4 This sub-clause applies where the Owner satisfies the Council that there is no reasonable prospect of a person coming forward who fulfils the criteria set out in the definition of “Eligible Person” as amended by 6.3

6.5 Where 6.4 applies, in relation to that Dwelling and that disposal, “Relevant Parish” means any civil parish in the district of Fylde, or the unparished part of the district of Fylde

**6 THE COUNCIL [AND COUNTY COUNCIL’S] COVENANTS**

The Council [and the County Council] covenant with the Owner as set out in the Fourth Schedule.

**7** **MISCELLANEOUS**

7.1 The Owner shall pay to the Council [and the County Council] on completion of this Deed the reasonable legal costs of the Council [and the County Council] incurred in the negotiation, preparation and execution of this Deed [in the sums of £1000 and £250 respectively].

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

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

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council [or the County Council] under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Development Control Manager and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party in accordance with clause 18.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 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.

7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.10 This Deed shall not be enforceable against:

7.10.1 save as otherwise for the obligations in respect of the Affordable Housing Units as provided in the Third Schedule, owner-occupiers or tenants of the Dwellings or any of their respective successors in title or chargees; or

7.10.2 any statutory undertaker after the transfer to it of statutory apparatus and any land upon or in which that statutory apparatus is situated; or

7.10.3 any person who shall acquire the freehold or leasehold interest in any Affordable Housing Unit pursuant to any statutory right to buy or right of acquisition or their mortgagees;

7.10.4 a Chargee which shall have the benefit of a legal mortgage or charge secured against the Affordable Housing Land or part thereof who wishes to exercise a power of sale provided that the Chargee shall have first complied with the Chargee’s Duty; and

7.10.5 any successors in title of the above.

**8 WAIVER**

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

[9 **MORTGAGEE’S CONSENT**

9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.]

**10 CHANGE IN OWNERSHIP**

10.1 The Owner agrees with the Council [and the County Council ] to give the Council [and the County Council] written notice within 5 working days of any change in ownership of any of its interests in the Site 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 Site purchased by reference to a plan and the consideration for the transaction provided that this clause shall not apply to any change in Ownership arising from the sale or lease of a Dwelling or the transfer of land to a statutory undertaker when otherwise the provisions for notices in the Third Schedule shall apply.

**11 INDEXATION**

The Public Open Space Contribution shall be Index Linked and the Primary Education Contribution shall be Index Linked – Education and adjusted in accordance with the GBCIS Index.

**12 INTEREST**

If any payment due under this Deed by the Owner is paid late, Interest will be payable from the date payment is due to the date of payment.

**13 VAT**

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

**14 DISPUTE PROVISIONS**

14.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either party to the President for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

**15 REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council or County Council under this deed shall not be unreasonably withheld or delayed.

**16 JURISDICTION**

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

**17 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.

**18 NOTICES**

18.1 All notices, demands or other written communications to or from the Owner, the Council and the County Council in relation to this Deed shall be deemed to have been properly given or made if sent by first class recorded delivery letter to the Owner, the Council or County Council, as appropriate, at the address specified at the beginning of this Deed or such address as the relevant party may notify to the other parties from time to time.

18.2 Any notices, demands or other written communication in relation to this Deed shall be deemed to have been served:

18.2.1 if by hand, upon delivery;

18.2.2 if by first class recorded delivery, 48 hours after delivery of the notice, request, demand or other written communication in to the postal system.

PROVIDED THAT if a notice, demand or other written communication is served after 4pm on a Working Day or on a day that is not a Working Day, needs to be treated as having been served on the next Working Day.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

**FIRST SCHEDULE**

**[Details of the Owner’s Title, Plan and description of the Site**

*[Xxxxhold* land at *Location*, Lancashire, comprising part of registered title number *LAXXXX* and being *description of land in title]*

second schedule

**Form of notice of planning permission**

**THird schedule**

Part 1

**The Owner’s Covenants with the Council**

**Affordable Housing**

1 The Owner covenants with the Council as follows:

Affordable Housing Statement

1.1 Not to Commence Development until the Affordable Housing Statement has been approved in writing by the Council;

1.2 To carry out the Development only in accordance with the approved Affordable Housing Statement;

Trigger Points for Delivery of Affordable Housing

1.3 Not to allow no more than [XX%] of the Market Dwellings to be Occupied until contracts for the transfer of the Affordable Housing Units have been exchanged with a Registered Provider on the terms set out in the Affordable Housing Statement PROVIDED THAT in the event that, despite using reasonable endeavours to do so, the Owner has been unable to exchange contracts for the transfer of Affordable Housing Units within 6 months from Practical Completion of the last Affordable Housing Unit then, subject to the Owner providing written evidence to the Council of the negotiations with the Registered Provider and reasons why contracts have not been exchanged with the Registered Provider, the Owner may propose to the Council an alternative way to dispose of the Affordable Housing Units for its consideration and approval (such approval not to be unreasonably withheld or delayed);

1.4 Not to allow to be Occupied more than 75% of the Market Dwellings until all of the Affordable Housing Units have been constructed to Practical Completion and disposed of to a Registered Provider;

1.5 Subject to clause 7.10 of this Deed, not to permit the Affordable Housing Units to be used or occupied other than as Affordable Housing by Eligible Persons in accordance with the terms of this Deed.

1.6 **The Chargee’s Duty**

1.6.1 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than one months’ prior written notice to the Council and addressed to the Director of Development Services of its intention to dispose (“Chargee’s Notice”); and

1.6.2 in the event that the Council responds in writing within three months from receipt of the Chargee’s Notice indicating that arrangements for the transfer of the Affordable Housing Land can be made in such a way as to satisfy the terms of the mortgage or charge and to safeguard them as Affordable Housing then the chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;

1.6.3 if the Council does not serve its response to the Chargee’s Notice served under paragraph 1.6.1 within three months then the Chargee shall be entitled to dispose of the Affordable Housing free of the restrictions set out in this Schedule;

1.6.4 if the Council or any other person nominated by the Council cannot within two months of the date of service of its response under paragraph 1.6.2 secure such transfer (so for the avoidance of doubt there shall be a total period of only 3 months from the Chargee’s Notice to completion of such transfer) then provided that the Chargee shall have complied with its obligations under paragraph 1.6.1 the Chargee shall be entitled to dispose of the Affordable Housing Land free of the restrictions set out in this Schedule;

**[Public Open Space Contribution**

2 To pay the Public Open Contribution (in full) prior to the occupation of the first Dwelling.]

**Notices**

3 To give written notice to the Council within 7 (seven) Working Days of the dates of the following:-

[3.1 Commencement of Development

3.2 Upon occupation of 75% of the Market Dwellings]

Part 2

**The Owner’s Covenants with the County Council**

**4 Education Contribution**

4.1 Within 20 working days following the grant of a Reserved Matters Consent to notify the County Council that a Reserved Matters Consent has been granted and request that the County Council calculates the Primary Education Contribution relating to the said Reserved Matters Consent in accordance with this Deed.

4.2 The Primary Education Contribution shall be paid in two equal instalments as follows:

4.2.1 The first instalment equivalent to 50 per cent of the Primary Education Contribution prior to occupation of the tenth Dwelling.

4.2.2 The second and final instalment equivalent to 50 per cent of the Primary Education Contribution prior to the Occupation of the twentieth Dwelling.

**[5 Notices**

To give written Notice to the County Council at least 7 (seven) Working Days prior to:

* the Occupation of the 1st Dwelling;
* the Occupation of the Dwelling that is equivalent to 50% of the total number of Dwellings.]

**fourth SCHEDULE**

**Council [and County Council’s] Covenant**

**[Public Open Space Contribution**

1 The Public Open Space Contribution shall used by the Council towards the provision, improvement and/or maintenance of recreational open space at XXXXX.]

2 **Repayment of contributions**

 The Council covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

 The Council further covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within ten years of the date of receipt by the Council of such payment together with interest at the HBSC Bank plc base rate from time to time for the period from the date of payment to the date of refund.

3 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

**Education Contribution**

4 The calculation of the Primary Education Contribution generally and of Spare Places shall be undertaken in the same manner as demonstrated in the County Council’s Education Methodology (Appendix 1)

5 The County Council’s pupils projections that are current at the time of the calculation shall be used.

6 For the avoidance of doubt, if the County Council’s re-calculations show that the number of Spare Places in primary has increased then there may be a reduction in the payment due in accordance with the re-calculated shortfall. If, however the re-calculated number of Spare Places is expected to exceed the calculated pupil yield from this development as per this Schedule, then no Primary Education Contribution shall be payable.

7 Whilst the County Council have confirmed its intention to deliver projects at Lea Community Primary School it should be noted that this would be subject to the following:

\*willingness of school governing body to expand

\*planning permission & compliance with Section 77 of the Schools Standards and Framework Act 1998 and Schedule 1 to the Academies Act 2010.

\*consultation with local schools and the community

\*parental preference at the time that the places are require

\*school standards at the time that the places are required

\*suitability of site

\*availability of other funding streams.

8 Should the Primary Education Contribution not be spent on the project named within this Agreement, the County Council will return the entire sum to the party who paid any part of the Primary Education Contribution. Furthermore, the County Council will ensure that sufficient local primary school places are provided to address the impact of the Development at no cost to the Owner or Developer.

**Discharge of obligations**

9 At the written request of the Owner but at no cost to the Owner, the Council and the County Council shall provide written confirmation of the discharge of the respective obligations contained in this Deed when satisfied that such obligations have been performed.

**THE COMMON SEAL** of **FYLDE**

**BOROUGH COUNCIL**

was affixed to this Deed

in the presence of:

Head of Governance

**THE COMMON SEAL** of

**LANCASHIRE COUNTY COUNCIL**

was affixed to this Deed

in the presence of:

Authorised Signatory

Execution by Owner and Mortgagee