

Dated 2nd July 2018

ROSSENDALE BOROUGH COUNCIL

And

LANCASHIRE COUNTY COUNCIL

And

HURSTWOOD GROUP 1 LIMITED



A PLANNING OBLIGATION BY AGREEMENT
SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990
relating to land at Land At Johnny Barn Close

Rosendale Borough Council
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made the 2nd day of July 2018

BETWEEN

(1) ROSSENDALE BOROUGH COUNCIL of Futures Park, Bacup. OL13 0BB ("the Council")

(2) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall, Fishergate, Preston, Lancashire. PR1 8XJ ("the County Council")

(3) HURSTWOOD GROUP 1 LIMITED (Company registration number 04799100) of Bridge Street Chambers, 72 Bridge Street, Manchester. M3 2RJ ("the Owners")

1. Recitals

1.1 The Council and the County Council are local planning authorities for the purposes of the Act for the area within which the Site is located and the authorities by which the planning obligations herein contained are enforceable.

1.2 The Owner has applied to the Council pursuant to the Act for permission to develop the Site under the Application reference 2015/0517 and enter this Agreement with the intention that it is bound by the obligations contained herein.

1.3 The Owners are the freehold owner of the Site which is registered at the Land Registry under title number LA535250.

1.4 The covenants, restrictions and requirements imposed upon the Owners under this Agreement create planning obligations pursuant to Section 106 of the Act and Owners are the persons against whom such obligations are enforceable in respect of the Site.

1.5 The Owners have agreed to enter into this Agreement so as to create a planning obligation in favour of the Council and the County Council pursuant to Section 106 of the Act and to be bound and to observe and perform the covenants hereinafter contained.

2. Definitions and Interpretation

2.1

"the Act"	means the Town & Country Planning Act 1990 (as amended) or any statute amending or modifying repealing or re-enacting the same for the time being in force.
"Affordable Housing"	as defined in the National Planning Policy Framework (NPPF) this includes the Shared Ownership Units and also the Starter Homes for Occupation by households whose needs are not met by the open market and who meet the Approved Person criteria as per the Eighth Schedule and the Seventh Schedule (as applicable) and includes a provision for the relevant Dwelling to remain at an affordable price for future eligible households (in the case of Shared Ownership Units) or if these restrictions are lifted for subsidy to be recycled for alternative affordable housing provision as provided for in this Agreement.

<p>“Affordable Housing Provider (AHP)”</p>	<p>means a registered provider, registered social landlord or a housing association or similar organisation registered in accordance with section 80 of the Housing and Regeneration Act 2008 or if such bodies cease to exist or are superseded the equivalent body whose main objectives included the provision of Affordable Housing and to whom the Affordable Housing Units may be transferred as approved by the Council in writing (such approval not to be unreasonably withheld or delayed.)</p>
<p>“Affordable Housing Units”</p>	<p>means thirty percent of the Dwellings to be erected on the Site in accordance with the Fifth, Sixth, Seventh, Eighth and Ninth Schedules and pursuant to the Planning Permission or as may otherwise be agreed in writing with the Council and the term “Affordable Housing Unit” shall be construed accordingly.</p>
<p>“the Application”</p>	<p>means the application for outline planning permission numbered 2015/0517 dated 18th December 2015 for the development of the Site for up to 30 dwellings, with all matters reserved</p>
<p>“Approved Person”</p>	<p>means a person who meets the criteria as appropriate set out in the Seventh Schedule and the Eighth Schedule (as appropriate)</p>
<p>“BCIS All-in Tender Price Index”</p>	<p>means 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;</p>
<p>“the Borough”</p>	<p>means the Borough of Rossendale</p>
<p>“Chargee”</p>	<p>means any mortgagee or chargee of the Registered Provider or any administrator, receiver including any fixed charge receiver, receiver appointed under the Law of Property Act 1925, administrative receiver or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any housing administrator howsoever appointed</p>
<p>“Commence”</p>	<p>means the carrying out of a material operation as defined by section 56 (4) of the Act (excluding for the purposes of this Agreement and for no other purpose any Preparatory Operation) in accordance with the Planning Permission and the expressions “Commencement” shall have a corresponding meaning.</p>
<p>“Commencement Date”</p>	<p>means the date of the Commencement of the Development</p>
<p>“Development”</p>	<p>means the development proposed in the Application and described at the Second Schedule.</p>
<p>“the Disposal”</p>	<p>each and every means by which the right of occupation of an Affordable Housing Unit is given or transferred to another person body or company and shall include sale, transfer, option, gift, exchange, declaration or trust, assignment, lease and contract for such disposal and shall include the subsequent disposals and “Dispose” shall be construed accordingly and for the sake of clarity the term “Disposal”, “Dispose” and “Disposed of” shall be</p>

	construed accordingly and further shall include the exercise of the right to Staircase under a shared ownership lease.
“Dwelling”	means a residential dwelling (including a house, apartment, bungalow or maisonette) to be constructed on the Site in accordance with the Planning Permission and “Dwellings” shall be construed accordingly and includes both Market Units and an Affordable Housing Units.
“Education Contribution”	means the sum equating to the number of 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 primary school places at St Peter's Roman Catholic Primary School or any subsequent name or designation by which it is known;
Education Indexation	<p>Indexation will be applied to Section 106 agreements using the formula below</p> $\frac{\text{Education Contribution} \times \text{BCIS All in Tender Price Index for the period immediately prior to the date of payment under the S106 agreement}}{\text{BCIS All in Tender Price Index for the period last published before the date of agreement}}$
Elderly Persons Unit	'Dwellings on the Site which will be subject to a restriction limiting the main occupier to a person with a minimum age of 55 years'
“Eligibility Criteria”	means the criteria set out in the Seventh Schedule and the Eighth Schedule (as appropriate)
“Equipped Play Space”	means the sum of £541.00 [five hundred and forty one pounds] per Dwelling to provide facilities at Staghills playground.
“Homes and Communities Agency”	means Homes England or any body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating provision of Affordable Housing or if such body ceases to exist or is superseded the equivalent or successor body.
“Housing Authority”	means Rossendale Borough Council
“Housing Need”	means living in unsuitable housing conditions and/or being unable to afford suitable housing at open market prices.
“Interest”	means interest at the rate of 3 per cent above the base lending rate of the Bank of England from time to time unless where otherwise expressly stated herein.

“Interest Bearing Account”	means a separately identifiable account within the financial accounting system of the Council or the County Council (as appropriate) to which will be added interest equivalent to that which the Borough Council or the County Council obtains on its interest
“Market Units”	means Dwellings (other than Affordable Housing Units) to be sold on the open market and the expression “Market Unit” shall be construed accordingly.
“Market Value Notice”	means the notice to the Council giving the Open Market Value of the proposed Affordable Units
“Net Sales Proceeds”	means the amount received by the Seller after all costs and expenses are deducted from the gross proceeds arising from the disposal of the relevant Affordable Housing Unit.
“Nomination Agreement”	means an agreement between the Council and an Affordable Housing Provider which allows the Council to nominate the prospective tenants and assignees for the Affordable/ Social Rented Units.
“NPPF”	means the National Planning Policy Framework issued by the Department for Communities and Local Government on 27 March 2012
“Occupation”	means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupied” shall be construed accordingly.
“Open Market Value”	has the meaning ascribed to it in the Appraisal and Valuation Manual published by the Royal Institution of Chartered Surveyors.
“the Owners”	means Hurstwood Group 1 Limited
“Plan”	means the Plan annexed hereto in the First Schedule
“Planning Permission”	means the outline planning permission (as may be amended or varied from time to time) granted in accordance with the Application in the form of and subject to the conditions set out in the draft in [the ^{3rd} Schedule or any reserved matters approval granted pursuant to any Qualifying Application.
“Playing Pitches Contribution”	means the sum of £566 [five hundred and sixty six pounds] per Dwelling towards the improvement of existing playing pitches in at Marl Pits.
“Preparatory Operation”	means a material operation as specified in Section 56(4) of the Act provided that the term “material operation” in Section 56(4) shall not for the purposes of this Agreement include operations in connection with site clearance, demolition, ground stabilisation, archaeological investigation, investigation for the purpose of assessing contamination, removal of contamination, diversion and laying of Services, earthworks and the erection of means of enclosure for the purposes of site security and/or display of notices or advertisements, exploratory boreholes and any dug works, matters and operations to enable any of the foregoing to take place.

"Primary Cost Per Place"	means $£12,257 \times 0.97 \times (287/240) = £14,217.31$																		
"Protected Tenant"	Any tenant or owner (or its successors) who either: a) has exercised the right to acquire the dwelling of which he is a tenant pursuant to section 16 of the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit; or b) has exercised any statutory right to buy the dwelling of which he is a tenant pursuant to Part V of the Housing Act 1985 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit; or c) of a Shared Ownership Unit where Staircasing has taken place.																		
"Pupil Places Required"	means 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;																		
"Pupils Expected to be Resident"	means the aggregate sum of each number of Dwellings [less Elderly Person Units] with a given number of bedrooms x corresponding Pupil Yield Figure (rounded to the nearest whole number);																		
"Pupil Yield Figure"	<table border="1" data-bbox="464 1021 1370 1200"> <thead> <tr> <th colspan="6">Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling</th> </tr> <tr> <th></th> <th>One</th> <th>two</th> <th>three</th> <th>Four</th> <th>five</th> </tr> </thead> <tbody> <tr> <td>Primary</td> <td>0.01</td> <td>0.07</td> <td>0.16</td> <td>0.38</td> <td>0.44</td> </tr> </tbody> </table>	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
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														
"Qualifying Application"	means any application for reserved matters approval in relation to the Planning Permission and/or any subsequent applications for planning permission made under section 73 of the Act and/or in accordance with article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 in respect of the Development																		
"Recycling"	means recycling by the Affordable Housing Provider by procuring of further Affordable Housing within the Borough of a type of a location and tenure to be agreed between the Housing Authority and the Affordable Housing Provider (both to act reasonably)																		
"Recycling Percentage"	means 100% of the Staircasing Net Sale Proceeds on any Staircasing of any of the Shared Ownership Units																		
"Registered Provider"	means any registered provider of social housing as defined under the Housing and Regeneration Act 2008 with the Regulator of Social Housing and has not been removed from the Register																		
"Resale Covenant Scheme"	means a scheme approved in writing by the Council which governs the permitted sale price of Starter Homes to Approved Persons and the terms upon which such occupation and/or sale or transfer of such Starter Homes Dwellings may take place such scheme to be in the substantial form set out at the Sixth Schedule with such modifications and amendments as may be agreed in writing by the Council.																		

“Reserved Matters Consent(s)”	means 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;
“RPIX”	means the Retail Prices Index excluding Mortgage Interest Payments (RPIX) published by the Office for National Statistics each month and if such index ceases to exist such other similar index as the Council shall specify to the Owners In writing.
“Services”	means all the media and apparatus for the supply and removal of water, sewerage, gas and electricity.
“Shared Ownership Units”	means an Affordable Housing Unit where the lessee enters into a lease and purchases a percentage of the equity (subject to the initial equity share of a shared ownership lease being restricted to between 25% and 75% equity share), the lessee pays a rent to the Affordable Housing Provider in respect of the remaining equity share in the property, the documentation for which will follow the Homes and Communities Agency model lease with the rent payable calculated at no more than 2.75% of the value of the unsold equity in the Dwelling. The lessee has the option to Staircase so as to increase their equity share in the Affordable Housing Unit up to 100% and acquire the freehold or long leasehold interest (as appropriate.)
“Site”	means the land against which this Agreement may be enforced shown for illustrative purposes only edged red on the Plan and as more particularly described in the First Schedule.
“Spare Places”	means 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 paragraphs 5 – 7 of Schedule 10 hereto;
“Staircase”	means the acquisition of an additional share or shares of the equity of the Shared Ownership Unit by an owner occupier up to 100% after which the rent payable on the part retained by the Affordable Housing provider shall be reduced proportionately and the term “Staircasing” shall be construed accordingly.
“Staircasing Net Sale Proceeds”	means the net consideration (if any) received by an Affordable Housing Provider on Staircasing based on the value at that time in respect of the shared ownership leases (if any) after the deduction of all reasonable costs and expenses of an Affordable Housing Provider on Staircasing including without limitation its administrative costs, valuation costs, loan costs and legal costs and fees and any taxation liability arising.
“Starter Home”	means an Affordable Housing Unit which is to be sold to Approved Persons at no more than 75% of Open Market Value in accordance with the Resale Covenant Scheme and the Seventh Schedule (and a Starter Homes Dwelling shall be construed accordingly);
“Tenancy”	is an assured tenancy where the Affordable Housing Unit is occupied by the individual household as their only or principle home by way of a lease.

"Working Day"	means any day on which the clearing banks in the City of London are (or would be but for strike, lockout, or other stoppage affecting such banks generally) open during banking hours Monday to Friday (inclusive) excluding national holidays and the period 24 December - 1 January inclusive and excluding Saturdays, Sundays and bank holidays.
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2.2 The expressions "the Council", "the County Council" and "the Owners" shall where the context admits includes their successors in title and assigns (and in the case of the Council the successor to its statutory functions) and those deriving title under each of them.

2.3 Words importing one gender shall be construed as including any gender.

2.4 Words importing the singular shall be construed as importing the plural and vice versa.

2.5 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation. Reference made to any clause paragraph or schedule or recital context is a reference to a clause paragraph or schedule or recital in this Agreement.

2.6 In the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it and any and every order instrument regulation permission direction or plan made or issued under the statute or deriving validity from it.

3. Legal Effect

3.1 This Agreement is a planning obligation and is made pursuant to Section 106 of the Act and the obligations contained in this Agreement are planning obligations for the purposes of that section insofar as they fall within the terms of sub-section 106(1) and with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.

3.2 Insofar as any of the covenants contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein are planning obligations for the purposes of the provisions in respect of the Site which may be enforced by the Council or the County Council against the Owners.

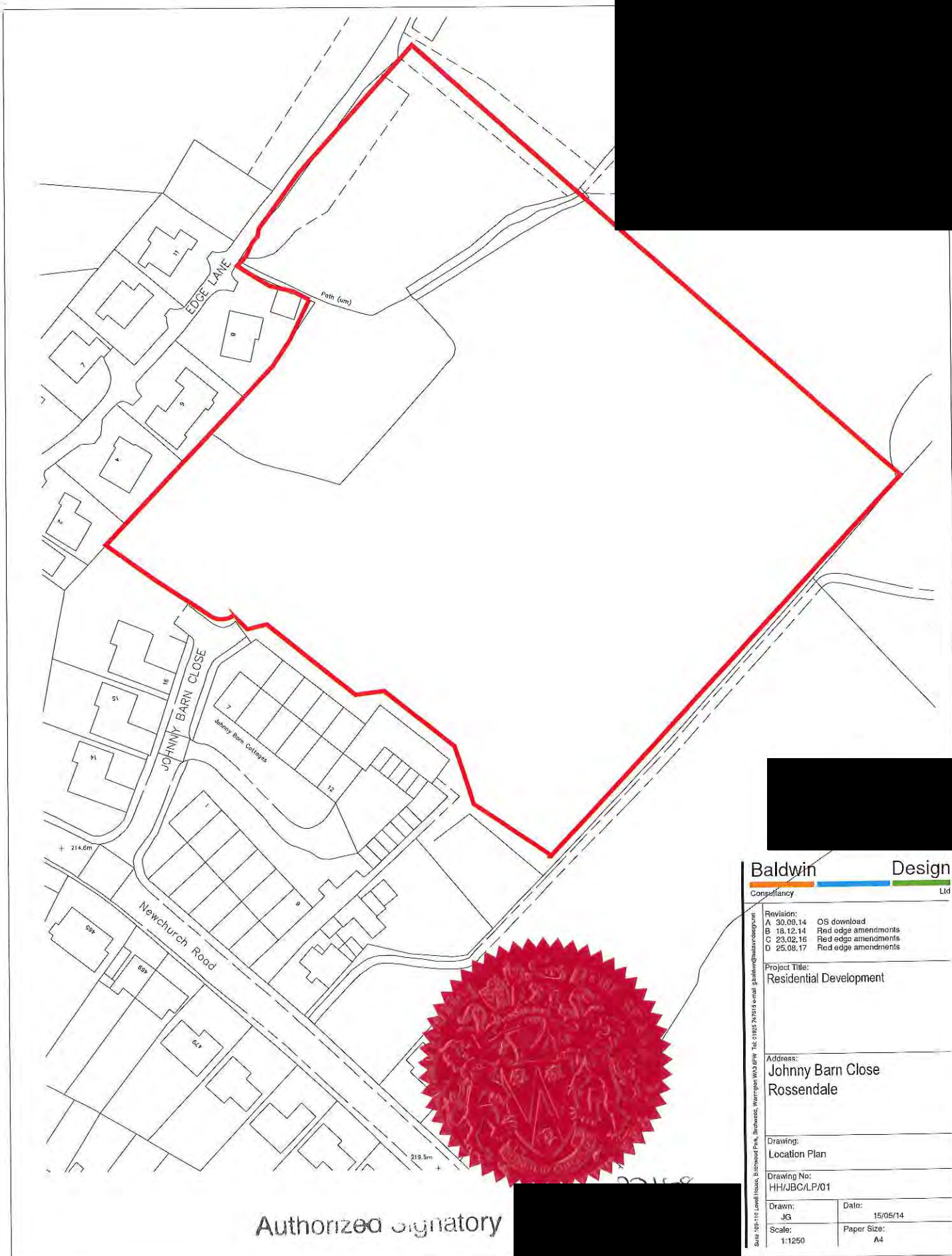
3.3 The parties agree that the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) relating to planning obligations and all other relevant regulations thereunder are satisfied.

4. Commencement

4.1 This Agreement is conditional upon the grant of the Planning Permission and shall not take effect until the Commencement of Development authorised by the Planning Permission.

4.2 Save for the provisions of clause 7.8 and 7.10 (Land Charges registration) and 7.13 (third parties) and 9 (Legal Costs) 7.3 (Notices) 10 (Notices of Change in Ownership) and Paragraph 1 of the Fourth Schedule (notice of intended Commencement of Development) which shall come into effect immediately upon completion of this Agreement.

5. The Covenants of the Owners



Authorized signatory

Baldwin		Design
Consultancy		Ltd
Revision: A 30.09.14 OS download B 18.12.14 Red edge amendments C 23.02.16 Red edge amendments D 25.06.17 Red edge amendments		
Project Title: Residential Development		
Address: Johnny Barn Close Rossendale		
Drawing: Location Plan		
Drawing No: HH/JBC/LP/01		
Drawn: JG	Date: 15/05/14	
Scale: 1:1250	Paper Size: A4	

Site: 109-110, Leavel House, Beckwood Park, Brethwood, Warrington WA3 6PW. Tel: 01925 747145 email: g.baldwin@baldwin-design.com

5.1 The Owners hereby covenant in respect of themselves and in respect of the Owners so as to bind their interest in the Site with the Council to perform the obligations on its part specified in the Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Schedules and with the County Council to perform the obligations on its part specified in the Tenth Schedule.

6. The Covenants of the Council and the County Council

6.1 The Council hereby covenants with the Owners to perform the obligations on its part specified in the Fifth Schedule and the Eleventh Schedule. The County Council hereby covenants with the Owners to perform the obligations on its part specified in the Twelfth Schedule

7. Agreements and Declarations

It is hereby agreed and declared as follows:

7.1 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

7.2 This Agreement is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

7.3 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council or the County Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council or the County Council by an officer or duly authorised signatory thereof.

7.4 Where any certificate, consent, permission, nomination or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably be delayed or withheld and if refused written reasons for the refusal shall be provided.

7.5 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

7.6 This Agreement shall not be enforceable against:

7.6.1 owner-occupiers or tenants of any Dwelling constructed pursuant to the Planning Permission or against those deriving title there from;

7.6.2 any mortgagee or chargee of the Site or any receiver appointed by such a mortgagee unless such shall go into possession of the Site or part thereof;

7.6.3 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;

7.6.4 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and or/cycle ways to be constructed on the Site.

7.6.5 Any party with the benefit of an easement only.

7.7 PROVIDED ALWAYS THAT nothing in this Agreement restricts or is intended to restrict the exercise at any time by the Council or County Council of any of their statutory functions or discretions in relation to any part of the Site or otherwise.

7.8 If the Planning Permission shall expire before the Commencement Date or shall at any time be quashed, revoked, otherwise withdrawn or it is, without the consent of the Owner, modified by any statutory procedure the provisions of this Agreement shall forthwith determine and cease to have effect (insofar only as they have not already been complied with) and any Local Land Charge registered pursuant to clause 7.10 shall be cancelled as soon as reasonably practicable.

7.9 Nothing in this Agreement 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 Agreement.

7.10 This Agreement shall upon completion be registered by the Council as a Local Land Charge.

7.11 If any sum due under this Agreement shall remain unpaid after the same has become due (without prejudice to any other right of the parties to this Agreement) Interest shall be paid thereon by the defaulting party to the other party from the date the sum becomes due to the date of actual receipt of the payment by the receiving party at the rate of 3% above the base lending rate of the Bank of England from time to time.

7.12 Obligations entered into by any party which comprises of more than one person shall be deemed to be joint and several.

7.13 This Agreement is binding on successors in titles and assigns.

7.14 No waiver (whether express 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 Agreement shall constitute a waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default.

7.15 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

7.16 Nothing in this Agreement shall be construed as granting planning permission or any other approval consent or permission required from the Council or the County Council in exercise of any other statutory function.

8. Disputes

8.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by any party hereto to a person having appropriate professional qualifications and experience in such matters ("the Expert") appointed jointly by the parties or in default of agreement within 10 Working Days after either party has given to the other a written request requiring the appointment of

the expert by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party and such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

- 8.2 The Expert shall have at least 10 years post qualification experience in the area of the dispute in question.
- 8.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties (except where there is a manifest error and/or on a matter of law) and the following provisions shall apply to the Expert.
- 8.4 The charges and expenses of the Expert shall be borne between the parties in such proportions as the Expert may direct.
- 8.5 The Expert shall give each of the parties an opportunity to make representations to him before making his decision which he shall make available to the other parties on request.
- 8.6 The Expert shall be entitled to obtain opinions from others if he so wishes.
- 8.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 8.8 The Expert shall comply with any time limits or other directions agreed by the parties on or before his appointment.
- 8.9 If the Expert is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 8.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 8.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor of at least ten (10) years post qualification experience in the same manner and the same terms as set out in clauses 8.1 to 8.1 inclusive who shall determine which type of professional should be appointed in relation to such matter.

9. Legal Costs

- 9.1 The Owners agree to pay to the Council on the date hereof the sum of £1500 (one thousand five hundred pounds) as a contribution towards the reasonable legal costs incurred by the Council in the negotiation preparation and execution of this Agreement .

10. Notice of Change in Ownership

- 10.1 The Owners agree with the Council that until all obligations under this Agreement have been discharged to give the Council notice of any change in ownership of any of their legal interests in the Site and the creation of any new legal interests by them on the Site within 15 Working Days of the occurrence of such change or creation and such notice shall

give details of the transferee's full name and registered office (if a company) or usual address together with the area of the Site or relevant unit of occupation by reference to a plan.

THE FIRST SCHEDULE

THE SITE

The registered freehold land at Johnny Barn Close, Cloughfold, Rossendale, BB4 7TL part of the land registered at the Land Registry under Title Number LA535250 and for the purposes of identification only shown edged red on the attached Plan

**THE SECOND SCHEDULE
DESCRIPTION OF THE DEVELOPMENT**

Outline residential development for up to 30 dwellings, with all matters reserved
Planning Application No: 2015/0517

**THE THIRD SCHEDULE
DRAFT PLANNING PERMISSION**

THE FOURTH SCHEDULE

Owners' Covenants

1. The Owner covenants with the Council as follows:

The Owner shall give notice in writing to the Council of their intention to commence the Development fourteen (14) calendar days prior to Commencement of the Development and shall give notice in writing of the date of commencement of construction of each of the 10th, 20th and 25th Dwelling on Site within 7 calendar days of each date arising.

2. Payment of the contributions

The Owner will pay the Equipped Play Space Contribution and Playing Pitch Contribution to the Council as follows:

- 2.1 On the occupation of the 10th Dwelling one third of the Equipped Play Space Contribution and one third of the Playing Pitch Contribution. The Owner shall not occupy or cause or permit to be occupied the 10th Dwelling constructed on the Site until such payment has been made.
- 2.2 On the occupation of the 20th Dwelling one third of the Equipped Play Space Contribution and one third of the Playing Pitch Contribution. The Owner shall not occupy or cause or permit to be occupied the 20th Dwelling constructed on the Site until such payment has been made.
- 2.3 On the occupation of the 25th Dwelling one third of the Equipped Play Space Contribution and one third of the Playing Pitch Contribution. The Owner shall not occupy or cause or permit to be occupied the 25th Dwelling constructed on the Site until such payment has been made.

The Contributions shall be subject to annual review from the date of this Agreement in accordance with the RPIX up to the date of payment after the relevant annual review.

Rossendale Borough Council

APPLICATION FOR PLANNING PERMISSION

Town and Country Planning Act 1990

Applicant Name: Hurstwood Holdings
Notice Recipient: Peter Brett Associates
Peter Brett Associates
Oxford Place
61 Oxford Street
Manchester
Lancashire
M1 6EQ

Part 1 – Particulars of Application:

Dated Received: **20th January 2016**

Application Number: **2015/0517**

Proposed Works: Outline residential development for up to 30 dwellings, with all matters reserved

Location: Land at Johnny Barn Close, Cloughfold, Rossendale, BB4 7TL,

Following consideration of the application in respect of the proposal outlined above, it was resolved to **GRANT OUTLINE PLANNING PERMISSION** subject to the following conditions:

CONDITIONS:

1. An application for approval of the reserved matters (namely the layout, scale, appearance, access and landscaping of the development) must be made to the Council before the expiration of three years from the date of this permission and the development hereby permitted must be begun two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. The outline planning permission hereby approved relates to the erection of up to thirty residential units which shall be carried out in accordance with the following plans and documents unless otherwise required by the conditions below:- Application form date stamped 20th January 2016 by the Local Planning Authority.- Site Location Plan (drawing number HH/JBC/LP/01 Revision D) date stamped 30th August 2017 by the Local Planning Authority.- Parameters Plan (drawing number HH/JBC/PP/01 Revision C) date stamped 20th January 2016 by the Local Planning Authority.- Flood Risk Assessment by Peter Brett Associates Ref: 29669/4001 (Revision 1) date stamped 30th August 2017 by the Local Planning Authority.

Reason: To ensure the development complies with the approved plans and submitted details.

3. Either prior to the commencement of the development or as part of the first reserved matters application full details of the alignment, height and appearance of all fences and walls and gates to be erected (notwithstanding any such detail shown on the submitted plans) shall be submitted to and approved in writing by the Local Planning Authority. Notwithstanding the above there shall be 1.8m boundary treatments between the rear gardens of each individual dwelling, and natural stone walling shall be used around the perimeter of the site. No dwelling shall be occupied until all fences and walls shown in the approved details to bound its plot have been erected in conformity with the approved details. Other fences and walls shown in the approved details shall have been erected in conformity with the approved details prior to substantial completion of the development.

Reason: The required details are not provided as part of this outline application and are required at an early stage in order to ensure a visually satisfactory form of development and to provide reasonable standards of privacy to residents.

4. Either prior to the commencement of the development or as part of the first reserved matters application full details of the following details shall be submitted to and approved by the Local Planning Authority in writing:

- a) Details of the colour, form and texture of all external facing materials to the proposed dwellings
- b) Details of the colour, form and texture of all hard ground surfacing materials. Notwithstanding the above, the dwellings hereby approved shall be constructed in natural coursed stone, and shall have natural blue slate roofs. The development thereafter shall be constructed utilising the approved materials

Reason: The application is in outline only and is not accompanied by detailed plans, and to ensure that the development is appropriate in terms of visual amenity and to ensure that it responds to the local context of the site.

5. Notwithstanding the details shown on the submitted plans the new dwellings shall be no greater than two storeys in height.

Reason: To ensure that the development is appropriate in terms of visual amenity and to protect neighbour amenity.

6. No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:

- i) The parking of vehicles of site operatives and visitors
- ii) The loading and unloading of plant and materials
- iii) The storage of plant and materials used in constructing the development
- iv) The erection and maintenance of security hoarding
- v) Wheel washing facilities
- vi) Measures to control the emission of dust and dirt during construction
- vii) A scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of highway safety.

7. No development shall commence until a scheme for the construction of the site access and off-site highways works has been submitted to and approved in writing by the Local Planning Authority. The off-site highway works shall include the provision of a bus shelter at the eastbound bus stop located to the south east of the site on Newchurch Road. No part of the development shall be occupied until the works have been carried out in accordance with the approved details.

Reason: In the interests of highway safety and to ensure that safe and adequate access will be secured at the site at an early stage of the development

8. Prior to the occupation of any of the dwellings hereby approved details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and Maintenance Company has been established.

Reason: To ensure that the estate streets serving the development are maintained to an acceptable standard in the interest of residential / highway safety.

9. Prior to the construction of any of the streets referred to in the previous condition, full engineering, drainage, street lighting and constructional details of the streets shall be submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details.

Reason: In the interests of highway safety.

10. Prior to the occupation of the first dwelling house hereby approved full details of the proposed arrangements for future management and maintenance of the communal areas and areas of landscaping within the development shall be submitted to and approved by the Local Planning Authority. The communal areas shall thereafter be maintained in accordance with the approved management and maintenance details until such time as a private management and Maintenance Company has been established.

Reason: To ensure that the communal areas serving the development and landscaped areas are maintained to an acceptable standard in the interest of residential / highway safety.

11. Notwithstanding any information submitted with the application, either prior to the commencement of development or as part of the first reserved matters application a report containing the preferred option(s) to form a contaminated land remediation strategy for the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the duly approved remediation strategy.

Reason: In the interests of mitigating pollution, risk to controlled waters and risk to the development from contaminated land.

12. As part of the first reserved matters application, if any surface water drainage works (which may be required in connection with the development as hereby approved) are proposed to be carried out on the northern part of the site above where the approved dwellings are to be sited as shown on the approved Parameters Plan (drawing number HH/JBC/PP/01 Revision C date stamped 20th January 2016 by the Local Planning Authority), then that part of the site shall be subject to the following:

a) An investigation and preliminary risk assessment of land contamination, which shall be submitted to and approved in writing by the Local Planning Authority. The above assessment shall investigate the nature and extent of any contamination on the northern part of the site (whether or not it originates on the site). The assessment shall be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority before any development takes place. The submitted report shall comprise:

- i. Where potential risks are identified by the Preliminary Risk Assessment, a site investigation survey of the extent, scale and nature of contamination and;
- ii. An assessment of the potential risks to:- human health, - property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes,- adjoining land,- groundwaters and surface waters,- ecological systems, - archaeological sites and ancient monuments;
- iii) Where unacceptable risks are identified, an appraisal of remedial options and proposal of the preferred option(s) to form a remediation strategy for the site.

b) Full details (including any necessary mitigation proposals) demonstrating how unacceptable flood risk impacts on any public rights of way within the application site will be avoided. The development shall thereafter be carried out in full accordance with the approved details.

Reason: To promote sustainable development, secure proper drainage, protect public rights of way and to manage the risk of land contamination, flooding and pollution.

13. Pursuant to condition 11 and condition 12 (if appropriate) and prior to first occupation of the dwellings hereby approved, a verification report, which validates that all remedial works and mitigation measures undertaken on site were completed in accordance with those agreed with the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To promote sustainable development, secure proper drainage, protect public rights of way and to manage the risk of land contamination, flooding and pollution.

14. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) by Peter Brett Associates Ref: 29669/4001 (Revision 1) (date stamped 30th August 2017 by the Local Planning Authority), and the following mitigation measures detailed within the FRA:

- a. Limiting the surface water run-off generated by the critical storm periods for 1 in 1 year, 1 in 30 year and 1 in 100 year + allowance for climate change so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- b. Provision of compensatory flood storage approx. 500m³ within the site and 1000m³ above the site as indicated in section 5.3.29 of the FRA
- c. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
- d. Confirmation of the location of pipes from the existing reservoir (north of the site) across the site.
- e. Finished floor levels are set no lower than 150mm above Ordnance Datum (AOD).

Reasons:

- i. To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- ii. To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.
- iii. To ensure safe access and egress from and to the site.
- iv. To reduce the risk of flooding from severance of the pipe network from the reservoir and reservoir itself
- v. To reduce the risk of flooding to the proposed development and future occupants.

15. As part of the first reserved matters application a detailed surface water drainage scheme for the development shall be submitted to, and approved in writing by the Local Planning Authority. The submitted surface water drainage scheme shall include the following as a minimum:

- a) Information about the lifetime of the development design storm period and intensity (1 in 30 and 1 in 100 year + allowance for climate change - with reference to Environment Agency advice on 'Flood Risk Assessments: Climate Change Allowances'), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance and easements where applicable, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of floor levels in AOD;
- b) The drainage scheme should demonstrate that the surface water run-off must not exceed the discharge rate agreed with United Utilities at 15 litres per second. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed;
- c) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
- d) Flood water exceedance routes, both on and off site;
- e) A timetable for implementation, including phasing where applicable;
- f) Site investigation and test results to confirm infiltrations rates;
- g) Details of water quality controls, where applicable. The approved scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme.

Reasons:

- i. To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- ii. To reduce the risk of flooding to the proposed development, elsewhere and to future users.
- iii. To ensure that water quality is not detrimentally impacted by the development proposal.

16. No development hereby permitted shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Reasons:

- i. To ensure that the drainage for the proposed development can be adequately maintained.
- ii. To ensure that there is no flood risk on- or off-the site resulting from the proposed development or resulting from inadequate the maintenance of the sustainable drainage system.

17. No development shall commence until details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development have been submitted which, as a minimum, shall include:

a) The arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company

b) Arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:

i. on-going inspections relating to performance and asset condition assessments

ii. operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime;

c) Means of access for maintenance and easements where applicable. The plan shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the sustainable drainage system shall be managed and maintained in accordance with the approved details.

Reasons:

- i. To ensure that appropriate and sufficient funding and maintenance mechanisms are put in place for the lifetime of the development
- ii. To reduce the flood risk to the development as a result of inadequate maintenance
- iii. To identify the responsible organisation/body/company/undertaker for the sustainable drainage system.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting that Order with or without modification, no structure shall be erected within permeable paved areas, including the filter drains to the north of the proposed development, as delineated on drawing 29669/4003/002, Land at Johnny Barn Close Proposed Surface Water Management Strategy in the approved Flood Risk Assessment document.

Reasons:

- i. To ensure safe access and egress from and to the site.
- ii. To reduce the risk of flooding to the proposed development and future occupants

19. All attenuation/storage and flow control devices/structures are to be constructed and operational prior to the commencement of any other development and prior to any development phase.

Reasons:

- i. To ensure site drainage during the construction process does not enter watercourses at un-attenuated rate.
- ii. To prevent a flood risk during the construction of the development

20. The first reserved matters application shall include full details of the location of the affordable housing units to be provided on the site. The affordable housing shall thereafter be provided in accordance with the approved scheme.

Reason: To ensure the appropriate provision of affordable housing units on the site.

21. No development shall take place until a repeat survey of the site and surrounding land for the presence of badgers has been undertaken, and the results of the survey (together with proposals for mitigation/compensation, if required) in the form of a report have been submitted to and approved in writing by the Local Planning Authority. Any approved measures for the protection of badgers shall be implemented in full as part of the development.

Reason: In the interests of protecting any badgers which are present on the site.

22. No ground works, site clearance or other works that may affect nesting birds shall take place between 1st March and 31st July inclusive, unless a survey by a competent ecologist demonstrates that nesting birds would not be affected. Such a survey shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any such works during the dates specified above.

Reason: In the interests of protecting nesting birds.

23. Any removal or rebuild of any dry stone walls as part of the development shall be undertaken by hand. If any reptiles or nesting birds are found at any time then works to the dry stone walls must cease and advice sought from a suitably qualified person about how best to proceed. Works to the dry stone walls shall not recommence until a method statement compiled by a suitably qualified person (including measures to avoid harm to reptiles and nesting birds) has been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved method statement.

Reason: The dry stone walls have the potential to accommodate reptiles and nesting birds and mitigation is required in the interests of protecting reptiles and nesting birds.

24. The reserved matters (landscaping) application shall include a statement containing full details of measures to be carried out to conserve and enhance the biodiversity value of the site. The details shall include the planting of native hedgerows and appropriate tree planting throughout the site, along with installation of bird nest boxes and bat roosting opportunities.

Reason: To conserve and enhance biodiversity.

25. The first reserved matters application shall include full details of proposed finished ground floor levels and external ground levels of the development hereby approved, and shall include full details of the finished ground floor levels of all neighbouring dwellings located directly adjacent to the site.

Reason: In the interests of neighbour amenity.

26. All of the dwellings hereby permitted shall be sited within the area labelled 'indicative development parcels' on the approved Parameters Plan (drawing number HH/JBC/PP/01 Revision C date stamped 20th January 2016 by the Local Planning Authority). No dwellings shall be sited outside of this area.

Reason: In the interests of visual amenity.

27. Any ground works or construction works associated with the development hereby approved shall not take place except between the hours of 7:00 am and 7:00 pm Monday to Friday and 8:00 am and 1:00 pm on Saturdays. No construction shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.

Reason: In the interests of neighbour amenity.

28. A tree survey to BS 5837 (2012) shall be undertaken by a suitably qualified person / organisation and shall be submitted to the Local Planning Authority as part of the first reserved matters application. The tree survey shall cover all existing trees within the site boundary and shall set out any mitigation measures necessary for the protection of those trees during construction works.

Reason: In the interests of visual amenity and protecting biodiversity.

INFORMATIVES

- 1) If, during any works on site, contamination is suspected or found, or contamination is caused, the Local Planning Authority shall be notified immediately. Where required, a suitable risk assessment shall be carried out and/or any remedial action shall be carried out in accordance to an agreed process and within agreed timescales in agreement with the Local Planning Authority.
- 2) The Local Planning Authority has a Core Strategy (adopted in November 2011) and a series of Supplementary Planning Documents, which can be viewed at:
http://www.rossendale.gov.uk/downloads/download/331/core_strategy_local_plan_part_1_adapted

The Council operates a pre-application planning advice service. All applicants are encouraged to engage with the Local Planning Authority at the pre-application stage. In this case the applicant did not engage in pre-application discussions.

The Local Planning Authority has considered the application and where necessary considered either the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development in accordance with the National Planning Policy Framework and the local planning policy context.

Date:

Development Control
First Floor
The Business Centre
Futures Park
Bacup
OL13 0BB

Signed:

Nicola Hopkins
Planning Manager

Please note that this notice does not relieve the applicant from the need to ensure compliance with the appropriate provisions of the Building Act 1984 and the Building Regulations 2000.

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ACCOMPANYING THIS NOTICE

GUIDANCE NOTES FOR APPLICANTS WHERE AN APPLICATION HAS BEEN APPROVED

1. APPLICATIONS FOR PLANNING PERMISSION, APPROVAL OF RESERVED MATTERS, LISTED BUILDING CONSENT OR CONSERVATION AREA CONSENT.

If you object to the Local Planning Authority's decision to grant permission, approval or consent subject to conditions, you may appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990 within 12 weeks of the date of this notice. With regard to approved applications concerning listed buildings in a conservation area, you may appeal under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 8 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.

Please make your appeal using a form from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 6372) www.planning-inspectorate.gov.uk. The Secretary of State may allow a longer period for you to give notice of appeal, but will normally only do so if there are special circumstances that excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it appears that the Local Planning Authority could have granted permission for the proposed development only subject to the conditions it imposed, bearing in mind the statutory requirements, the development order, and any directions given under the order. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority made its decision on the grounds of a direction that he or she had given.

It may be that planning permission, conservation area consent or listed building consent is granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment; but you, as the landowner, claim that the land is no longer fit for reasonably beneficial use in its existing state and you cannot make it fit for such use by carrying out the permitted development. If so, you may serve a purchase notice on Oxford City Council requiring the Council to buy your interest in the land. You can do this under Section 137 of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings and buildings in conservation areas.

You may claim compensation against the Local Planning Authority if the Secretary of State has refused or granted permission subject to conditions, either on appeal or when the application was referred to her or him.

Compensation is payable in the circumstances set out in:

(a) Section 114 and Part II of Schedule 3 of the Town and Country Planning Act 1990; or (b) Section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings.

2. ADDITIONAL NOTES ON LISTED BUILDING CONSENT

- 1 If you wish to modify the development referred to in your application or to vary it in any way, you must make another application.
- 2 This notice refers only to the grant of listed building consent and does not entitle you to assume that the City Council has granted its consent for all purposes:
 - (a) If you have applied for planning permission under Section 57(1) of the Town and Country Planning Act 1990, we will send you a separate notice of decision;
 - (b) We will send you a separate notice about plans you have submitted under the Building Regulations 2000;
 - (c) If the development for which listed building consent has been granted includes putting up a building for which you have to submit plans under the Building Regulations 2000, you should not do any work connected with erecting that building until you have satisfied yourself that you have complied with Section 219 of the Highways Act 1980 or that they do not apply to this building.
- 3 Even if you have gained listed building consent, you must comply with any restrictive covenants that affect the land referred to in the application.

3. APPLICATION FOR CONSENT TO DISPLAY ADVERTISEMENTS

If the applicant is aggrieved by the decision of the Local Planning Authority to grant consent, subject to conditions, he or she may appeal to the Secretary of State for the Environment in accordance with Regulation 17 and Part 3 of Schedule 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 within eight weeks of the receipt of this notice. (Appeals must be made on a form which obtainable from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 6372) www.planning-inspectorate.gov.uk).

IMPORTANT

Compliance with Planning Conditions

The Council's Planning Enforcement Team is responsible for monitoring the implementation of planning permissions. This includes ensuring that all relevant conditions have been complied with. Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- Help ensure that public acceptance of the decision-making process is maintained.

Whilst the majority of developers/homeowners do comply with the requirements of planning permissions, there are a number who do not. Where any planning conditions are breached, the Council can take formal enforcement action without further notice. Enforcement action could include such measures as requiring remedial works, cessation of use, or complete demolition and can cause the developer/homeowner unnecessary expense, delay and frustration.

It is important that you read and understand the eight points below to avoid any potential breaches of planning control:

- 1) Please take some time to read through the conditions attached to the planning permission and their particular requirements.
- 2) All planning conditions and timeframes for their submission/implementation must be complied with in full, unless a subsequent application or appeal is made to vary or remove those conditions and is subsequently approved.
- 3) Applications to vary conditions attached to a planning permission can take up to 8 weeks to determine (13 weeks if relating to a major planning application). Appeals normally take much longer.
- 4) Applications for approval of details reserved by planning condition (more commonly referred to as condition discharge applications) can take approximately 8 weeks to determine.
- 5) Applicants should ensure that they submit any applications or appeals in good time, well in advance of any anticipated or scheduled start date for commencement of the development.
- 6) If any amendments are sought to the permission, either prior to commencement of development or during the development, the developer should contact the Planning Department at their earliest opportunity to establish what form of application will be required. Work should not continue until any amendments are approved in writing by the Local Planning Authority.
- 7) Fees are normally payable for applications for approval of details reserved by planning condition (condition discharge applications). The relevant application forms, associated

fees and details of how to apply can be found on the Planning Portal:
www.planningportal.gov.uk

- 8) Should you have any queries relating to any part of the Planning Process the Council's Duty Planning Officer is available Mondays, Wednesdays and Fridays between the hours of 0900-1200 and can be contacted during those times on 01706 217 777 (Option 4).

Nicola Hopkins
Planning Manager

DRAFT

THE FIFTH SCHEDULE AFFORDABLE HOUSING

The Owner hereby covenants with the Council as follows:

Part 1

1. To notify the Council in writing of the Commencement of the Development such notice to include details of which units within the Development are to be Affordable Housing Units and such notice shall be served on the Borough Council within fourteen (14) days.
2. Prior to Commencement of the Development the Owner shall submit to the Council for approval (not to be unreasonably withheld or delayed) a scheme for the provision of 30% Affordable Housing Units in accordance with the Ninth Schedule including by reference to a plan or plans of their location, plot boundaries and layout and including a programme and timetable for the provision of Affordable Housing Units and the 'Market Value Notice';
3. The Council will advise within 28 days of receipt of the Market Value Notice whether it approves the valuations, such approval not to be reasonably withheld or delayed, failing which the valuations provided in accordance with this paragraph shall be deemed to be approved by the Council.
4. Following approval of such scheme, the Owner shall lay out the Affordable Housing in full compliance with the approved scheme, or any subsequent variation to that scheme as approved by the Council.
5. The Owner covenants with the Council not to Commence Development of any part of the Site unless a notice pursuant to paragraph 1 above has been served on the Council and the scheme referred to in paragraph 2 has been approved and the valuations have been approved or deemed approved in accordance with paragraph 3.

Part 2

A. Construction of the Affordable Housing Units

1. To construct and provide on the Site 30% of the Dwellings in accordance with the Ninth Schedule and as Affordable Housing Units as more particularly set out in this Agreement.
2. The Affordable Housing Units shall be used solely for the purpose of providing Affordable Housing to be occupied by Approved Persons as the sole residence of households in need of Affordable Housing within the Borough in accordance with this Agreement.
3. The Owner shall serve notice on the Council within fifteen [15] working days after the completion of construction of the Affordable Housing Units.
4. The Owner shall not occupy or allow more than 10 of the Open Market Dwellings to be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission (and for the avoidance of doubt construction of the Affordable Housing Units shall not be achieved unless all the services are connected and operating insofar as they relate to the Affordable Housing Units and the Affordable Housing Units are accessible by both vehicles and pedestrians) and until:
 - 4.1. the Shared Ownership Units have either:
 - 4.1.1 been transferred pursuant to paragraph 1 of Part 2B for Occupation by a person or persons who meet the Eligibility Criteria in accordance with Part B below: or
 - 4.1.2 been released from the Affordable Housing Provisions of this Agreement pursuant to paragraphs 5 or 6 of Part B; or

4.1.3 an alternative scheme for providing Affordable Housing for Occupation by persons in Housing Need has been agreed pursuant to paragraph 5 of Part B and implemented; and

4.2 a comprehensive marketing campaign in respect of all of the Starter Homes Dwellings has been approved in writing by the Council, commenced and thereafter actively pursued using reasonable endeavours to secure a sale of those Dwellings.

Part B Transfer of the Shared Ownership Units

1. The Owner shall use reasonable endeavours to enter into a contract to dispose of a freehold or long leasehold interest in all the Shared Ownership Units to one Affordable Housing Provider unless otherwise agreed in writing with the Council. For the avoidance of doubt, such interest shall comprise the freehold interest by transfer or a term of years certain for at least 99 years by a long lease.
2. The agreement to dispose of any of the Shared Ownership Units to the Affordable Housing Provider must impose (inter alia) the following or equivalent terms:
 - 2.1 a restrictive covenant by the Affordable Housing Provider not to use the relevant Affordable Housing other than for residential purposes for those in Housing Need and in accordance with the terms of this Agreement; and
 - 2.2 that the transfer for a long lease as appropriate of the relevant Affordable Housing Units to the Affordable Housing Provider be free from any ground rent (other than a peppercorn) or encumbrances save for any existing encumbrances and such rights reservations and covenants as are necessary to enable the Owner to develop the Site in accordance with the Planning Permission and shall grant to the relevant Affordable Housing Provider such rights and covenants as are necessary to enable it to complete (and provide) the Affordable Housing Units; and
 - 2.3 the Owner shall not require the relevant Affordable Housing Provider to meet any of the Owner's legal or other conveyancing costs.
3. The Owner shall provide confirmation to the Council that an agreement of the transfer of the Shared Ownership Units to an Affordable Housing Provider has been entered into within ten [10] Working Days of it being entered into.
4. The Owner shall use reasonable endeavours to agree with the Council the identity of the Affordable Housing Provider to which the Shared Ownership Units are to be transferred (and the Council) shall respond to any request for such agreement within twenty one [21] Working Days.

Subject to compliance with paragraph 1 above,

5. In the event the Owner has:
 - 5.1 not been able to identify an Affordable Housing Provider which is acceptable to the Council in accordance with this Schedule and which is ready willing and able to exchange unconditional contracts on commercially acceptable terms to the Owner for the purchase of all of the Shared Ownership Units; or
 - 5.2 has identified an acceptable Affordable Housing Provider which was ready willing and able to exchange unconditional contracts for the purchase of the all of the Shared Ownership Units but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Shared Ownership Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider) in either case within six (6) months of the date of this Agreement then the provisions of the following paragraph shall apply.

6. Where the preceding paragraph applies, the Owner may at any time following the 6-month period referred to notify the Council that they have not exchanged contracts with an Affordable Housing Provider for the disposal of all of the Shared Ownership Units and the Council shall then use reasonable endeavours to identify a suitable Affordable Housing Provider which is ready able and willing to exchange contracts for the purchase of all of the Shared Ownership Units (or such as remain unsold) and the provisions of the following paragraph shall apply.
7. In the event that either:
 - 7.1 the Council have not been able to identify an Affordable Housing Provider which is ready willing and able to exchange unconditional contracts for the purchase of all of the Shared Ownership Units from the Owner; or
 - 7.2 the Council had identified an Affordable Housing Provider which was ready and willing and able to exchange unconditional contracts for the purchase of all of the Shared Ownership Units from the Owner but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Shared Ownership Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider) in either case within six (6) months of the date after the date on which the Owner had originally notified the Council under paragraph 6 then the provisions of the following paragraph shall apply.
8. Subject to the Owner providing written evidence to the Council of Affordable Housing Provider engagement and reasons why the transfer to the Affordable Housing Provider have not moved forward, then the Council and the Owner (both acting reasonably) shall seek to agree an appropriate alternative scheme for providing Affordable Housing for Occupation by Approved Persons in Housing Need or as appropriate payment of a commuted sum for the provision of alternative Affordable Housing within the administrative area of the Council.
9. Where the Owner and the Council are not able to reach agreement in accordance with paragraph 8 above within one month of the Owner submitting such evidence, the Owner shall be entitled to dispose of the Shared Ownership Units as Open Market Units, free from the restrictions within this Agreement, subject to payment of 40% of the Net Sales Proceeds to the Council as a commuted sum within 5 Working Days of legal completion, for the provision of alternative Affordable Housing within the administrative area of the Council
10. From the date of transfer of the Shared Ownership Units by the Owner to an Affordable Housing Provider the provisions of the Fifth Schedule shall apply thereto and shall bind the Affordable Housing Units only.
11. The Shared Ownership Units shall:
 - 11.1 be available from an Affordable Housing Provider;
 - 11.2 meet the lease requirements in the definition of Shared Ownership Units; and
 - 11.3 be sold by the Affordable Housing Provider to eligible persons who meet the criteria in the Eighth Schedule;
 - 11.4 remain as Affordable Housing in perpetuity (save after final Staircasing of the occupier's interest in a shared ownership lease to 100% of the relevant Shared Ownership Unit and also save when released from the Affordable Housing provisions of this Agreement by virtue of paragraphs 9 of Part B of this Schedule) by controlling their future use and occupation so as to required that they are managed by an

Affordable Housing Provider in accordance with its objectives and/or Articles of Association.

11.3 Upon Disposal of the Shared Ownership Units to an Affordable Housing Provider the Affordable Housing Provider shall at all times thereafter:-

11.3.1 manage the Shared Ownership Units in accordance with the Affordable Housing Provider's usual and normal shared ownership terms and conditions of the type and style recommended by Homes England in such form that meets the lease requirements in the definition of Shared Ownership Units;

11.3.2 require (insofar as it is legally possible to do so) each Approved Person who acquires a Shared Ownership Unit to enter into an obligation in the document affecting the relevant disposal to occupy it as that person's sole or main residence; and

11.3.3 On Disposal of a relevant Shared Ownership Unit the Affordable Housing Provider shall allow tenants to increase their equity stake to 100% of the grant of a shared ownership lease.

11.3.4 The Affordable Housing Provider shall only make an initial Disposal of a Shared Ownership Unit on the basis of a starting equity share of between a minimum of 25% and maximum of 75% Provided That this shall not prevent the owner of the Shared Ownership Unit from increasing their equity stake to 100.

11.4 As soon as reasonably possible following any Staircasing on a relevant Shared Ownership Unit an Affordable Housing Provider shall calculate the Staircasing Net Sale Proceeds for the relevant Shared Ownership Unit and therefore the Recycling Percentage on that Staircasing of the Shared Ownership Unit and shall pay into a designated reserve fund held by the Affordable Housing Provider any Recycling Percentage received in respect of such Staircasing.

11.5 The Recycling Percentage may only be used by the Affordable Housing Provider for Recycling.

11.6 On any transfer of any Shared Ownership Unit(s) by one Affordable Housing Provider to another Affordable Housing Provider the outgoing Affordable Housing Provider shall (to the extent not spent or already allocated for spending on Recycling) transfer the balance of the Staircasing Net Sale Proceeds attributable to such Shared Ownership Units to the incoming Affordable Housing Provider and pursuant to this deed the incoming Affordable Housing Provider shall meet the obligations contained in this Schedule in so far as these relate to Recycling of the Staircasing Net Sale Proceeds received by it on Staircasing (whether this relates to those sums transferred to it by the outgoing Affordable Housing Provider or received on Staircasing after its date of acquisition).

11.7 In the event that the whole or any part of any Recycling Percentage has not been spent or allocated for spending on Recycling within five (5) years from the date of receipt by the Affordable Housing Provider, the monies or balance shall forthwith be released from any obligations pursuant to this Deed and be available for application by the Affordable Housing Provider in any manner which it considers appropriate, so long it has used all reasonable (but commercially prudent) endeavours to secure further Affordable Housing in the Borough.

11.8 The Affordable Housing Provider shall maintain records in respect of each of the

Shared Ownership Unit(s) containing the name of the shared owner(s) and occupier(s) of the relevant Shared Ownership Unit and sufficient details of that person(s) to show that s/he is an Approved Person and the price or rent paid for the Shared Ownership Unit and details of the Staircasing and specifically the Staircasing Net Sale Proceeds and the Recycling Percentage calculations and (to the extent permitted by law) upon request must allow the Council to inspect those records and provide any relevant information in writing.

11.9 Nothing in this agreement shall prevent or restrict the right of an Approved Person who has acquired a share of the ownership or part of the equity of a Shared Ownership Unit subsequently to Staircase under a shared ownership lease.

12. The Shared Ownership Units shall not be Occupied otherwise than for the purpose of providing Affordable Housing in accordance with this Part B save that this obligation and the obligations in this Fifth Schedule shall:
- 12.1 not be binding on any Chargee provided that the Chargee has complied with paragraph 13 below;
 - 12.2 cease to apply to any part or parts of the Property which are transferred or leased by any party referred to in paragraph 12.1 above;
 - 12.2 cease to apply to any Dwelling on disposal to a Protected Tenant
13. Any Chargee shall prior to seeking to dispose of the Shared Ownership Units pursuant to any default under the terms of its mortgage or charge shall give prior written notice to the Council of its intention to dispose (the Chargee's Notice) and:
- 13.1 in the event that the Council responds within one month from receipt of the Chargee's Notice indicating that arrangements for the disposal of the Shared Ownership Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use all reasonable endeavours to complete such disposal
 - 13.2 if the Council does not serve its response to the notice served under paragraph 13.1 within one month from receipt of such notice then the Chargee and any successor in title to such Chargee shall be entitled to dispose free of the restrictions set out in this Third Schedule which shall from the time of completion of the disposal cease to apply to the relevant Shared Ownership Unit(s)
 - 13.3 if the Council or any other person cannot within two months of the date of service of its response under paragraph 13.1 complete such disposal then provided that the Chargee shall have complied with its obligations under paragraph 13.1 the Chargee and any successor in title to such Chargee shall be entitled to dispose free of the restrictions set out in this Third Schedule which shall from the time of completion of the disposal cease to apply to the relevant Shared Ownership Unit(s)

PROVIDED THAT at all times the rights and obligations in this paragraph 13 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Chargee shall not be required to complete a disposal unless the consideration payable is sufficient to

repay the outstanding amount due under the mortgage or charge plus all interest and costs incurred

- 13.4 In the event of any sale not taking place in accordance with the foregoing paragraph 13.1 within a period of two (2) calendar months following the service of the Council's notice thereunder or if the Council fails to issue such notice then the Chargee shall be entitled to sell such Affordable Housing or the relevant part thereof pursuant to its or their power of sale or other remedies under the mortgage or charge in question on the open market and from the date of actual completion the provisions of this Schedule 5 shall not apply to the Shared Ownership Units as sold nor shall any successor in title to or person deriving title from such mortgagee or Chargee be so bound
14. If at any time after the transfer to a Registered Provider of any part of the Site the Council and the Registered Provider shall agree in writing that the Affordable Housing shall be held and made available on terms other than the tenure and/or mix outlines in the definitions to this Agreement then the tenure and/or mix shall be varied thereby without need for consent or agreement of any other person and this right to agree to vary the tenure and/mix of the Affordable Housing by agreement with the Registered Provider shall be exercisable by the Council more than once in respect of the Site if the Council shall see fit and as often as the Council shall see fit.

Part C - Starter Homes

1 The Owners covenant with the Council that when they Dispose of any Starter Home Dwelling they shall observe and perform the obligations of the Owner/Transferee within the Resale Covenant Scheme set out in the Sixth Schedule of this Agreement and shall procure that all future Disposals of those Dwellings shall be bound by the terms of the Resale Covenant Scheme.

2 Save as provided below, the Starter Homes Dwellings shall not be occupied otherwise than:

- 2.1 as the sole private residence of the Occupier;
- 2.2 by an Approved Person (as determined in accordance with the Seventh Schedule) who is in Housing Need at the time of the commencement of his Occupation of the relevant Dwelling; and
- 2.3 in accordance with the Resale Covenant Scheme

SIXTH SCHEDULE
RESALE COVENANT SCHEME
Standard Remarketing Provisions for Starter Homes Dwellings
forming the basis for a
Re-Sale Covenant Scheme
to be tailored for freehold or leasehold sales

1. On any disposal of a Discount for Starter Homes Dwelling the following definitions shall be imposed in the deed of transfer or lease (as applicable):

1.1 "the Agreement" means a S106 Agreement dated 2nd July...2018 made between ROSSENDALE BOROUGH COUNCIL (1) LANCASHIRE COUNTY COUNCIL (2) and HURSTWOOD GROUP 1 LIMITED (3)

- 1.2 'the Assumptions' are:

1.2.1 a willing seller and buyer

1.2.2 that prior to the date of valuation the Dwelling was freely exposed to the market and there has been a reasonable period within which to negotiate the sale (having regard of the nature of the Dwelling and the state of the market) and that values remained static throughout that period and

1.2.3 that no account is taken of any bid by any prospective purchaser with a special interest and

1.2.4 that both parties to the transaction has acted knowledgably prudently and without compulsion; and

1.2.5 that the Dwelling is in its existing state of repair and sold with vacant possession

1.2.6 that the transfer/assignment does not contain any provisions that are not standard or usual in residential freehold/leasehold transactions

1.3 'Council' means Rossendale Borough Council

1.4 'Discounted Sale Price' means seventy per cent (75%) of the Open Market Value of the Dwelling

1.5 'Disposal' means sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly;

1.6 'Independent Valuer' means a member of the Royal Institution of Chartered Surveyors appointed by the owner of the Dwelling at his own cost but first approved by the Council in writing

1.7 'Open Market Value' means the value assessed by an Independent Valuer and agreed by the Council in accordance with paragraph 2 below or determined in accordance with paragraph 2.4 below.

1.8 'Owner' means the person who intends to Dispose of the relevant Dwelling

1.9 'Dwelling' means the property the subject of this deed

1.10 "Approved Person" means a person, as defined in the Agreement, who is approved by the Council to purchase the Dwelling or such other persons as are approved by the Council in writing pursuant to clauses 2.3 or 2.5 below or such other persons as are approved by the Council from time to time

1.11 "Main Residence" means a dwelling lived in by an owner/occupier as his sole home

1.12 a 'Sale' of the Dwelling occurs in every case where there is a transfer/assignment of the Dwelling except when the transfer is:

- (i) executed pursuant to an order of a court on granting in respect of the parties a decree of dissolution of marriage or judicial separation or
- (ii) executed pursuant to an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such decree or
- (iii) executed at any time in pursuance of an agreement made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation or
- (iv) executed by personal representatives of a deceased Owner for the purpose of transferring or assigning into the sole ownership of the spouse of the Owner
- (v) executed by personal representatives of a deceased joint tenant and a surviving joint tenant for the purpose of transferring or assigning the Premises into the sole ownership of the surviving joint tenant

PROVIDED THAT in each case set out in paragraph 1.12(i) – (v) the transferee covenants with the Council as set out in paragraph 2 below and "Sell" shall be construed accordingly

2. The following shall apply where a person wishes to Sell the Dwelling and each subsequent Sale of a Dwelling within five years of the anniversary of the first Sale of that Dwelling in accordance with this Schedule j(the Original Disposal):

2.1 The Owner of the Dwelling shall before commencing marketing of the Dwelling, submit an assessment of Open Market Value

2.2 The assessment produced pursuant to sub paragraph 2.1 above shall be prepared by an Independent Valuer and submitted to the Council for approval by or on behalf of the then owner within one month of the valuation being carries out.

2.3 The Council shall either approve an assessment submitted to it in accordance with to sub-paragraph 2.2 above or provide an alternative assessment on the same basis with a view to arriving at an agreed valuation.

- 2.4 If agreement between the Council and the Owner is not reached under sub paragraph 2.3 above within 4 weeks of the Council's receipt of the assessment then the matter shall be referred to an appropriate independent expert (who shall either be agreed between the parties or by the President for the time being of the Royal Institution of Chartered Surveyors or any person acting with his authority) and the decision of the expert shall be final and binding (save in the case of manifest error) and his costs shall be borne as he shall direct (or where no direction is made, the costs shall be borne by the Owner).
- 2.5 Having obtained the Council's agreement of the Open Market Value or having received the binding decision of the expert in accordance with paragraph 2.4 of this deed in order to establish the Open Market Value, the Owner will give the Council written notice of (a) the date upon which he has arranged for the Dwelling to be advertised for sale and (b) the name and address of the agent who will market the Dwelling, and will invite the Council to nominate Approved Persons to purchase the Dwelling.
- 2.6 If exchange of contracts for the Sale of the Dwelling has not occurred within 6 months of the date of the valuation being agreed or determined in accordance with paragraph 2.4 of this deed, then the Owner shall submit a new valuation, repeating the steps set out in paragraphs 2.1 to 2.3 and any Sale shall only proceed in accordance with the new Valuation, which in turn shall only be valid for a period of six months from the date it is agreed or determined in accordance with paragraph 2.4 of this deed.
- 2.7 At any time up to 14 days before exchange of contracts for the sale the Dwelling the Council may nominate Approved Persons to the Owner as prospective purchasers prioritised from its own affordable housing lists and from applications made to it in response to the transferee's own marketing exercise. Priority will be given to applicants in accordance with any local connection criteria set out in the Agreement.
- 2.8 Prioritising nominees in the order indicated by the Council (if any) and having satisfied himself regarding their sustainability as prospective purchasers, the Owner will use reasonable endeavours to advance a sale of the Dwelling to an Approved Person
- 2.9 If the transferee satisfies the Council (by written confirmation from his solicitor or estate agent) that the Dwelling has been advertised continuously for twenty weeks at the Discounted Sale Price to those who would qualify as Approved Persons and that he has not been able to exchange contracts for sale then he shall be entitled to sell the Dwelling to any person at the Discounted Sale Price
- 2.10 If a Dwelling is sold to a purchaser in accordance with clause 2.9 above
- (i) the Council will certify to the Land Registrar that the disposition complies with clause [paragraph 2 of Schedule 6] of the transfer/lease dated [] made between [] and [] so that the disposition may be registered in accordance with the restriction on the register of title of the Dwelling and
 - (ii) the Dwelling shall remain subject to the terms of the Agreement and the transfer/lease regarding future disposal to and occupation by an Approved Person

2.11 Upon Sale of the Dwelling and every transfer/assignment of the Dwelling described in clause 1.12 (i) – (v) above the transferee shall covenant with the Council and as a separate covenant with the transferor (but not so as to render the transferee liable to the transferor after the transferee shall have parted with his interest in the Dwelling) that:

- (a) any Sale of the Dwelling shall only be for the Discounted Sale Price at the time of the sale
- (b) any Sale of the Dwelling shall be to an Approved Person
- (c) the Dwelling shall at all times be the Main Residence of the transferee
- (d) the transferee shall not affect the Sale save in accordance with Paragraph 2 above
- (e) the transferee shall not sell the Dwelling without first:
 - (i) procuring that any transferee enters into a covenant with the Council to observe and perform the covenant set out in this paragraph 2; and
 - (ii) delivering to the Council the covenant referred to in paragraph 2 on the Sale of the Dwelling

2.12 To the intent that no transfer of the Dwelling shall take place otherwise than in accordance with paragraph 2 or paragraph 3 above the transferee shall at the transferee's own expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the Dwelling such restriction to remain on the register during its subsistence:

'No disposition of the registered estate (other than a charge) by the Registered Proprietor is to be registered without a certificate addressed to the Land Registry and signed by the Borough Solicitor, Rossendale Borough Council, Futures Park, Bacup, OL13 0BB that the disposition complies with clause [paragraph 2 or paragraph 3 of Schedule 6] of a transfer/lease dated [] made between [] (1) and [] (2)'

3. The following shall apply where a person wishes to Sell (or Sells) the Dwelling after the fifth anniversary of the Original Disposal:

3.1 The Owner of the Dwelling shall before commencing marketing of the Dwelling, submit an assessment of Open Market Value

3.2 The assessment produced pursuant to sub paragraph 3.1 above shall be prepared by an Independent Valuer and submitted to the Council for approval by or on behalf of the then owner within one month of the valuation being carries out.

3.3 The Council shall either approve an assessment submitted to it in accordance with to sub-paragraph 3.2 above or provide an alternative assessment on the same basis with a view to arriving at an agreed valuation.

- 3.4 If agreement between the Council and the Owner is not reached under sub paragraph 3.3 above within 4 weeks of the Council's receipt of the assessment then the matter shall be referred to an appropriate independent expert (who shall either be agreed between the parties or by the President for the time being of the Royal Institution of Chartered Surveyors or any person acting with his authority) and the decision of the expert shall be final and binding (save in the case of manifest error) and his costs shall be borne as he shall direct (or where no direction is made, the costs shall be borne by the Owner).
- 3.5 Having obtained the Council's agreement of the Open Market Value or having received the binding decision of the expert in accordance with paragraph 3.4 of this deed in order to establish the Open Market Value, the Owner will give the Council written notice of (a) the date upon which he has arranged for the Dwelling to be advertised for sale and (b) the name and address of the agent who will market the Dwelling.
- 3.6 If exchange of contracts for the Sale of the Dwelling has not occurred within 6 months of the date of the valuation being agreed or determined in accordance with paragraph 3.4 of this deed, then the Owner shall submit a new valuation, repeating the steps set out in paragraphs 3.1 to 3.3 and any Sale shall only proceed in accordance with the new Valuation, which in turn shall only be valid for a period of six months from the date it is agreed or determined in accordance with paragraph 3.4 of this deed.
- 3.7 On the sale of the Dwelling the Owner shall pay the Council 30% of the Open Market Value of the relevant Dwelling.
- 3.8 On receipt of the monies paid in accordance with clause 3.8, the Council will certify to the Land Registrar that the disposition complies with clause [paragraph 3 of Schedule 6] of the transfer/lease dated [] made between [] and [] so that the disposition may be registered in accordance with the restriction on the register of title of the Dwelling and the terms of this Schedule 6 shall cease to apply.

**THE SEVENTH SCHEDULE
ELIGIBILITY FOR STARTER HOMES**

1. An Approved Person should meet the following Eligibility Criteria for the Starter Homes:
 - 1.1 applicants must have a local connection with the area in which they are seeking to live;
 - 1.2 applicants must have never previously owned a residential property;
 - 1.3 applicants must be in need of, and will be required to attain, mortgage finance to enable them to purchase the property.

2. For the avoidance of doubt local connection means (not in order of priority)
 - 2.1 the applicant has lived in the borough or Rossendale for at least 6 out of the last 12 months or 3 out of the last five years
 - 2.2 the applicant is employed within the borough of Rossendale – the employment should be a permanent contract or fixed term for a minimum of 12 months, and on average for 16 or more hours per week
 - 2.3 the applicant has close family who live in the borough of Rossendale, and have done for at least 5 years – close family meaning parent, sibling or child.

3. In the event that more than one applicant satisfies the above criteria in clause 1, then applicants under the age of 40 will be given priority.

4. In the event that more than one applicant satisfies the above criteria in clause 1, and more than one are under 40, then the current bedroom will need to be taken into consideration, and applicants whose need is the closest to the Dwelling applied for will be given priority.

5. An Approved Person must intend (and be required) to use the Starter Home as their main and principle residence, and this criterion will apply for 5 years from the first sale or until the property is re-sold.

6. If after the Starter Homes have been marketed for 12 months there is no interest from applicants who comply with paragraph 2, then paragraph 1 will no longer apply, however paragraphs 3, 4 and 5 will still apply.

7. For the avoidance of doubt the Council will determine whether or not a person is an Approved Person and when considering the ability of a person to purchase on the open market the Council will take into account household income levels, and other commitments.

THE EIGHTH SCHEDULE
ELIGIBILITY FOR SHARED OWNERSHIP UNITS

1. An Approved Person should meet the following Eligibility Criteria for the Shared Ownership Units:
 - 1.1 applicants must have a local connection with the area in which they are seeking to live;
 - 1.2 applicants must be deemed to be in need of financial assistance to purchase a property on the open market;
 - 1.3 applicants must be able to demonstrate a housing need for a property type.

2. For the avoidance of doubt local connection means (not in order of priority)
 - 2.1 applicants who have previously had their only or principal home in the Borough for 6 out of the last 12 months or 3 out of the last 5 years; or
 - 2.2 the applicant is employed within the borough of Rossendale – the employment should be a permanent contract or fixed term for a minimum of 12 months, and on average for 16 or more hours per week; or
 - 2.3 the applicant has close family who live in the borough of Rossendale, and have done for at least 5 years – close family meaning parent, sibling or child.

3. For the avoidance of doubt the Council will determine whether or not a person is an Approved Person and when considering the ability of a person to purchase on the open market the Council will take into account household income levels, and other commitments.

4. For the avoidance of doubt applicants will be assessed on their current housing need.

5. For the avoidance of doubt the Shared Ownership Unit must be the applicants sole or principle home.

6. Applicants will only be authorised to proceed with a purchase after meeting the criteria above. Applicants will normally only be permitted to purchase Affordable Housing Units with an excess of one bedroom for their current housing need, however discretion may be showed where it is reasonable to expect a household's need increase.

7. Provided Always that notwithstanding the above the Council and Affordable Housing Provider may agree between themselves any amendment to the Eligibility Criteria where the Council shall deem it reasonable to do so and provided further that after such amendments are applied the applicant is able to demonstrate a housing need for a property type. The applicants must use the accommodation as their main and principal residence.

8. If after the Shared Ownership Units have been marketed for 6 months there is no interest from applicants who comply with paragraphs 1 and 2 applicants who are ordinarily resident within the Borough can be considered as well as applicants who can demonstrate a need for affordable housing.

THE NINTH SCHEDULE
AFFORDABLE HOUSING UNITS TENURE SPLIT

The Affordable Housing Units shall be provided by the Owner in accordance with the Fifth Schedule (5) and the Plan and shall comprise:

- A. Shared Ownership to be 4 of the total number of Affordable Housing Units comprising of two and/or three bed houses
- B. Starter Homes to be 5 of the total number of Affordable Housing Units comprising of two and/or three bed houses

Or such other tenure split or unit provision as shall from time to time be agreed in writing between the Council and the Owner.

THE TENTH SCHEDULE

Owner's Covenants to the County Council

The Owner covenants with the County Council as follows:

1. Within 20 working days following the grant of a Reserved Matters Consent to notify the County Council's School Planning Team that a Reserved Matters Consent has been granted and request that the County Council calculates the Education Contribution based on the Development authorised by said Reserved Matters Consent in accordance with this Deed.
2. The Owner will pay the Education Contribution to the County Council as follows prior to the Occupation of the first Dwelling on the Site.
3. The Owner shall not occupy or cause or permit to be occupied any Dwelling constructed on the Site until such payment has been made.
4. The Education Contribution shall be subject to annual review from the date of this Agreement in accordance with BCIS All IN Tender Price Indexation up to the date of payment after annual review.

Calculation of the Education Contributions

5. 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 – May 2016.
6. The County Council's pupil projections that are current at the time of the calculation shall be used.
7. For the avoidance of doubt, if the County Council's re-calculations show that the number of Spare Places in primary schools 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.

THE ELEVENTH SCHEDULE

The Council's Covenants

Contributions

1. To use all Contributions received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose.
2. The Council covenants with the Owner that it will refund all such sums to the person who paid such sums received by the Council under this Agreement which has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the Council has properly 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) within five years of the date of receipt by the Council of such sum together with interest for the period from the date of payment to the date of actual refund.
3. When requested in writing the Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
4. Following the performance and satisfaction of all the obligations contained in this Agreement, the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges held by the Council in respect of this Agreement.

THE TWELFTH SCHEDULE

The County Council's Covenants

Contributions

1. To use the Education Contribution received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose.
2. The County Council covenants with the Owner that it will refund all such sums to the person who paid such sums received by the County Council under this Agreement which has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the County Council has properly 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) within five years of the date of receipt by the County Council of such sum together with Interest at the Bank of England base lending rate for the period from the date of payment to the date of actual refund.
3. When requested in writing the County Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
4. Following the performance and satisfaction of all the obligations contract in this Agreement, the County Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges held by the Council in respect of this Agreement.

IN WITNESS whereof the Council, and the Owner have executed this Agreement as a Deed the date and year first before written.

EXECUTED AS A DEED by the
ROSSENDALE BOROUGH COUNCIL

By affixing its common seal in the

Presence of:



NO. IN SEAL REGISTER
115389

The Common Seal of **LANCASHIRE COUNTY COUNCIL**

was hereunto affixed to this Deed
in the presence of:



Authorised



27/68

EXECUTED AS A DEED by the
HURSTWOOD GROUP 1 LIMITED

Acting by two Directors

Signature of Director

Signature of Director

