DATED THE 1st August ~~DAY OF JULY~~ 2013

SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND AT ORAMA MILL, WHITWORTH, ROSSENDALE

between

(1) ROSSENDALE BOROUGH COUNCIL

and

(2) PERSIMMON HOMES LIMITED

CONTENTS

CLAUSE

1. Interpretation 1
2. Statutory provision 3
3. Variations to the Original Agreement 3
4. Covenants to the Council ..... **Error! Bookmark not defined.**
5. Local land charge 4
6. Endorsement 4
7. Council's costs 4
8. Value added tax 4
9. Third party rights 5
10. Governing Law 5

THIS DEED is dated 7th August ~~day of July~~ 2013

(1) Rossendale Borough Council of The Business Centre, Futures Park, Bacup, Lancashire OL13 0BB (the Council).

(2) Persimmon Homes Limited whose company registration number is 04108747 whose registered office is Persimmon Homes Fulford, York, YO19 4FE (the Owner)

BACKGROUND

(A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (TCPA 1990) for the area in which the Site is situated.

(B) The Owner is the registered freehold owner of the Property free from encumbrances.

(C) On 25th November 2011 Planning Permission was granted by the Council to the Owner under reference number 2010/0667.

(D) On 28th November 2011 the Council and the Owner and the Owner's then Mortgagee entered into the Original Agreement.

(E) The Council has decided to grant planning permission under reference number 2013/0171 which is a re-plan of part of the scheme approved under reference 2010/0667 subject to the making of this Agreement without which the permission would not have been granted

(F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.

(G) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

AGREED TERMS

1. **INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this deed.

1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this deed save where the context otherwise dictates.

1.3 In this deed the following expression shall have the following meaning:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 28th November 2011 between the Council, the Mortgagee and the Owner.

1.4 All references in this deed to clauses in the Original Agreement are to clauses within the Original Agreement.

1.5 Clause headings shall not affect the interpretation of this deed.

1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.7 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.8 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.

1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.10 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.11 A reference to a statute or statutory provision is a reference to it as [amended, extended or re-enacted from time to time or it is in force at the date of this deed][; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party].

1.12 A reference to a statute or statutory provision shall include any subordinate legislation made [from time to time or as at the date of this deed] under that statute or statutory provision.

1.13 A reference to writing or written does not include faxes or e-mail.

1.14 References to clauses, Schedules and plans (unless the context otherwise requires) are to clauses, Schedules and plans of this deed.

1.15 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.16 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.17 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 The provisions of the Original Agreement shall remain fully effective and applicable as varied by this Deed for the planning permissions granted under reference numbers 2010/0667 and 2013/0171 and the terms of the original Agreement shall have effect as though the provisions contained in this deed had been originally contained in the Original Agreement, whichever planning permission is implemented.

3.2 Clause 1.4 of the Original Agreement shall be amended by adding to the end of the paragraph the following words:

"and/or the application for planning permission for 38 house re-plan of part of the scheme approved under planning permission 2010/0667 resulting in the addition of 12 houses."

3.3 Clause 1.20 of the Original Agreement shall be amended by adding to the end of the paragraph the following words:

"and 2013/0171)"

3.4 An additional clause to the First Schedule of the Original Agreement shall be inserted with the following:

"4. That the Owner creates a 3 metre wide path for the provision of a pedestrian and cycle way adjacent to plot 66A as indicated and shown on plan 7 attached.

3.5 An additional plan to the Original Agreement be inserted and shown as Plan 7.

3.6 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

6. ENDORSEMENT

Promptly following completion of this deed the Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated [DATE] and made between the Council and the Owner."

7. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

8. VALUE ADDED TAX

8.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that

VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

9. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.

10. GOVERNING LAW

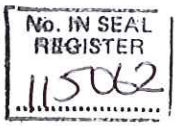
This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

The Common Seal of Rossendale Borough Council was affixed to this document in the presence of:

[redacted]

Authorised signatory



Executed as a Deed by
Persimmon Homes Limited
Acting by its Attorney

[redacted]

[redacted]

Authorised signatory

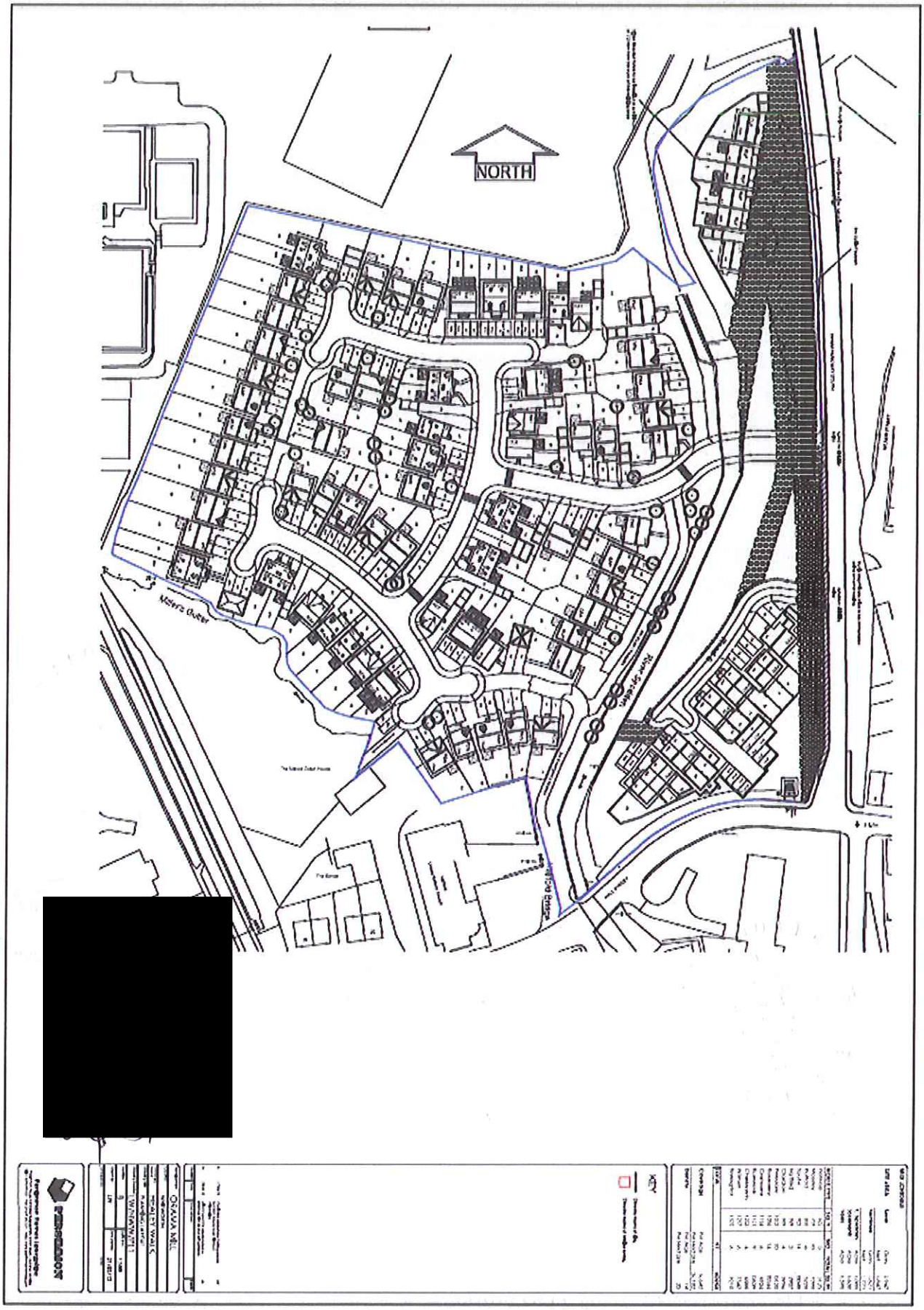
And

[redacted]

[redacted]

Authorised signatory

In the presence of:

[redacted]

Plan 7