DATED

(1) WEST LANCASHIRE BOROUGH COUNCIL

and

(2)

PLANNING OBLIGATION
made under Section 106 of the
Town & Country Planning Act 1990

Relating to land at

Terry Broderick
Borough Solicitor
West Lancashire Borough Council
52 Derby Street
Ormskirk
Lancashire
L39 2DF

Planning Ref:

MASTERAFFORDABLEHOUSING
THIS DEED is made the day of

BETWEEN

(1) WEST LANCASHIRE BOROUGH COUNCIL ("the Council") of 52 Derby Street, Ormskirk, Lancashire L39 2DF; and

(2) ("the Owner") and/or ("the Developer")

1. INTERPRETATION

1.1 For the purposes of this deed the singular includes the plural and vice versa.

1.2 Any reference in this deed to any of the parties is deemed to include their statutory successors, successors in title and assigns.

1.3 The expression "person" means any person firm authority or company or other legal entity.

1.4 Unless otherwise stated references to clause numbers are references to the clauses in this deed.

1.5 Unless otherwise stated references to schedules and paragraph numbers are reference to the schedules and paragraphs of schedules in this deed.

2. DEFINITIONS

2.1 In this deed the following words and expressions which begin with capital letters shall unless the context otherwise requires have the precise meanings set out below:-

"the Act" means the Town and Country Planning Act 1990 as amended.

“Affordable Housing” means Dwellings provided by way of either Shared Ownership and/or Social Rent or any other tenure as agreed by the Council and made available to households in Affordable Housing Need.
“Affordable Housing Need”:

(a) In relation to Social Rented Units means households eligible to join the Council’s Housing Register or a Registered Provider’s Housing Register

(b) In relation to Shared Ownership Units means:

(i) households unable to access housing for purchase or at market rent through the open housing market due to the differentials between local housing costs and income levels or

(ii) households eligible to join the Registered Provider’s Shared Ownership Register

“Affordable Housing Units” means Dwellings to be constructed on the Application Site in accordance with Schedule ……………. and made available as Affordable Housing and reference to “Affordable Housing Unit” shall be construed accordingly.

"Application" means the planning application made to the Council for planning permission for the Development and given the Council reference no

"Application Site" means the land at …………………………………………

……………………………………………………………………………………

……………………………………………………………………………………

for which planning permission is sought to carry out the Development and which is shown for the purposes of identification only edged red on the Plan annexed hereto.

"Arbitrator" means the person appointed under clause 7 of this Agreement.

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

"Development" means residential development of ........................................
..................................................................................................................
as set out in the Application and in the plans specifications and particulars deposited with the Council and forming part of the Application and as permitted by the Planning Permission.

“Dwelling” means a dwelling constructed on the Application Site in accordance with the Planning Permission and "Dwellings" shall be construed accordingly

“Homes and Communities Agency” means the Homes and Communities Agency (in its capacity as regulator of social housing under part 2 of the Housing and Regeneration Act 2008) or any body undertaking the existing functions of the Homes and Communities Agency within the meaning of Part 2 of the Housing and Regeneration Act 2008 (or as revised by any amendment, replacement or re-enactment of such Act).

“Housing Allocation Scheme” means the system adopted by the Council in accordance with government guidelines in respect of the provision of Affordable Housing within its area.
Housing Register - A register held by the Council and/or a Registered Provider which records details of applicants who have expressed interest in Affordable Housing within its area of operation.

“Legal Fees” means a contribution towards the Council’s costs of preparing, negotiating and completing this Agreement in the sum of £900 (Nine Hundred Pounds)

“Local Connection” has the meaning given to such term in the Council’s agreed Housing Allocation Scheme.


“Nomination Agreement” means the agreement(s) (if any) between the Council and the Registered Provider governing the allocation of the Shared Ownership Units and the Social Rented Units pursuant to the Housing Allocation Scheme.

"Obligations" means the obligations and restrictions on the part of the Owner and/or Developer and their successors in title to the Application Site contained or referred to in Schedules ……………….. to this Agreement.

"Plan (1)" and “Plan (2)” means the plans annexed to this Deed and numbered accordingly.

“Planning Obligations Management Fee” means the sum of £500.

"Planning Permission" means the planning permission granted for the Development in pursuance of the Application.

“Registered Provider” means a registered provider as is defined by the Housing and Regeneration Act 2008 (or as defined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and
Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be approved by the Assistant Director.

“Shared Ownership” means occupation by persons under shared ownership arrangements as defined by Section 70(4) of the Housing and Regeneration Act 2008 where those persons have the opportunity to purchase all or substantially all of the equity in the Affordable Housing Units at a later date or such other equity sharing or retention terms from time to time approved by the Council and reference to “Shared Ownership Units” shall be an Affordable Housing Unit so occupied.

“Social Rent” means a form of tenure that sets rent levels in line with the Homes and Communities Agency’s target rent (as may be set from time to time) and reference to “Social Rented Unit” shall be an Affordable Housing Unit occupied at a Social Rent.

“Specialist Housing Units” means housing designed specifically to accommodate the elderly in accordance with the following “HAPPI” (Housing our Ageing Population: Plan for Implementation) criteria produced by the All Party Parliamentary Group on Housing and Care for Older People November 2012:

- minimum 70sqm internal floor space for 2 bed unit, 58 sqm for 1 bed unit
- increased natural light
- wheelchair accessible circulation without adaption
- adaptability and care aware design which is ready for tele-care and tele-health technologies
- high level energy efficiency with good ventilation
- investigation into “age eligible” accommodation with minimum age requirement

3. PURPOSE OF THIS DEED

3.1 The Council is the local planning authority for the purposes of the Act for the area which includes the Application Site and is the local planning authority by which the Obligations are enforceable.

3.2 The Owner is the freehold owner of the majority of the Application Site which is in part registered with Title Absolute at HM Land Registry under Title Number ……………………………

3.3 Having regard to all material considerations the Council is desirous of granting planning permission for the Developments subject to the Owner and/or Developer entering into this Deed for regulating the Development.

4. ENABLING POWERS

4.1 This Deed is made pursuant to and is a planning obligation for the purposes of Section 106 of the Act and the Local Government Act.

4.2 The Obligations are conditional and shall not come into force unless and until the Planning Permission has been granted and Commencement of Development has occurred.

4.3 The Obligations are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority for the area in which the Application Site is situated.
4.4 Insofar as any of the Obligations or are not planning obligations within the
meaning of Section 106 of the Act they are entered into pursuant to the Local
Government Act and all other enabling powers.

5. PLANNING OBLIGATIONS

5.1 Subject to clauses 5.2 and 5.3 the Owner and/or Developer with the intent to bind
its successors in title hereby undertakes to perform the Obligations.

5.2 No person shall be liable for breach of an Obligation after having parted with all
of its interest in the Application Site or in the part of the Application Site in
respect of which such breach occurs but without prejudice to liability for any
subsisting breach of Obligation prior to parting with such interest.

5.3 Save for the Affordable Housing obligations contained at paragraphs 12 and 14 to
18 of Schedule 4 which shall bind and be enforceable against owners and
occupiers of individual Affordable Housing Units (subject to the exclusions at
clause 5.5) the Obligations will not be enforceable against the buyers of a
Dwelling erected on the Application Site or a purchaser of the freehold reversion
to a completed Dwelling

5.4 The Obligations at paragraphs 12 and 14 to 18 of Schedule 4 shall not be
enforceable against:

5.4.1 any mortgagee or chargee of a Registered Provider to which Affordable
Housing Units (or the freehold legal estate in land on which Affordable
Housing Units are to be constructed) have been transferred or leased
which mortgagee or chargee is in possession thereof and is exercising its
power of sale or against a person deriving title from such mortgagee or charge;

5.4.2 any occupant of an Affordable Housing Unit who has exercised a statutory right to acquire under the Housing Act 1996 or otherwise (“Occupant”) or any person other than a Registered Provider deriving title under that Occupant;

5.4.3 any person who was previously the Lessee of an Shared Ownership Unit who has exercised their right to staircase ownership up to 100% ownership; and/or

5.4.4 any mortgagee of an Occupant or Lessee in the event that a mortgagee of an Occupant or Lessee seeks to dispose of an Affordable Housing Unit pursuant to its power of sale exercised pursuant to default of the terms of the mortgage

5.5 The Owner hereby covenants with the Council that within one month of every change of ownership or occupation of the whole of the Application Site (but not any such change in respect of any individual dwelling house or plot thereon) to give notice in writing with particulars to the Council and to provide the Council with such reasonable information as may be required to ascertain whether there has been a breach or breaches of the Obligations.

6. **DETERMINATION OF DEED**

6.1 If the Planning Permission shall expire before the Commencement of Development or shall at any time be revoked this deed shall forthwith be annulled and cease to have effect.
6.2 Nothing in this agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this deed.

6.3 The Planning Obligations and the existence of this Deed shall be appropriately registered in the Local Land Charges Register of the Council.

7. JURISDICTION

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

7.2 The Courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

7.3 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

8. NOTICES

8.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post or second class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
8.3. Unless the time of actual receipt is prove, a notice, demand or communication sent by the following means is to be treated as having been served.

8.3.1. If delivered by hand, at the time of delivery.

8.3.2. If sent by post, on the second working day after posting, or

8.3.3. If sent by recorded delivery, at the time of delivery was signed for.

8.4. If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day. It is to be treated as having been served on the next working day.

9. LEGAL FEES

The Owner agrees to pay the Legal Fees to the Council upon completion of this deed.

10. ARBITRATION

10.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Agreement shall be referred to arbitration.

10.2 If the parties do not agree upon the appointment of the Arbitrator within 28 days of the service of an arbitration notice the Arbitrator shall be nominated upon the Application of either party by the President or Vice President for the time being of the Royal Institution of Chartered Surveyors. The Arbitrator shall be an independent person who is professionally qualified in respect of the subject matter of the dispute for a minimum of 10 years.

10.3 Unless the Arbitrator shall direct to the contrary:-
10.3.1 not more than 28 days after the Arbitrator's appointment the claimant shall send to the Arbitrator and respondent a summary of its case together with a bundle of key documents relied upon.

10.3.2 not more than 28 days after the receipt of the claimant's submission the respondent shall send the Arbitrator and the Claimant a summary of its case together with a bundle of key documents relied upon.

10.3.3 the Arbitrator shall not hear oral evidence or representations.

10.4 The Arbitrator shall be at liberty to visit the Application Site.

10.5 The Arbitrator may call for such written evidence from the parties as he may require.

10.6 The Arbitrator shall use all reasonable endeavours to make his award and the reasons for it in writing as quickly as possible and in any event within 90 days of his appointment. Within 28 days of the receipt of the Arbitrator's award either party may apply to the Arbitrator for further written clarification of his award and the reasons including details of the methodology of any calculation and the Arbitrator shall provide such clarifications within 28 days of the Application.

10.7 The decision of the Arbitrator shall be final and binding on the parties.

**IN WITNESS** whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.
SCHEDULE 1

Obligations relating to the provisions of Affordable Housing

The Owner and Developer hereby covenant with the Council:

1. To provide no less than ..........% of the total number of Dwellings to be constructed on each Phase as Affordable Housing Units and not to dispose of the Affordable Housing Units other than in accordance with the provisions of this schedule.

2. To erect or cause to be erected and completed no later than the completion of the Development the Affordable Housing Units within the Application Site in a location or locations determined in accordance with paragraph 4.

3. The location or locations of the Affordable Housing Units is to be determined as follows:-

   3.1 Simultaneously with or as part of the first reserved matters application covering the Application Site a plan shall be submitted to the Council’s Assistant Director Housing and Regeneration showing the proposed locations within the Application Site for the Affordable Housing Units

   3.2 Within 30 working days of the submission of the plan pursuant to paragraph 4.1 the Council will inform the Owner whether it approves the proposed locations for the Affordable Housing Units. If the Council informs the Owner/Developer that it does not approve the proposed locations the Council must in writing and by reference to a plan propose to the Owner/Developer alternative locations within the Phase.
4. In respect of each Phase:

4.1 the Affordable Housing Units shall consist of ..........% Social Rent and ..........% Shared Ownership or any other affordable housing tenure type, tenure mix and unit type as agreed in writing by the Council unless otherwise amended as part of any reserved matters application or in accordance with paragraph 10 of this Schedule 4

5. To transfer the Affordable Housing Units to a Registered Provider at a price which:

5.1 in respect of the Shared Ownership Units, allows the Registered Provider to use a shared ownership tenure model that will enable a purchaser in Affordable Housing Need to purchase an initial share of the Shared Ownership Unit of between 25% and 75% and

5.2 in respect of the Social Rented Units, allows the Registered Provider to use a social rent model in line with any guidance used to determine social rent levels in social housing.

6. To ensure that the transfer to the Registered Provider contains provisions whereby the Shared Ownership Units on first sale by a Registered Provider shall be at a price that will enable a purchaser to purchase an initial share of the Shared Ownership Unit of between 25% and 75% of the Shared Ownership Unit.

7. To offer the Affordable Housing Units, in the first instance, to the Council (as a Registered Provider) and, secondly, to any other Registered Provider which already has affordable housing stock in the Borough of West Lancashire
8. If neither the Council or the Registered Provider referred to in paragraph 8 above wish to accept the Affordable Housing Units within 2 months of being offered the Affordable Housing Units, then to offer the Affordable Housing Units to other Registered Providers without stock in the Borough of West Lancashire.

9. If neither the Council nor any of the Registered Providers contacted have entered into a binding legal contract to acquire the Affordable Housing Units on a Phase within 2 months of the Commencement of Development of that Phase, then the Owner/Developer will contact the Council’s Assistant Director Housing and Regeneration to explore alternative methods of bringing the housing forward as affordable housing. The Owner/Developer will serve notice on the Council requiring assistance in finding a willing Registered Provider to acquire the Affordable Housing Units (‘Assistance Notice’) and the following provisions of this paragraph 10 shall apply:

9.1. When serving the Assistance Notice, the Owner/Developer shall provide to the Council the following;

9.1.1. details of which Registered Providers have been offered the Affordable Housing Units;

9.1.2  the date of initial contact with the Registered Provider(s) and any follow up contact and replies

9.1.3 a copy of the Registered Provider’s confirmation that they do not wish to acquire the Affordable Housing Unit(s) and (if available) the price the Registered Provider would be willing to pay in order for the Affordable Housing Unit(s) to be able to be made available in line with paragraph 6 of this Schedule and
9.1.4 a statement from the Owner/Developer as to why it feels (in its reasonable opinion) a contract cannot/has not been achieved with the Registered Providers in question.

10. Where the Affordable Housing Units are transferred to a Registered Provider to seek to ensure that the Registered Provider enters into a Nomination Agreement with the Council whereby the Council is able to nominate purchasers or tenants for the Affordable Housing Units or where a Nomination Agreement already exists between the Registered Provider and the Council that they are updated to reflect the addition of the Affordable Housing Units as well as any local connection and specific allocation criteria in respect of this Development.

11. That the Affordable Housing Units shall be sold or let to persons in Affordable Housing Need.

12. All Social Rented Units will be allocated in accordance nominations from the Council's Housing Register to the Registered Provider and the Council will have 100% nomination rights for the first and subsequent allocations of the Social Rented Units unless amended as part of any Nomination Agreement review.

13. All first and subsequent sales of Shared Ownership Units are to be allocated to persons in Affordable Housing Need in line with the following priority:-

(a) Existing Council/Registered Provider tenants

(b) Any applicant on the Council’s Housing Register

(c) Any applicant in the private rented sector
(d) first time buyers

(e) Any owner-occupier living in overcrowded accommodation

(f) Any applicant who has owned a property previously, but has lost the home through matrimonial divorce proceedings, who has capital available but is still unable to purchase a home to meet their needs

(g) Any other person

And subject to meeting the affordability criteria set out in paragraph 15 below:

14. In assessing Affordable Housing Need the Registered Provider shall:

(a) Be satisfied that the household could not ordinarily purchase or rent an equivalent property in the same locality to the Affordable Housing Unit on the open market based on their household income and taking account of any other reasonable assets owned by that household and in accordance with Homes and Communities Agency guidance on such matters.

(b) Be satisfied that the household is able to sustain the required housing costs, when taking into account their other reasonable household expenditure.

15. The Owner/Developer shall ensure that the Registered Provider will work together with the Council to ensure that the Affordable Housing Units are brought to the attention of the local community through the use of media as thought appropriate by both parties.
16. That the marketing of the Affordable Housing Units will be undertaken by the Registered Provider and shall be in a format agreed with the Council’s Assistant Director Housing and Regeneration.

17. That within one month of the Affordable Housing Unit being sold under a contract to a Registered Provider the Owner/Developer shall ensure that the Registered Provider will contact the Council to agree a marketing strategy and timetable in order to ensure that the Affordable Housing Units are well publicised and information about registering an interest, scheme restrictions and eligibility criteria is widely known to target groups, the Council, RSL Officers, Parish Councils and Elected Members.

18. The management of the Affordable Housing Units will be undertaken by the Registered Provider subject to the conditions set out in this Deed and in the Nomination Agreements made between the Council and the Registered Provider.

19. To liaise with the Registered Provider to ensure that the Registered Provider pays into a designated account any proceeds (after deduction of mortgage redemption and all other costs) received from a person who has purchased a Shared Ownership Unit pursuant to their rights in accordance with legislation, or in relation to the Social Rented Units a person who has acquired the Social Rented Unit pursuant to the Right to Buy or Right to Acquire schemes, and to transfer any such proceeds to the Council for the provision of affordable housing products and/or units within the Borough of West Lancashire within a 5 year period from the date of receipt.

20. To ensure that any lease of an Affordable Housing Unit shall contain a right of pre-emption clause to enable the Registered Provider to buy back any shares in the property if the owner/occupier decides to sell.
21. To ensure that all of the Affordable Housing Units are not used for any other purpose, except in accordance with the agreed Affordable Housing provision, for the sole and principal occupation of the tenancy agreement holder.

22. That the Affordable Housing Unit(s) will be available as Affordable Housing in perpetuity.

23. To ensure that on an initial transfer or disposal of a Shared Ownership Unit or in the lease of a Social Rented Unit the transfer or lease shall contain a covenant by the transferee or lessee and their successors in title to occupy the Affordable Housing Unit as his or her principal residence.

24. That the Affordable Housing Units will be built to Lifetime Homes Standard.

25. The Owner/Developer covenants with the Council:

25.1 to take reasonable and prudent steps to avert repossession of the Affordable Housing Units by any chargee or mortgagee of a Registered Provider or the exercise by any chargee or mortgagee of a Registered Provider of a power of sale and for these purposes in the event of default under the security or likely default to cooperate reasonably and fully with the Council and the Homes and Communities Agency to arrange a transfer of the Affordable Housing Units with sitting tenants to another Registered Provider or at the Council’s option to the Council and in particular to inform the Council in the event of the Registered Provider receiving notification from such chargee or mortgagee of any breach or alleged breach by the Registered Provider of any of its obligations under its security;

25.2 notify the Council immediately in the event of service of any notice order or direction in relation to clause 27.1 above.
25.3 The provisions of this Schedule 4 shall not be binding on any chargee or mortgagee of a Registered Provider in possession of the whole or any part of the Affordable Housing Units provided that such a chargee or mortgagee in possession exercising any power of sale or leasing shall first have used its reasonable endeavours over a period of 4 months in consultation with the Council’s Assistant Director Housing and Regeneration to dispose of the Affordable Housing Units to a Registered Provider which will covenant to comply with the provisions of this Schedule 4.

26. In the event of a default under any security referred to in paragraph 27.1 of this Schedule or in other circumstances warranting the intervention of the Homes and Communities Agency (whether or not under the Housing Act 1996 Part 1 Chapter IV of Schedule 1 Part IV) the transfer of the freehold of the Affordable Housing Units or any part of them to another Registered Provider shall not be prevented.
SCHEDULE 2

Obligations relating to the provision of Specialist Housing for the Elderly

1. The Owner/Developer hereby covenants with the Council:

   1.1 To provide no less than 20% Specialist Housing Units for the Elderly as part of the Development;

   1.2 The 20% Specialist Housing Units for the Elderly shall either be provided across all or any one of the Phases or a combination of Phases provided that no less than 20% of the total number of Dwellings within the Development is Specialist Housing Units for the Elderly.
SCHEDULE 3

Obligations relating to the Planning Obligations Management Fee

The Owner/Developer hereby covenants with the Council:

1. that prior to Commencement of the Development (“the Due Date”) it will pay to the Council the Planning Obligations Management Fee

2. in default of such payment the sum shall increase at the rate of 4% above the base lending rate from time to time of Lloyds Bank Plc from the Due Date until the payment is made.
SIGNED as a DEED by WEST )
LANCASHIRE BOROUGH )
COUNCIL acting by )
AUTHORISED SIGNATORY )

_____________________________
Authorised Signatory

SIGNED as a DEED by )
acting by its duly authorised )
officers )

_____________________________
Director

_____________________________
Director/Secretary

MASTERAFFORDABLEHOUSING