WEST LANCASHIRE BOROUGH COUNCIL (1)

AND

OWNER (2)

DEVELOPER XXXXXXXXXX (3)
Plus anyone else with an interest in land i.e. mortgagee

PLANNING OBLIGATION
Made under Section 106 of the
Town and Country Planning Act 1990
relating to .................................

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

Planning Reference...........................
THIS DEED is made the 20..

BETWEEN: -

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

(2) XXXXXXXXXXXX ("The Owner") and/or ("The Developer") and/or ("The Mortgagee")

NOW THIS DEED WITNESSETH as follows: -

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 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: -

“Act” means the Town and Country Planning Act 1990 as amended (or as redefined by any amendment, replacement or re-enactment of such Act);
“Application Site” means the land XXXXXXXXXXXXXXX and which is shown for the purposes of identification only edged red on the Plan;

“Arbitrator” means the person appointed under clause 7 of this Deed;

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

“Community Benefit” means Open Space Commuted Sum.

“Development” means XXXXXXXXXXXXXXX as set out in the Application and in the plans specifications and particulars deposited with the Council and forming part of the Application;

“Local Government Act” means the Local Government Act 1972 as amended (or as redefined by any amended replacement or re-enactment of such Act.

“Obligations” means the planning obligations contained or referred to in the Schedules to this Deed;

“Public Open Space Land” means the area of public open space and amenity land to be created by the Owner within the Application Site as part of the Development and shown edged and hatched green on the Plan;
“Open Space Commuted Sum” means the sum equivalent to the cost of maintenance of the Public Open Space Land for a period of ten years to be agreed between the Council and the Owner in accordance with the provisions of paragraph 1.5 of the Second Schedule;

“Open Space Works” means the works comprising the laying out and landscaping of the Open Space; and/ or the installation of Play Equipment.

“Play Equipment” means the children’s play equipment, details of which, including type and layout, to be approved in writing by the council.

“Plan” means the plan annexed to this Deed;

“Planning Permission” means a planning permission to be granted and issued by the Council pursuant to the Application.

3. **RECITALS**

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 whom the obligations contained herein are enforceable.

3.2 The Owner is the freehold owner of the Application Site which is registered with Title Absolute at HM Land Registry XXXXX under Title Number XXXXXXX.

3.3 The Owner/Developer has submitted the Application in respect of the Application Site which is registered with Title Absolute at HM Land Registry, XXXXXXXXX under title numbers XXXXXXXXXXXX.

3.4 By the Application the Owner/Developer has applied to the Council for approval or the Development.

3.5 Having regard to all material considerations the Council is desirous of granting the Planning Permission for the Development subject to the Owner/Developer etc entering into this Deed for regulating the Development and securing the matters hereinafter referred to.
4. **ENABLING POWERS**

4.1 This Deed is made pursuant to 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 issued.

4.3 The restrictions and obligations of the Owner/Developer which are set out in the First and Second Schedule hereto 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 covenants or Obligations or agreements contained in this Deed 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. **OBLIGATIONS**

5.1 Subject to clause 5.3 the Owner with the intent to bind the Application Site and its successors in title hereby covenants with the Council to perform the Obligations or activities specified in the Schedules to this Deed.

5.2 No party shall be liable for breach of a covenant contained in this Deed:

5.2.1 occurring after he or it has parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest;
5.3 The Owner hereby covenants with the Council that within one month of every change of ownership or occupation of the whole of the Land (but not any such change in respect of any individual dwellinghouse 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 hereinbefore recited covenants.

6. **DETERMINATION OF DEED**

6.1 If the permission granted pursuant to the Application shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) or revoked this Deed shall forthwith be annulled and cease to have effect and the Council shall immediately remove any entry relating to this Deed for the Register of Local Land Charges.

6.2 Nothing in this Deed 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 Council will upon the written request of the Owner at any time after the Obligations have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

6.4 This Deed is a local land charge and shall be registered as such.

7. **ARBITRATION**

7.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Deed shall be referred to arbitration.
7.2 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.

7.3 Unless the Arbitrator shall direct to the contrary:

7.3.1 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.

7.3.2 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.

7.3.3 The Arbitrator shall not hear oral evidence or representations.

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

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

7.6 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.

7.7 The decision of the Arbitrator shall be final and binding on the parties.
8. GENERAL PROVISIONS

8.1 In this Deed the expressions “the Owner” and “the Developer” and/or “the Mortgagee” etc shall where the context so admits be deemed to include their respective successors in title and assigns and the expression "the Council" shall include its respective successor authority.

8.2 Wherever this Deed requires the agreement approval confirmation or consent of the Council such agreement approval confirmation or consent is not to be unreasonably withheld or delayed.

8.3 No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto.
FIRST SCHEDULE

Planning Obligations relating to the Provision of Open Space

1. The Owner/Developer/Mortgagee hereby covenant with the Council: -

1.1 To lay out, grade, grass and plant the Public Open Space Land in accordance with the Planning Permission and approved plans or with any amended plans submitted to and approved in writing by the Executive Manager.

1.2 Upon the satisfactory completion and establishment of the Public Open Space Land the Owner shall thereafter maintain the Public Open Space Land in accordance with the principles of good horticultural practice until the same is transferred to the Council.

1.3 In the event that the Owner wishes to convey the Public Open Space Land to the Council the Owner may convey to the Council its freehold interest in the Public Open Space Land by way of a transfer at no cost to the Council.

1.4 The transfer of the Public Open Space Land shall be prepared by the Owner's solicitors at the cost of the Owner and the Owner shall pay the reasonable legal costs and disbursements of the Council relating to the transfer. The transfer shall be in accordance with the provisions contained in the Fifth Schedule to this Deed.

1.5 Prior to the date of the transfer of the Public Open Space Land to the Council to submit to the for approval a proposed sum in relation to the Open Space Commuted Sum PROVIDED THAT if agreement cannot be reached between the Council and the Owner in relation to the Open Space Commuted Sum within 15 working days of the date of its submission to the Council (or such other period of time that may be agreed) then the provisions of clause 7 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute.
1.6 Upon receipt of the Council's approval to the Open Space Commuted Sum (or upon receipt of expert determination in relation to the Open Space Commuted Sum if applicable) pursuant to paragraph 1.5 of this Schedule to pay to the Council the Open Space Commuted Sum on the date of the transfer of the Public Open Space Land to the Council subject to a condition that the Council uses the Open Space Commuted Sum only for the purposes of maintaining the Public Open Space Land.

1.7 In the event that the Owner does not transfer the Public Open Space Land to the Council then the Public Open Space Land will be maintained by the Owner in accordance with the principles of good horticultural practice or to such other standard as may be confirmed in writing from time to time by the Executive Manager.
SECOND SCHEDULE

Planning Obligations relating to the transfer of Open Space Land
to the Council

1. The freehold of the Open Space Land will be transferred to the Council:
   1.1. for £1.00
   1.2. with vacant possession and full title guarantee
   1.3. together with all rights of way over the roads constructed on the Site and
        leading to and from the Open Space Land from and to the adopted public
        highway and such other easements as shall be reasonably necessary for the
        use and enjoyment of the Open Space Land for the use thereby intended.
   1.4. excepting and reserving such rights of drainage and services as shall be
        reasonably necessary to provide drainage and services to the Development
        permitted by the Planning Permission as shall not be prejudice or
        materially adversely affect the use of the intended area as envisaged by
        this Deed or the liability of the Council in terms of the future maintenance
        thereof
   1.5. subject to a covenant not to use the Open Space Land for any purpose
        other than as public open space amenity land
   1.6. and subject to such other terms as are agreed between the Owner and the
        Council
   1.7. Any dispute as to the precise form of the Transfer shall be subject to the
        provisions of clause 10 to this Deed save that the expert appointed to
        determine the same shall be an independent barrister or conveyancing
        solicitor with at least ten years post qualification experience in property
        law;
   1.8. The title to the Open Space Land shall be deduced in accordance with
        normal conveyancing procedures relating to registered or unregistered
        land as the case may be;
THIRD SCHEDULE

Conditions relating to the Planning Obligations

Management Fee

1. That on completion of the Development ("the Due Date") they 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.
THE COMMON SEAL of WEST LANCASHIRE
BOROUGH COUNCIL was hereunto affixed in the
the presence of:-

Authorised Officer

EXECUTED AS A DEED by
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MASTERS106POS