

DATED 7th January 2016

- (1) ROSSENDALE BOROUGH COUNCIL
- (2) WATERFOOT INVESTMENTS LIMITED

PLANNING AGREEMENT

under Section 106 Town and Country Planning Act 1990
relating to land at Waterfoot County Primary School, Thornfield Avenue,
Waterfoot, Rossendale, BB4 9AP

Stuart Sugarman
Chief Executive
The Business Centre,
Futures Park,
Bacup.
OL13 0BB

THIS AGREEMENT is made on the

7th

day of January 2016

BETWEEN:

(1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre Futures Park Bacup OL13 0BB ("the Council")

(2) **WATERFOOT INVESTMENTS LIMITED** (Company Registration Number 08105700) whose registered office is at c/o [REDACTED]

[REDACTED] ("the Owner")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) Lancashire County Council ("the County Council") is the Education Authority for the area in which the Site is located
- (C) The Owner is the freehold owner of the whole of the Site registered at the Land Registry under title number LAN124422 free from encumbrances which would prevent the Owner entering into this Agreement
- (D) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title
- (E) The Owner has by application reference 2015/0037 ("the Planning Application") applied to the Council for permission to develop the Site in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule ("the Development")

- (F) The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the Development would not have been granted
- (G) The Owner agrees to pay the Education Contribution to the Council as agents for the County Council in accordance with the Second Schedule
- (H) The parties agree that the planning obligations contained in this Agreement are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Regulations 2010 (as amended)

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

“1990 Act”	the Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991
“Administrative Area”	means the administrative area of Rossendale Borough Council
“Affordable Units”	means the affordable housing to be provided on the Site which shall comprise of not less than six dwellings including not less than 2 New Build Dwellings
“Affordable Price”	means a sum not exceeding 75% of the Open Market Value of the relevant Affordable Unit

- “Application”** an application for planning permission for the development of the Site consisting of the conversion of existing school buildings to 22 apartments and erection of 6 houses made by the Owner carrying the reference 2015/0037
- “Close Family Association”** means a spouse, civil partner, parent, sibling, grandparent or grandchild who is resident in the relevant area and who has been resident there for a minimum of five continuous years
- “Commencement Date”** the date on which the Development commences by the carrying out on the Site pursuant to the Permission of a material operation as specified in section 56(4) of the 1990 Act
- “Completed”** means constructed and fitted out ready for beneficial Occupation and ‘Completion’ shall be construed accordingly
- “Contributions”** means the Education Contribution, the Public Open Space Contribution and the Refuse Bin Contribution and ‘Contribution’ shall be construed accordingly
- “Development”** the development of the Site in accordance with the Permission
- “Dwelling”** means a dwelling house built in accordance

	with the Permission and 'Dwellings' shall be construed accordingly
"Education Contribution"	means the sum of £24,059 towards the provision of additional primary school capacity and/or occupancy within a two mile radius of the Site to be paid as outlined in the Second Schedule
"Employment"	means that a person is permanently employed or has accepted in writing a firm offer of permanent employment or is in full time self-employment within the relevant area
"Index"	means the All Items Retail Price Index published by the Office for National Statistics or such other index as may from time to time be published in substitution for it
"Index Linked"	means an increase to each of the sums payable to the Council (under this Agreement) on an annual basis or pro rata per diem from the date of this Agreement until such time that payment of any sum in this Agreement is made such index linking to be equivalent to any inflationary increase taking as the measure of inflation the Index
"Interest Rate"	means the base lending rate for the time being of the Bank of England compounded

	annually
“Market Dwellings”	means a Dwelling that it is not an Affordable Dwelling
“the Public Open Space Contribution”	means the sum of £33,467 to be expended towards the provision, modernisation or maintenance of local recreational/play facilities, nature conservation facilities or pedestrian/cycle links in the vicinity of the Site to be paid as outlined in the Second Schedule
“New Build Dwelling”	means a Dwelling built on the Site which is a new construction as permitted by the Permission
“Occupation”	means beneficial occupation for the purposes permitted by the Permission but including occupation by persons engaged in construction fitting out or decoration
“Permission”	the planning permission which may be granted in pursuance of the Application
“Plan”	means the Plan attached to this Agreement
“Qualifying Criteria”	means the criteria contained in the Fourth Schedule of this Agreement
“Qualifying Person”	means a person(s) who meets the Qualifying Criteria
“Refuse Bin Contribution”	means the sum of £100 per individual

“Site”

Dwelling built on the Site (totalling £2,800) to be paid as outlined in the Second Schedule the freehold property known as land at Waterfoot County Primary School, Thornfield Avenue, Waterfoot, Rossendale, BB4 9AP which is currently registered at HM Land Registry under title number LAN124422 shown for the purposes of identification only edged red on the Plan set out at the First Schedule

“Statutory Undertaker”

means any company corporation or board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking

“Wards of Whitewell and Hareholme” means the wards of Whitewell and Hareholme within the Administrative Area

OPERATIVE PROVISIONS

1 **NOW THIS DEED** is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section to the intent that it shall bind all interests in the Site into

whosoever hands the same may come and the Owner and his successors in title and assigns and all persons claiming under or through them.

2 Save for the provisions of Clause 9 the provisions of this Agreement shall only come into effect on the Commencement Date.

3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his interest in the Site or the relevant part of the Site in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to the parting with such interest)

4 the covenants on the part of the Owner contained in this Agreement shall not be enforceable against:-

4.1 purchasers lessees or mortgagees of individual Dwellings; or

4.2 a Statutory Undertaker which has an interest in any part of the Site for the purposes of its lawful undertaking

5 The Owner covenants with the Council to comply with the obligations specified in the Second Schedule

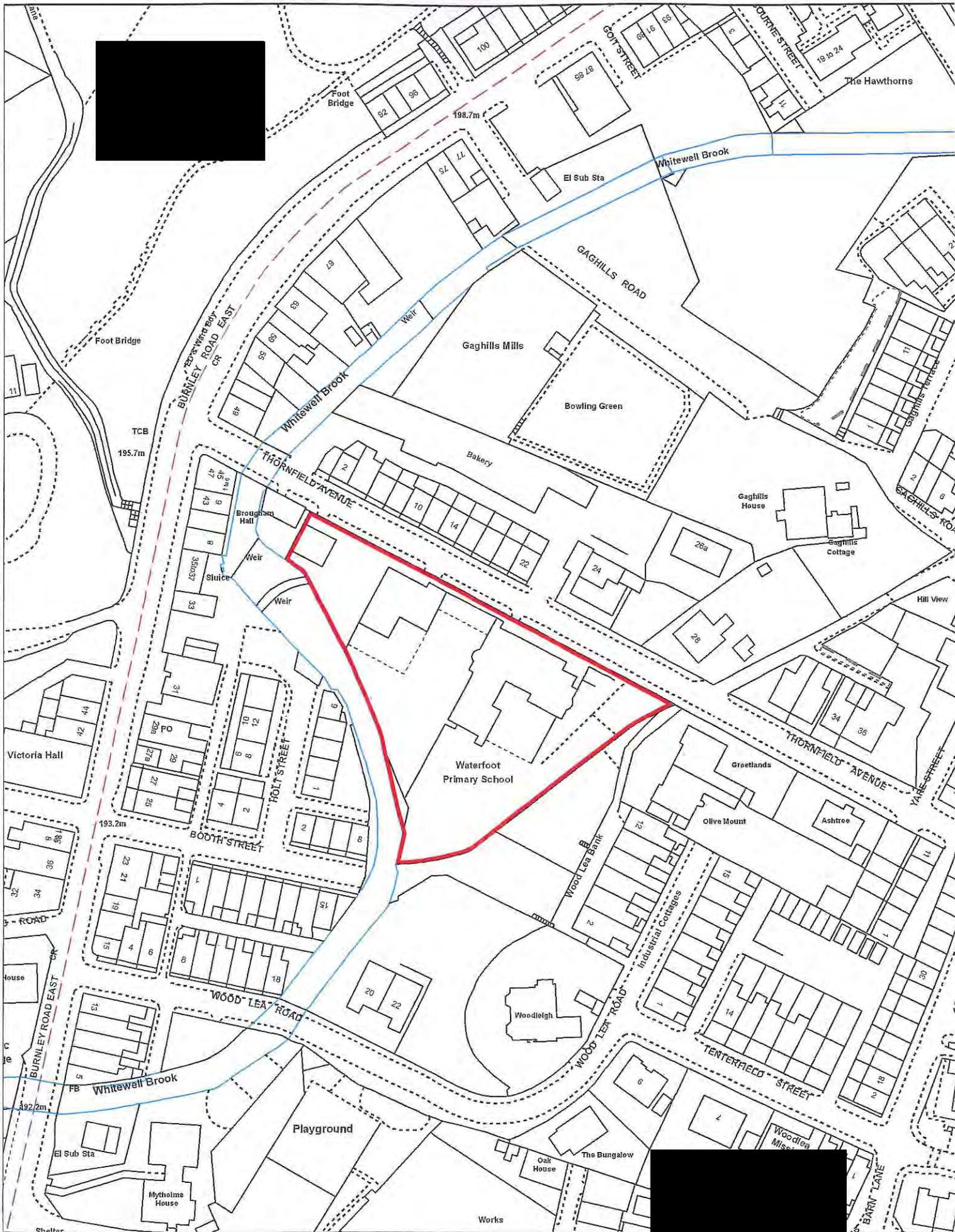
6 The Council hereby covenants with the Owner to perform the obligations specified in the Third Schedule

7 It is agreed and declared as follows:-

7.1 The expressions "the Council" "the Owner" and "County Council" shall include their successors in title and assigns

7.2 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders

8 This Agreement is a local land charge and shall be registered as such



Waterfoot Primary School

(FOR IDENTIFICATION PURPOSES ONLY)

Grid Ref: SD8321

Drawn by: P. Danson

Plan Ref: PG/PD

Scale: 1:1,250

File Ref: -

Date: 12/12/2011



- 9 The Owner agrees to pay the Council's reasonable legal fees in the sum of £750.00 relating to the preparation of the Agreement
- 10 All notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
- 10.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
- 10.2 in the case of a notice to be served on the Owner to the Owner at the above address
- 11 If the Planning Permission is not granted or if it is revoked or the Planning Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- 12 Unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto
- 13 Whenever in this Agreement there is reference to the Council giving its approval to any matter or scheme that reference is on the basis that such approval shall not be unreasonably withheld or delayed
- 14 Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement (including the transfer of any of the Affordable Housing Dwellings) shall

forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

- 14.1 The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties
- 14.2 If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place
- 14.3 It is hereby agreed and declared that:-
- 14.3.1 the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations
- 14.3.2 the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit

14.3.3 the Expert shall have an unfettered discretion to determine the reference to him

14.3.4 the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

15 Any sum referred to in paragraph 2 of the Second Schedule shall be Index Linked.

16 If any payment due under this Agreement is paid late interest will be payable from the date payment is due to the date of actual payment at the rate of 3% above the Interest Rate

17 Nothing contained or implied in this Agreement shall prejudice or affect the and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement PROVIDED ALWAYS for the avoidance of doubt the Council shall comply with the obligations on its part contained in this Agreement

18 This Agreement is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS whereof these presents have been duly executed as a DEED by the parties hereto the date and year first before written

FIRST SCHEDULE

All that plot of land shown edged red on Plan which is situate at the Site

SECOND SCHEDULE

The Owner covenants with the Council as follows:

1 Commencement

To notify the Council in writing of the Commencement Date within seven days of the Commencement Date

2 Contributions

2.1 To pay to the Council the Education Contribution in the following instalments, each instalment to be Index Linked:

2.1.1 £12,059 to be paid on Occupation of the 15th Dwelling on Site; and

2.1.2 £12,000 to be paid on Occupation of the 22nd Dwelling on Site.

2.2 To pay to the Council the Public Open Space Contribution in the following instalments, each instalment to be Index Linked:

2.2.1 £11,467 to be paid on Occupation of the 8th Dwelling on Site;

2.2.2 £11,000 to be paid on Occupation of the 15th Dwelling on Site; and

2.2.3 £11,000 to be paid on Occupation of the 22nd Dwelling on Site.

2.3 To pay to the Council the Refuse Bin Contribution in the following instalments, each instalment to be Index Linked:

2.3.1 £700 to be paid on Occupation of the 1st Dwelling on Site;

2.3.2 £700 to be paid on Occupation of the 8th Dwelling on Site;

2.3.3 £700 to be paid on Occupation of the 15th Dwelling on Site; and

2.3.4 £700 to be paid on Occupation of the 22nd Dwelling on Site

3 **Affordable Housing**

3.1 On or before the Commencement Date to seek written consent from the Council as to the exact locations of the Affordable Units on the Site

3.2 On receipt of written consent of the Council to the locations of the Affordable Units to build the Affordable Units in accordance with the Planning Permission

3.3 Not more than 13 of the Market Dwellings shall be Occupied until two of the Affordable Units have:

3.3.1 been Completed in accordance with the Planning Permission and made ready for beneficial Occupation and use; and

3.3.2 disposed of in accordance with paragraphs 3.6 – 3.8 of this Schedule

3.4 Not more than 18 of the Market Dwellings shall be Occupied until two of the Affordable Units (in addition to those referred to at paragraph 3.3) have:

3.4.1 been Completed in accordance with the Planning Permission and made ready for beneficial Occupation and use; and

3.4.2 disposed of in accordance with paragraphs 3.6 – 3.8 of this Schedule so that the total number of Affordable Units that have been provided totals four.

3.5 Not more than 20 of the Market Dwellings shall be Occupied until two of the Affordable Units (in addition to those referred to at paragraphs 3.3 and 3.4) have:

3.5.1 been Completed in accordance with the Planning Permission and made ready for beneficial Occupation and use; and

3.5.2 disposed of in accordance with paragraphs 3.6 – 3.8 of this Schedule so that the total number of Affordable Units that have been provided totals six.

- 3.6 Prior to disposal of each Affordable Unit to submit in writing to the Council the Owner's assessment of the Affordable Price of the Affordable Unit and no disposal of the Affordable Unit shall take place without receipt in writing of the Council's approval of the Affordable Price **provided always** that if after six weeks of the receipt of submission of the Owner's written assessment of the Affordable Price of the Affordable Unit the Council has been unable to approve the assessment then either party shall be entitled to refer the matter to an independent expert in accordance with clause 14 of this Agreement and this clause shall apply to the first and all subsequent disposals of each of the Affordable Units.
- 3.7 Prior to disposal of each Affordable Unit the Owner shall submit in writing to the Council evidence that the intended purchaser qualifies as a Qualifying Person and no disposal of the Affordable Unit shall take place without the receipt in writing of the Council's approval of the Qualifying Person **provided always** that if after six weeks of receipt of the evidence the Council has been unable to approve the Qualifying Person then either party shall be entitled to refer the matter to an independent expert in accordance with clause 14 of this Agreement and this clause shall apply to the first and all subsequent disposals of the Affordable Units.
- 3.8 To dispose of the Affordable Units at a price not exceeding the Affordable Price to a Qualifying Person and the assurance effecting the disposition of each Affordable Unit shall incorporate the relevant and applicable definitions from this Agreement and contain the following covenants for the benefit of the Transferor and as a separate covenant with the Council so as to bind each of the Affordable Units in perpetuity:

- 3.8.1 that the Affordable Unit is not to be occupied other than as the sole or main residence of a Qualifying Person;
- 3.8.2 that the Affordable Unit cannot be offered for rent or for shared ownership, shared equity or other similar product;
- 3.8.3 that the Affordable Unit shall not be disposed of otherwise than at the Affordable Price to a Qualifying Person;
- 3.8.4 not to dispose of the Affordable Unit before the owner of the Affordable Unit (the Dwelling Owner) has submitted in writing to the Council the Dwelling Owner's assessment of the Affordable Price of the Affordable Unit and no disposal of the Affordable Unit shall take place without receipt in writing of the Council's approval of the Affordable Price provided always that if after six weeks of the receipt of the submission of the Dwelling Owner's written assessment of the Affordable Price of the Affordable Unit the Council has been unable to approve the assessment then either party shall be entitled to refer the matter to an independent expert in accordance with clause 14 of the Section 106 Agreement dated [7th January 2016] between (1) Rossendale Borough Council and (2) Waterfoot Investments Limited and that this clause shall apply to the first and all subsequent disposals of the Affordable Unit.

Not to dispose of the Affordable Unit before the Dwelling Owner has submitted in writing to the Council evidence that the intended purchaser qualifies as a Qualifying Person and no disposal of the Affordable Unit shall take place without the receipt in writing of the Council's approval of the Qualifying Person provided always that if after six weeks of receipt of the

evidence the Council has been unable to approve the Qualifying Person then either party shall be entitled to refer the matter to an independent expert in accordance with clause 14 of the Section 106 Agreement dated [7th January 2016] between (1) Rossendale Borough Council and (2) Waterfoot Investments Limited and this clause shall apply to the first and all subsequent disposals of the Affordable Unit.

3.8.5 That the Dwelling Owner shall not dispose of the Affordable Dwelling (other than a charge) without first:

- (a) procuring that any disponent enters into a covenant with the Council to observe and perform the covenants set out in herein; and
- (b) delivering to the Council the covenant referred to at paragraph 3.8.6(a) on the disposal of the Affordable Dwelling

3.8.6 that application shall be made to the Chief Land Register to enter a restriction in the following form in the proprietorship register of the title to the Affordable Dwelling:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the solicitor or conveyancer of Rossendale Borough Council that the provisions of the disposition are in accordance with paragraph 3.8 of the Second Schedule to the Planning Agreement dated [7th January 2016] and made between (1) Rossendale Borough Council and (2) Waterfoot Investments Limited have been complied with”

3.8.7 That the Owner shall at its own cost apply to register the restriction referred to in paragraph 3.8.7 above at HM Land Registry as soon as reasonably practicable and shall deliver to the Council an official copy of such title showing the registration of the restriction in respect of the Affordable Dwelling.

THIRD SCHEDULE

The Council covenants with the Owner as follows:

- 1 To issue a receipt on request for each instalment of the Contributions.
- 2 Upon receipt of each instalment of the Public Open Space Contribution and the Refuse Bin Contribution to place the relevant sums in an interest bearing account or in separate accounts as the Council shall in its discretion provide.
- 3 To use the Public Open Space Contribution towards the provision, modernisation or maintenance of local recreational/play facilities, nature conservation facilities or pedestrian/cycle links in the vicinity of the Site and for no other purpose.
- 4 To use the Refuse Bin Contribution for provision of refuse bins for the Dwellings and for no other purpose.
- 5 To pay each instalment of the Education Contribution to the County Council on condition that the County Council uses the Education Contribution for the provision of additional primary school capacity and/or occupancy within a two mile radius of the Site.
- 6 Upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation to that effect.

FOURTH SCHEDULE

Qualifying Criteria

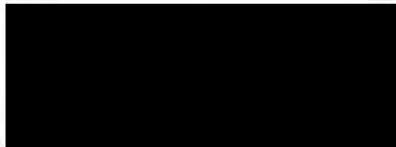
- 1 First preference shall be given to persons who in the opinion of the Council are in need of affordable housing and who:
 - 1.1 have lived in the Wards Of Whitewell And Hareholme for at least 12 months;
or
 - 1.2 Have strong connections with the Wards Of Whitewell And Hareholme either by Employment or Close Family Association
- 2 If, following marketing of the relevant Affordable Unit(s) for Occupation for a continuous period of six weeks (evidence satisfactory to the Council having first been provided to the Council) no person qualifying under paragraph 1 above has been forthcoming, preference shall be given to persons who in the opinion of the Council are in need of affordable housing and who:
 - 2.1 Have lived in the Administrative Area for at least 12 months; or
 - 2.2 Have strong connections with the Administrative Area either by Employment or Close Family Association

IN WITNESS whereof this document has been executed as a DEED by the respective parties hereto in the appropriate manner with the intention of such document being Delivered on the part of each of them a DEED on (but not before) the day and year first before written

No. IN SEAL REGISTER
115142

THE COMMON SEAL of ROSSENDALE)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:-)

Authorised Signatory



**EXECUTED as a DEED By
WATERFOOT INVESTMENTS LIMITED
Acting by two Directors**

Signature of Director: _____

Signature of Director: _____

